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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD
O.A. NO. 413 of 1992.

Between

K. Krishna

...

Applicant

And

1. Assistant Mechanical Engineer (R&L), Headquarters Office, Power Branch, Railnileayam, South Central Railway, Sec'bad.
2. Chief Mechanical Engineer (Power), South Central Railway, Railnileayam, Secunderabad.
3. General Manager, South Central Railway, Railnileayam, Sec'bad

...

Respondents

Counsel for the Applicant

: Sri. G.V. Subba Rao

Counsel for the Respondents

: Sri. V. Bhimanna, SC for Rlys.

CORAM:

Hon'ble Mr. Justice V. Neeladri Rao, Vice Chairman

Hon'ble Mr. A.B. Gorathi, Administrative Member

T-C

R

Contd:... 2/-

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Copy to:-

1. Assistant Mechanical Engineer(R & L),
Headquarters Office, Power Branch, Railnialyam, South
Central Railways, Secunderabad.
2. Chief Mechanical Engineer(Power), South
Central Railway, Rail Nilayam, Secunderabad.
3. General Manager, South Central Railways,
Rail Nilayam, Secunderabad.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr.V.Bhiamanna, SC for Rlys,
CAT, Hyderabad..
6. One copy to Library, CAT, Hyd.
7. One spare copy .

kku.

T. C ✓

V. Bhiamanna

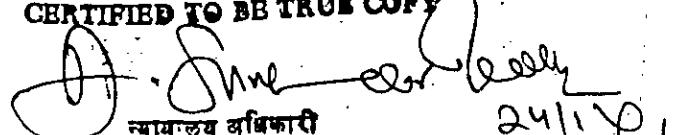
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J. S. D.

Accordingly, AME being an officer lower than a Junior Scale Officer cannot impose the penalty of removal from service. A Group 'B' officer, however, is empowered to initiate disciplinary proceedings in respect of a Group 'D' employee and award any of the minor penalties, as per Schedule IJ to the Railway Servants (Discipline & Appeal) Rules, 1968. There does not seem to be any controversy in this regard and as such it must be held that the penalty of removal is liable to be set aside.

4. For the above reason, there is no need to consider the other contentions raised on behalf of the applicant.

5. In the result, the impugned penalty order dt. 3.6.91 removing the applicant from service is hereby set aside together with the order of the appellate authority rejecting the applicant's appeal. This order does not, however, debar the competent authority to consider the record of the inquiry proceedings and the Inquiry Officer's report and pass appropriate orders. As the applicant had already been taken back into service on 22.1.92 by the order of the General Manager, the question as to how the period from 3.6.91 to 22.1.92 should be treated shall have to be decided by the competent authority in terms of Rule 1344 (F.R.54-A) of the Indian Railway Establishment Code Vol.II. //

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY


न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer
कैराप गवर्नर न्यायालय
HYDERABAD BENCH

24/11/92

T.C P

Serial Circular No. 227/89 Circular Letter No. P(R)481/S&T.
Dated: 26-12-1989

Copy of Board's letter No. PC-IV/89/03/20/25 dated 27-11-89 is published for information, guidance and necessary action.

Copy of Railway Board's Letter No. PC-IV/89/03/02/25, dated 27-11-1989

Sub.: Scales of Stenographic Assistance to Officers on the Railways.

The entitlement of Railway Officers for stenographic assistance has been revised by the Railway Board pursuant to adoption of the Revised Pay Scales on the basis of IV Central Pay Commission's recommendations. It has been decided that the scales of pay and designations of stenographers attached to the officers of different levels will be as follows:

Level of Stenographic Assistance	Scale of Officer entitled
Stenographer (Rs. 1200-2040)	Jr. Scale Officers (Rs. 2200-4000)
Stenographer (Rs. 1400-2300)	Sr. Scale Officers (Rs. 3000-4500)
	Sr. Scale Officers (Rs. 3000-4500)
	JA Grade Officers (Rs. 3700-5000)
	SG Officers (Rs. 4500-5700)
One Stenographer (Rs. 1400-2300) should be attached to two senior scale officers	
Personal Assistant (Rs. 2000-3200)	Chief Security Commissioner (Rs. 5100-6150)
	SA Gr. Officers (Rs. 5900-6700 & above)

2. These instructions will take effect from the date of issue of these orders.

Serial Circular No. 228/89 Circular Letter No. P. (R) 420/IV.
dated: 26-12-1989.

Copy of Board's letter No. E(G)89 LE2/16 dt. 6-12-89 is published for information, guidance and necessary action. Board's letters dated 25-1-89 referred to there in were circulated under confidential letters No. P (R) 227/Con/III of 3-3-87 and 28-2-89 respectively.

26-12-86 (not 26-2-86) and

Copy of Board's letter No. E (G) 89 LE2-16 dated 6-12-89.

Sub:- Regularisation of the period of unauthorised absence.

Attention is invited to the instructions contained in this Ministry's D. O. No. E (G) 86LE-2/12 dated 26-2-86 and No. E (G) 88 LE-2/3 dated 25-1-89, stressing the need to tighten up the administrative machinery and for initiating action in cases of unauthorised absence of Railway employee.

The question as to how the spell of unauthorised absence should be regularised if the employee is allowed to re-join duty after the period of absence and is imposed a

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punishment other than compulsory retirement, removal or dismissal under the D&A Rules has been under consideration of this Ministry as the practice being followed at present from Railway to Railway vary. The matter has been considered and it is clarified that the period of absence in such cases may be treated only as extraordinary leave subject to provisions contained in para 510 of IPEC (5th edition) and no part of the absence period be allowed to be covered by leave salary payable for leave due and admissible. This issues with the concurrence of Finance Directorate of the Ministry of Railways

Serial Circular No. 229/89 No. P. RES/171/Policy v
Dated 2-12-1989.

Copy of Board's letter No. 29-E/SCT/1/29-5 dated 8-11-89 together with a copy of Office Memorandum No. 36011/25/89-EST dt. 21-8-89 and No. E/SC/1/3/25-ESTT (SCT) dated 24-6-85 Ministry of Personnel Public Grievances and Pensions, etc. etc. of personnel & Training Govt. of India is published for information and necessary action.

Board's letter mentioned therein were already circulated and they are also available in the Brochure on Reservation for scheduled castes and Scheduled Tribes in Railway Services (3rd Edition)

Copy of Board's letter No. 89- E(SCT)1/29-5 dated 8-11-89

Sub: Placement, Postings, Transfer of Scheduled Castes and Scheduled Tribes employees - Harassment and discrimination in the matter of

Ref: Board's letter No. (i) E/SCT/60CMI/100 dt. 8-12-80
(ii) E/SCT/70.CMI/15/3 dt. 19-11-70
(iii) E/SCT/74.CMI/5,58 dt 14-1-75
(iv) 78-E/SCT/15/25/ dt. 6-7-78
(v) 85-E/SCT/1/43,1 dt. 24-12-85.

A Copy of Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training)'s O. M. No. 36011/25/89-ESTT(SCT) dated 21-8-89 is enclosed for information and guidance.

In this connection, attention is also invited to the instructions contained in Board's letter's quoted above. Ministry of Railways desire that these instructions should be scrupulously followed and any violation thereof be seriously viewed.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH, HYDERABAD.

O.A. No. 1561/97

O.A. No. 1561 OF 1997

J. D. INDRANATHAN

APPLICANT

V/S

UNION OF INDIA,
REPRESENTED BY THE GENERAL MANAGER,
SOUTH CENTRAL RAILWAY,
SECUNDERABAD AND 5 OTHERS.

RESPONDENTS.

COUNTER AFFIDAVIT OF RESPONDENTS NO. 1 TO 6

I, A. Nagender Reddy S/O Gal Reddy, aged 35 years occupation Government Servant, R/o. Hubli, do hereby solemnly affirm and state as under:

1. I am working as Senior Divisional Personnel Officer, at Hubli Division of South Central Railway and I am Respondent No. 4 herein. As such I know all the facts. I am filing this counter affidavit on my behalf and also on behalf of other Respondents as I am authorised to do so.

2. I have gone through the contents of O.A. and I hereby specifically deny the allegation/averments which are not admitted and which are contrary to the submission made herein.

3. Brief facts of the case are as under:

The applicant was appointed on compassionate grounds as Loco Khalasi and the date of his regular appointment is 15.11.1971 and not 1.3.1971 as contended by him in the O.A. He progressed up to

DEPONENT

[Signature]

धर्मेंद्र मंडल कार्मिक अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

ATTESTOR

[Signature]
सहायक कार्मिक अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुबली,
South Central Railway HUBLI.

[Signature]
S. P. Rathod
Attest
26/2/98

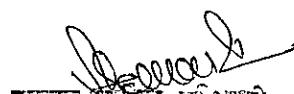
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the post of Boiler-maker in scale Rs.1200-1800 (RSRP). While working as Boiler Maker at Loco Foreman's Office, Hubli, he applied for grant 90 days LHPA., i.e., Leave on Half Average Pay from 1.11.1991 onwards vide his leave application dated 16.10.1991. His request for grant of 90 days Leave on Half Average Pay was regretted. However in the regret letter it was clearly mentioned that he may apply for LAP i.e. Leave on Average Pay if eligible. Though he was having 8 days leave on Average Pay at his credit neither did he apply for the same nor approached to the higher authorities against refusal of Leave on Half Average Pay. Instead of doing so, he remained absent unauthorisedly for 799 days from 1.11.1991 to 7.1.1994 without obtaining prior sanction or producing sick certificate issued by the Railway Doctor. The applicant had applied for voluntary retirement by his application dated 26.12.1992. But the same was not accepted in view of his non-completion of requisite period of qualifying service i.e. 20 years, as per rules and this position has been communicated to the applicant by the Railway Administration by letters No. H/P.579/IV/BR & I dated 1.2.1993 (Annexure A-6) and No. H/P.579/IV/BR & I dt. 19.7.1994 (Annexure A-12). The applicant in his representations had requested to sanction leave available at his credit

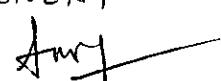
DEPONENT

2

ATTESTOR


सहायक कार्यालय अधिकारी,

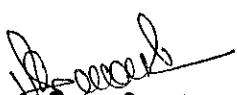
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुबली,
South Central Railway HUBLI.


सर्विस मंडल कार्यालय अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

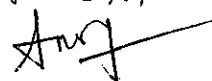
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and thereby to count for qualifying service to make good the short fall to complete 20 years of qualifying service. It is submitted that he was having 8 days Leave Average Pay and 224 days Leave on Half Average Pay at his credit. Even if all the leave at his credit had to be sanctioned, the qualifying service will not be completing 20 years as required for accepting voluntary retirement as per rules. A Charge Memorandum was issued to the applicant for his unauthorised absence from 1.11.1991 to 7.1.1994, duly asking him to submit his written statement of his defense for the said charges. But, he did not do so. In turn he had sent a letter dated 30.3.1994 addressed to the Disciplinary Authority (Divisional Mechanical Engineer, Hubli) to keep the disciplinary proceedings in abeyance stating that he had made representation to the Minister of Railways on 8.3.1994 (Annexure R-1). Since the applicant had not made out any sufficient and valid grounds for pending the disciplinary proceedings, the enquiry was conducted as per the procedure laid down in Railway Servants (Discipline & Appeal) Rules, 1968. The applicant had participated in the enquiry and he had admitted the charges during the enquiry and also during the enquiry he stated that he was satisfied with the procedure of the disciplinary proceedings. All

ATTESTOR


सहायक कार्यकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

DEPONENT

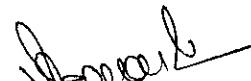


दक्षिण मध्य कार्यकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

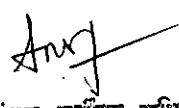
reasonable opportunities were given to the applicant to defend his case. The Enquiry Officer found that charges leveled against the applicant stands proved. A copy of the Enquiry Officer's report was sent to the applicant for which the applicant had acknowledged. After receipt of Enquiry Officer's report he had not submitted representation. Hence the Disciplinary Authority after having carefully gone through the enquiry proceedings and after careful consideration in the matter has passed speaking order of penalty removing the applicant from service by order No. H/F.227/IV/93/1045 dated 7.4.1995 (Annexure A-16). The applicant submitted representation to the Appellate Authority, (Annexure A-18) wherein he once again requested for voluntary retirement though it was made clear to him several times that accepting of voluntary retirement was not permissible under the rules because of his not completing 20 years of qualifying service. The Appellate Authority after consideration in the matter had confirmed the penalty order passed by the Disciplinary Authority (Annexure A-19). Afterwards the applicant had submitted Revision Petition to the Revising Authority (Annexure A-20) wherein he requested for compulsory retirement. The Revising Authority after going through the case carefully

ATTESTOR

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राज्यकालीन अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुबली,
South Central Railway HUBLI.

DEPONENT


राज्यकालीन अधिकारी,
Sr. National Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

and after careful consideration in the matter confirmed the penalty order removing the applicant from service (Annexure A-22)

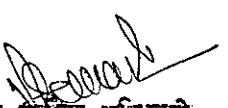
3. In reply to para 6(1) of the O.A. it is submitted that the averment made therein are specifically denied being false and incorrect. The date of regular appointment of the applicant is only from 15.11.1971 and not from 1.3.1971 as contended by him.

4. In regard to para 6(2) of the O.A., it is submitted that though his request for 90 days leave on Half Average Pay was rejected, it was made clear to him for applying for grant of leave on Average Pay. He did not apply for the same.

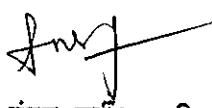
5. In reply to para 6(3) to 6(7) of the O.A., it is submitted that the allegation made therein are specifically denied being baseless. It is submitted that the applicant was having qualifying service less than 20 years. As per the rules to opt for voluntary retirement an employee must have 20 years qualifying service. In the case of the applicant his qualifying service is as under:

Date of appointment.	15.11.1971
Date of application for voluntary retirement.	26.12.1992
Total Service.	22 years 1 month 11 days
Non-qualifying service.	3 years and 9 days.

ATTESTOR


 सहायक क्रमिक अधिकारी,
 Assistant Personnel Officer,
 दक्षिण मध्य रेलवे हुबली,
 South Central Railway HUBLI.

DEPONENT


 वरिष्ठ मंडल क्रमिक अधिकारी,
 Sr. Divisional Personnel Officer,
 दक्षिण मध्य रेलवे, हुबली,
 South Central Railway HUBLI.

Qualifying service. 19 years 1 month 2 days.

Therefore, the respondents could not accept his request for voluntary retirement. This position was made clear to him several times (Annexure A.7). But the applicant went on requesting for voluntary retirement repeatedly. It is submitted that respondents have checked the service particulars of the applicant thoroughly and after proper checking only the period of qualifying service as 19 years 1 month and 2 days was communicated to him. The passing of penalty order as at Annexure A.15 is not at all of a sudden as alleged by the applicant. As stated supra the said penalty order was passed duly observing procedure laid down under Railway Servants (Discipline & Appeal) Rules, 1968 and the applicant has also participated in the disciplinary proceedings. The Disciplinary Authority after carefully considering the findings of Enquiry Officer has passed the said penalty order.

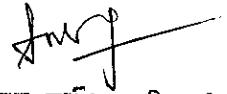
6. The allegation made in sub-para 6(8) and 6(9) are denied being false and incorrect. It is submitted that the Appellate Authority has confirmed the order of Disciplinary Authority after carefully considering the matter and Revising Authority has also after carefully considering the matter passed speaking orders confirming the order of removal from service. As per the Railway Servants (D&A) Rules 1968 the Appellate Authority and

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ATTESTOR


सहायक कार्यालयीक अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI,

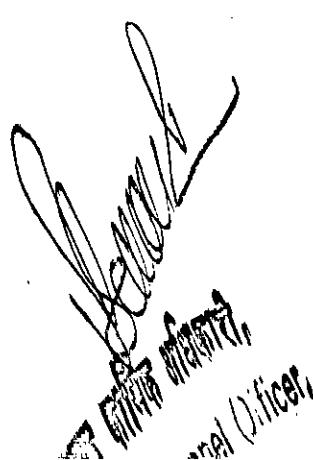
DEPONENT


सरित गंडल कार्यालयीक अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

Revising Authority have power to confirm, modify or set-aside the orders passed by the Disciplinary Authority. The Allegation that the revising authority is not competent to pass such orders is incorrect. No order passed by the authorities are violative of Articles 14,16 and 311(1) of the Constitution of India.

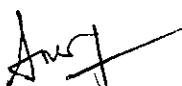
7. In reply to para 1 to 3 under the head "GROUNDS" of the O.A., it is submitted that the allegation made therein are specifically denied being false and incorrect. It is submitted that the representation made by the applicant are duly considered and suitable reply sent. The calculation of qualifying service shown in para 1 of the "GROUNDS" is base less, the reason for initiating disciplinary proceedings against the applicant was for his unauthorised absence and not for his requesting for voluntary retirement as alleged by the applicant in para 2 of the "GROUNDS". It is submitted that the respondents have not acted contradictory to the procedure laid down in Railway Servants (Discipline & Appeal) Rules, 1968. The Disciplinary proceedings was initiated by the competent authority i.e. Disciplinary Authority only as per rules. The said Disciplinary Authority is empowered to pass orders in the matter of Disciplinary Proceedings. The allegation that the Disciplinary Authority and Revising Authority have

ATTESTOR



Shankar
Divisional Officer

DEPONENT



श्रीष्ठ भाइक अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण सेवा रेलवे, हुबली.
South Central Railway HUBLI.

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no Locus STANDI to conduct enquiry is base less. Competent Authorities have observed all procedures laid down in the rules of disciplinary proceedings in conducting the enquiry and the applicant had also participated in the enquiry proceedings. During the course of enquiry he said that he was fully satisfied with the DAR proceedings. Hence, there is no reason to render the penalty order as Null & Void.

6. In regard to para 4 of the "GROUNDS" in the O.A., it is submitted that the averment made therein are base less and hence denied. In the case of the applicant the General Manager is neither the Disciplinary Authority nor the Appointing Authority. The applicant is trying to mislead this Hon'ble Tribunal by Mis-interpreting the Rules of DAR procedure with an ulterior motives.

7. In regard to paras 5 to 7 of the "GROUNDS" in the O.A., it is submitted that the applicant can not compare his case in that of O.A. No.352/86 or O.A. No.413/82 or SLP No.2828/97 mentioned in the said paras. The facts and circumstances involved in the said citations are different from that of the applicant. The applicant is misconceived.

10. In reply to the para 8 of the grounds it is submitted that the applicant is relying on a

B

ATTESTOR


सहायक कार्यालयीक अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुबली,
South Central Railway HUBLI.

DEPONENT


प्राप्त अधिकारी, कार्यालयीक अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

rule of 1993 where he submitted representation for voluntary retirement in the year 1992. Thus Rule of 1993 are not applicable to the applicant. Moreover, for treating any period as particular leave there must be a request from the employee to the competent authority.

11. In regard to para 9 of the grounds in the D.A., it is submitted that the Railway Board's circular produced as Annexure A.23 is of no avail to the applicant since it applies to the unauthorised absences who are allowed to re-join duty after the period of absence and is imposed punishment other than compulsory retirement, removal or dismissal under the D&A rules.

12. In regard to paras 11 to 13 of the grounds in the D.A., it is submitted that the allegations made therein are denied being baseless and false. It is submitted that the action of the respondents in removing the applicant from service is neither against rules of natural justice nor contradictory to Articles 14, 16 and 311(1) of the Constitution of India.

13. It is submitted that the D.A. is devoid of merits and untenable and hence liable to be dismissed. The applicant is not entitled to any reliefs sought for in the D.A.

ATTESTOR

सहायक कार्यक कालिकारी;
Assistant Psc. Officer (ser.,
दक्षिण मध्य रेलवे हृष्ण.
South Central Railway HUBLI.

DEPONENT

श्री राम संडल कालिक टी.एस.टी.
Sr. D. Officer Personnel Officer,
दक्षिण मध्य रेलवे, हुबली.
South Central Railway HUBLI.

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14. In view of the submissions made above it is respectfully submitted that this Hon'ble Tribunal may be pleased to dismiss the Q.A. with costs in the interest of justice.

DEPONENT

Sworn and Signed before
me on this the ...20th... day
of February 1998.

वरिष्ठ मंडल कार्यिक अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

ATTESTOR.

Deenabandhu
सहायक कार्यिक अधिकारी;
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुबली.
South Central Railway HUBLI.

10

सहायक कार्यिक अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुबली.
South Central Railway HUBLI.

विशेष मंडल कार्यिक अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

In the C.A.T
Byd Beria

OA. 156/192

Reply Statement



ANNEXURE - R-1

ZION PRAYER HOUSE

Teacher's Colony,

Place: Vaniyambadi-2.

Date: 30.3.94.

58

From

J.D. INBANATHAN
Boiler Maber/UBL
ZION PRAIER HOUSE
54/A1 Teachers Colony
Khaderpet,
VANIYAMBADI 635 751.

To

DME/L/UBL..... Disciplinary Authority.

Sir,

Ref: Your office memorandum of charges (SF-5)
in No. H/P227/IV/93/1045 24.1.94 with Covering
letter (from S.D.DPO/UBL) dt. 17.3.94.

While duly acknowledging the memo of charges cited
above, I respectfully submit the following for your kind
perusal and favourable action please.

The unauthorised absence for 798 days as alleged
in the article of charge was a cumulative adverse result/
corollary of the rejection of my request for leave for
90 days (LHAP) by the concerned authorities at a time while
I was engulfed in acute domestic problems. Therefore, I
with humility along the charge of contrevenging any rules
under R.S. conduct Rules.

Further, My request for acceptance of my voluntary
retirement was also not agreed to. Under such pressing
and agonising circumstances having
I have now (on 8.3.94) sent a re
Minister for Railways for commi
orders in my case.

In this circumsta
please keep the disciplin
response to my letter
detailed defence stat
from the high offi

Thank you.

Yours faithfully,
J.D. INBANATHAN

INBANATHAN
HUBL

In the C.A.T
Hyd Bench

OA. 1561/97

Reply Statement



Filed by:-

N. R. Devanay
30 May 1998
17/198

ANNEXURE - R-1

ZION PRAYER HOUSE

Teacher's Colony,

Place: Vaniyambadi-2.

58

Date: 30.3.94.

From

J.D. INBANATHAN
Boiler Maber/UBL
ZION PRAYER HOUSE
54/A1 Teachers Colony
Khaderpet,
VANIYAMBADI 635 751.

To

DME/L/UBL..... Disciplinary Authority.

Sir.

Ref: Your office memorandum of charges (SF-5)
in No. H/P227/IV/93/1045 24.1.94 with Covering
letter (from S.D.DPO/UBL) dt. 17.3.94.

While duly acknowledging the memo of charges cited
above, I respectfully submit the following for your kind
perusal and favourable action please.

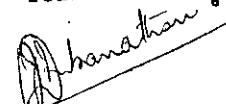
The unauthorised absence for 798 days as alleged
in the article of charge was a cumulative adverse result/
corollary of the rejection of my request for leave for
90 days (LHAP) by the concerned authorities at a time while
I was engulfed in acute domestic problems. Therefore, I,
with humility along the charge of contrevenging any rules
under R.S. conduct Rules.

Further, My request for acceptance of my voluntary
retirement was also not agreed to. Under such pressing
and agonising circumstances having constrained to do so,
I have now (on 8.3.94) sent a representation to the Honourable
Minister for Railways for commiseration and favourable
orders in my case.

In this circumstances, I request your goodself to
please keep the disciplinary proceedings in abeyance pending
response to my letter to the honble M.R. I shall submit my
detailed defence statement also in due course on hearing
from the high office of M.R.

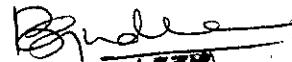
Thank you.

Yours faithfully,



(J.D. INBANATHAN)

Attached



इल महाल रल प्रबंधक / हुड्डा
for Divl. Ry. Manager / HUDDA

59

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

MA 531/98 in OA 1561/97

DATE OF ORDER : 19-11-98

Between :-

J.O.Inbanathan

... Applicant

And

1. Union of Indian rep. by the General Manager, S.C.Railway, Sec'bad.
2. Chief Personnel Officer, SC Riys, Sec'bad.
3. Addl.Divisional Railway Manager, SC Riys, Hubli, Dharward, Dist.Karnataka.
4. Sr.Divisional Personal Officer, SC Riys, Hubli, Dharward, Dist.Karnataka.
5. Sr.Divisional Mechanical Engineer, SC Riys, Hubli, Dharward, Dist.Karnataka.
6. Divisional Mechanical Engineer, SC Riys, Hubli, Dharward, Dist. Karnataka.

... Respondents

-- -- --

Counsel for the Applicant : Shri P.Rathaiah / Shri G.S.Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

-- -- --

CORAM:

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

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

(Order per Hon'ble Shri H.Rajendra Prasad, Member (A)).

R
19.11.98

-- -- --

6e

(Order per Hon'ble Shri H.Rajendra Prasad, Member (A)).

-- -- --

Orders in MA 531/98

Heard Shri G.S.Rao, learned counsel for the Applicant at great length and also Sri N.R.Devaraj, learned Standing Counsel for the Respondents on the M.A. for amending the Original Petition.

2. The amendments sought to be incorporated are not admissible since the proposed changes are totally out of context to the grounds raised as reliefs prayed for in the main O.A. The changes proposed in the M.A. would completely alter the entire complexion of the case. The applicant shall be free to file a fresh O.A., taking all the grounds and arguments mentioned in the M.A., if so advised, and seek a proper relief in the light of those grounds. The case will be examined according to law, if such O.A. is filed.

3. The M.A. is thus disposed of.

Orders on the O.A.

It is submitted by the learned counsel for the applicant that he desires to withdraw this case. He is permitted to do so. This permission is granted after hearing both the counsels at considerable length.

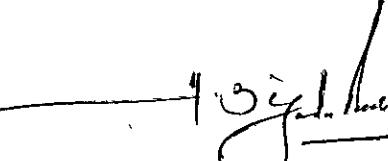
*TG
29.11.98*

... 3.

The Original Application is thus disposed-of as withdrawn.

No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J)
19.11.98


(H. RAJENDRA PRASAD)
Member (A)

Dated: 19th November, 1998.

Dictated in Open Court.

av1/


Deputy Registrar

MA. 531/98

O.A. 1561/97

To

1. The General Manager, SC Rly
Union of India, Secunderabad.
2. The Chief Personnel Officer,
SC Rlys, Secunderabad.
3. The Addl. Divisional Railway Manager,
SC Rlys, Hubli, Dharward, Karnataka State.
4. The Sr. Divisional Personal Officer, SC Rlys,
Hubli, Dharward Dist. Karnataka.
5. The Sr. Divisional Mechanical Engineer,
SC Rlys, Hubli, Dharward, Karnataka.
6. The Divisional Mechanical Engineer,
SC Rlys, Hubli, Dharward Dist. Karnataka.
7. One copy to Mr.P.Rathaiah, Advocate, CAT.Hyd.
8. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
9. One copy to HHRP.M.(A) CAT.Hyd.
10. One spare copy.

pvm.

I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE

~~VICE-CHAIRMAN
AND~~

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

The Hon'ble Mr. B.S. Jaiparameswar, M.C.G.
Dated: 19-11-1998.

~~ORDER/JUDGMENT~~

M.A./R.A./C.A. No. 531/98
in

O.A.No. 1561/97

T.A.No. (w.p.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions

Dismissed.

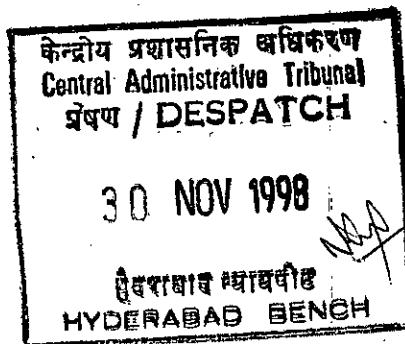
Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.



MA. 531/98 in OA. 1561/97.

DATE Office Note

ORDER

23-10-98

Acquid Mr. G. S. Rao for
Mr. P. Rathnaik for the
applicant and Mr. W. Satyavratayya
for Mr. N. R. Devani for the
respondents.

One week time is given to
the respondents to file their reply
to the MA. This is in addition
to the time already granted
to them on ~~an~~ earlier
occasion.

List this case for final
disposal with or without
reply to the MA on 30/11/98.

MA. 531/98
in
OA. 1561/97.

Prayer *for*
HRS SP HRP
M (J) M (B)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH,

AT HYDERABAD

O.A.NO.1561 of 1997

M.A.No. 531 of 1998

Between:

J.D. Inbanathan,
R/o Bethel Prayer House No.31/A
Govinda Swamy Street, Jolarpetta,
Vellore, CHENNAI - T.N. 635 851.

.. Applicant

AND

1. Union of India represented by the General Manager, South Central Railway, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Secunderabad.
3. Addl. Divisional Railway Manager, South Central Railway, Hubli, Dharward Dist, Karnataka.
4. Sr. Divisional Personnel Officer, South Central Railway, Hubli, Dharward Dist, Karnataka.
5. Sr. Divisional Mechanical Engineer, South Central Railway, Hubli, Dharward, Dist. Karnataka.
6. Divisional Mechanical Engineer, South Central Railway, Hubli, Dharward, Dist., Karnataka.

.. Respondents

APPLICATION FILED UNDER RULE 8(3) OF THE CENTRAL ADMINISTRATIVE TRIBUNAL PROCEDURAL RULES 1987:

For the reasons stated in the accompanying affidavit the applicant humbly prays that this Hon'ble Tribunal may be pleased to amend the prayer and quash the R-4 letters dt.1-2-93 & 17-07-94 and further direct R-4 to sanction leave at his credit and accept voluntary retirement from 26-12-92 and pay all consequential retiral benefits and pass such other order/orders as this Hon'ble Tribunal may deem fit and proper, in the interest of Justice.

DATE: -07-98

HYDERABAD.

*Amrit Singh
17/7/98
Counsel for the applicant*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH,

AT HYDERABAD

O.A.No.1561 of 1997

M.A.No 531 of 1998

Between:

J.D. Inbanathan,
R/o Bethel Prayer House No,31/A
Govinda Swamy Street, Jolarpetta,
Vellore, CHENNAI - T.N. 635 851.

.. Applicant

AND

1. Union of India represented by the General Manager, South Central Railway, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Sec'bad.
3. Addl. Divisional Railway Manager, South Central Railway, Hubli, Dharward, Dist, Karnataka.
4. Sr. Divisional Personnel Officer South Central Railway, Hubli Dharward, Dist. Karnataka.
5. Sr. Divisional Mechanical Engineer, South Central Railway, Hubli, Dharward, Dist. Karnataka.
6. Divisional Mechanical Engineer, South Central Railway, Hubli, Dharward, Dist., Karnataka.

.. Respondents

AFFIDAVIT

I J.D. Inbanathan, S/o Jaipaul aged 46 years occupation former Boiler maker, S.C.Railway, Hubli now residing at H.No.31/A Govind swamy street, old Jolarpetta, North Arcot Dist. 635 851, temporarily came done to Hyderabad do hereby and sincerely affirm and state on oath as follows:

1. I am the applicant herein as such I am well aquainted with the facts of the case deposed here under.
2. I state that I have filed O.A.No.1561/97 on 11-11-97 praying to quash the imposition of removal orders by R-3 and 4 for unauthorised absence.
3. I state that I worked as a substitute Khalasi in locoshed, Hospet in Hubli division from 10-06-70 to 30-06-70, 01-03-71 to 15-11-71 (A-2 reverse).
4. I further state, that my date of appointment was shown as regular from 15-11-71 to 26-12-92 (i.e.) 22 years 01month and 11days(A-6)

5. I submit during the period of my regular service from 15-11-71 to 26-12-92, I am in LWP from 17-6-82 ~~to 6-1-83~~ (i.e.) 6months 19days and 1-11-91 to 26-12-92 (i.e.) 1year 01month 25days (i.e.) total 1year 8months and 14days at the time of my Voluntary retirement (i.e.) 26-12-92 but not 3 years 9days as stated by R-4. The R-4 wrongly mentioned the above non qualifying service without specifically mentioning the actual periods (A-6).

6. I submit that R-4 admitted in his reply counter at para 5 of page 5 that I worked for 22years 01month and 11days minus 1year 8months 14days nonqualifying service by 26-12-92 is deducted the said period for qualifying service left is worked out as under.

a) Qualifying service as on 26-12-92	Y M D
	22 01 11
	(-)
b) Non qualifying service as on 26-12-92	1 08 14

Therefore total qualifying service as on 26-12-92

20 04 27

7. I submit that still temporary service rendered from 1-6-70 to 30-6-70 and 1-3-71 to 14-11-71 (i.e.) 9months 3days. Half worked out to 4months 18days to be added for pensionary benefits as per the Rly.Bd. orders inforce. Therefore the total qualifying service is 20yrs 4mths 27days (+) 4months 3days = 20years 8months 27days.

8. I submit further still got leave at my credit as on 26-12-92 (i.e.) date of voluntary retirement is as under

a) LAP	=	8days
b) LHAP	=	224days
<hr/>		
Total	=	232days

(i.e.) 7months 18days to be added. So 20years 8months 27days + 7months 18days if sanctioned and added the total qualifying service worked out to 21years 5months 3days (A-12).

9. I further state that a statement showing the full particulars of my service are herewith enclosed as Exh-I for kind perusal of the Hon'ble Tribunal.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

M.A.NO. of 1998

IN

O.A.NO.1561/97

BETWEEN:

J.D. INBANATHAN

..Applicant

AND

UOI represented by

GM/SCRly/SC and others ..Respondent

Amendment petition U/R.34 of the CCT.

Filed on - 1998.

Filed by the counsel for the Applicant

G.S. Rao, M.A., LL.B. (Spl)
A D V O C A T E.
H. No: 24-2/1, Plot 83.
Vijaydevi Nagar Colony
Muttigiri, Hyderabad-500047.

10. In view of the particulars stated at para 3 to 9 it is humbly prayed that para 3 at page 2 of the O.A. may please be amended to delete item 1 to 3 (i.e.) 1) Penalty order H/P 227/IV/93/Dt. 7-4-95 of removal by R-6
2) Penalty order H/P 90/IV/95/364/Dt. 16-1-96 by R-5
3) Penalty order H/P 90/IV/364/Dt. 11-11-96 by R-3.

and substituted as under as item 1 & 2.

1) LR.No.HP/579/IV/B/PRI, Dt. 1-2-93 of SR DPO/UBL.
2) LR.No.HP/579/IV/BRI, Dt. 19-07-94¹¹⁻¹¹⁻⁹⁶ of SR DPO/UBL and also paras 9 and 10 at page 10 & 11 of the OA may please be amended to delete completely the prayer (i.e.) to quash the removal orders of R-3, 5 & 6 stated wherein and now allow to substitute as under:
a) Lr.No.H/P 579/IV/R.RI dt. 1-2-93 & 17-7-94 of Sr.DPO/UBL may please be quashed.
b) To direct R-4 to sanction the leave of 8days LAP and 224 days MAP (i.e.) 7months 18days at the credit of the applicant as on 26-12-92.
c) To direct the R-4 to accept the voluntary retirement of the applicant as on 26-12-92 and pay all the consequential retirement benefits and pass such other order/orders as the Hon'ble Tribunal may deem fit and proper in the interest of Justice.

Verificatory
J. J. D. Imanathans/o Jai Paul, aged 45 years
Ex Boiler maker S.C. Railway Works R/o

I do solemnly declare that the contents of para 1 to 10 are true on the legal advice that I have not suppressed any material facts.

Signature
Deponent

Sworn and signed before me at
Hyderabad on this the 16 day
of July 1998.

Signature
Advocate

Signature
17/7/98
Advocate for the Applicant.

I.

1. The Respondent admitted that the applicant put in 22 years, 1 month and 11 days total service as on 26-12-92 (i.e.) from the date of Voluntary Retirement. - A-6.
2. It is not clear from what date the 3 years 1 month and 2 days were shown as non-qualifying service.

II. L.W.P. (i.e.) NON QUALIFYING SERVICE: Years Months Days

1. 17-06-82 to 06-01-83	=	0	06	19
	(+)			
2. 01-11-91 to 26-12-92	=	1	01	25

Total non-qualifying service upto voluntary retirement i.e. 26-12-92. = 1 8 14

III. a) Total service rendered as on 26-12-1992 = 22 01 11
(-) b) Non qualifying service = 1 08 14
Total qualifying service = 20 04 27

IV. Add 50% Temporary service rendered from 1-6-70 to 30-6-70 and 1-3-71 to 14-11-71 (i.e.) 9 months 3 days (half is 4 months 18 days). (+) 0 4 18 -A-2.

V. Leave at credit as on voluntary retirement 26-12-92 (+) 0 7 18
(a) LAP = 8 days
(b) LHAP = 224 days
Total 7 months 18 days = -A-12.
Total qualified service (III+IV+V) = 21 05 03

Therefore the applicant is eligible for all pensionary benefits.

Arvind Singh
Advocate for the applicant.

Amendment Petition
to be filed as
Rule 34(h) as
needed

(2) Rule 34(h) as
needed

Correlation
3) sufficient no. of copies
4) to be filed
5) Vakalat with no objection
6) from the Advocate on record to
be filed.

27/7/98

14 days



All the observations
raised from 1 to 4
since rectified.

Advocate
Advocate



Amendment Petition

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

M.A.NO. of 1998

IN

O.A.NO.1561/97

BETWEEN:

J.D. INBANATHAN

..Applicant

AND

UOI represented by

GM/ScRly/Sc and others

..Respondent

8 (3)

Amendment petition U/R. 22 of the CAT
Procedure rule 987

Filed on 1 - 7 - 1998.

Filed by the counsel for the Applicant.

P. Ratnayak

Advocate
A D V O C A T E.
H. No: 24-2/1, Plot 83.
Vimaidevi Nagar Colony
Malkajgiri, Hyderabad-500047.



May 8 1998
15/7/98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH :: AT HYDERABAD

M.A.No. 531 of 1998

in

O.A.No. 1561 of 1997

Between:-

J.D. Iambunathan

APPLICANT

AND

Union of India,
rep. by the General Manager,
South Central Railway,
Secunderabad and (5) others

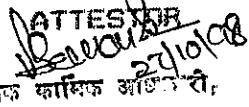
RESPONDENTS

REPLY STATEMENT ON M.A.No.531 FILED ON BEHALF OF THE
RESPONDENTS

I, A. Nagender Reddy, S/o Gal Reddy, aged 35 years, occupation Senior Divisional Personnel Officer, South Central Railway of Hubli Division do hereby solemnly affirm and state as follows:-

1. I am the Respondent No.4 and as such I am fully acquainted with all facts of the case. I am filling this Reply Statement on behalf of all the Respondents as I have been authorised to do so. The material averments in the O.A. are denied save those that are specifically admitted hereunder. The applicant is put to strict


DEPONENT

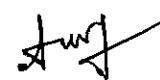
ATTESTED

सहायक कार्यक अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे मुख्यालय,
South Central Railway HUBLI.

वर्तित मंडळ कार्यक अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.


Recd
of
3/3/98

proof of all such averments except those that are specifically admitted hereunder:

2. At the outset, it is submitted that the present application for amendment of the prayer in main O.A. is not maintainable under law. The original O.A. was filed questioning the orders of revising, appellate and disciplinary authorities dt. 11.11.96, 16.1.96 and 7.4.95 respectively. Whereas under the present M.A., the applicant is seeking to substitute the said impugned orders to that of Lr. No. H/P. 579/IV/RR-I, dt. 1.2.1993 and 17.7.1994. Thus the entire nature of the O.A. will be changed if the present M.A. is allowed in the sense that the cause of action the O.A. was within the time limit prescribed under the Administrative Tribunal Act, whereas under this M.A., the orders that are going to be impugned are beyond the period of limitation prescribed under the Administrative Tribunal Act. Moreover under the present M.A. the applicant is also seeking to amend the original prayer substituting with prayer to direct Respondent No.4 to sanction the leave and accept the voluntary retirement which has no relevance to the pleadings of the applicant in the O.A. Thus the applicant is seeking to introduce a new cause of action by way



DEPONENT

शर्ति भंडल पार्सनल अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण भारत रेलवे, हुबली,
South Central Railway HUBLI,

ATTESTOR

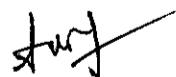
सहायक प्रार्थक अधिकारी,
Assistant Personnel Officer,
दक्षिण भारत रेलवे हुबली,
South Central Railway HUBLI.

of Amendment application which is not permissible under law. It is, therefore, respectfully submitted that the present M.A. is liable to be dismissed sumini.

3. Without prejudice the above contentions the Respondents submit their reply to the contents of M.A. as under:

4. In reply to paras 3 and 4, it is submitted that the applicant's contention as Substitute Khalasi from 10.6.70 to 30.06.70 does not count for reckoning either Date of Appointment or Qualifying service since the same is not continuous and there is a break of service from 1.7.70 to 28.2.71.

Further he is re-engaged as substitute from 1.3.71 and continued as such upto 14.11.73, i.e., till his regularisation. As per rules existing then, he was granted temporary status w.e.f. 1.9.71, i.e., on completion of 180 days in terms of Railway Board's Circular No.41/67 (copy enclosed as Annexure R-I), from which date his service will be counted for pension. As such, for the purpose of pension/counting of service his date



DEPONENT

दरिंद गंडल एवं प्रशिकारी,
Sr. Divisional Personnel Officer,
दक्षिण रेलवे रेलवे, हुबली.
South Central Railway HUBLI.

ATTESTOR
Deputy *22/10/82*
दक्षिण रेलवे विभाग,
Assistant Personnel Officer,
दक्षिण रेलवे रेलवे, हुबली.
South Central Railway HUBLI.

of appointment will be 1.9.71, i.e. the date of grant of temporary status but not 15.11.71 as claimed by the applicant.

His services were further regularised w.e.f. 15.11.73 and his date of appointment is recorded as 15.11.73 in his service record for seniority and other benefits. (copy of S.R. enclosed as Annexure R-II).

5. In reply to paras 5 and 6, it is submitted that the applicant has put in a total service of 21 years 3 months and 25 days as on 26.12.92, i.e., the date of his voluntary retirement application, from the date of his attaining temporary status, i.e., 1.9.71. Brief calculation can be seen as under:

	Years	Months	Days
Date of V.R. application	92	12	26
Date of appointment (date of temporary status)	71	09	01
	21	03	25

i.e., 21 years, 3 months and 25 days.

ATTESTOR
S. *[Signature]*
सहायक प्राधिक अधिकारी,
Assistant Personnel Officer,
धक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

DEPONENT
वरिष्ठ मंडल कार्यक अधिकारी,
Sr. Divisional Personnel Officer,
धक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

15:

The question of adding half the no. of days of temporary service to the qualifying service as contended by the applicant does not arise since the computing of qualifying service has been done right from the date of his attaining temporary status i.e., 1.9.71 followed by his regularisation, i.e., 15.11.73 and till the date of V.R. application.

The periods of non-qualifying service to the applicant is as follows:

<u>PARTICULARS</u>	<u>FROM</u>	<u>TO</u>	<u>NO. OF DAYS</u>
Absent	08.05.73	19.05.73	12
Absent	17.06.82	01.06.83	350
Suspension	25.12.87	05.01.88	12
Absent	02.11.91	26.12.92	420

As such the total non-qualifying service works out to 794 days. In other words, it is 2 years, 2 months and 4 days. The applicant herein has suppressed the information as to the periods of his unauthorised absence/suspension and thus stated the non-qualifying service as 1 year, 8 months and 14 days which is not correct. The applicant was absent and not on leave without pay as stated by him.


DEPONENT

श्रीराज रंजन कालिक अधिकारी,
Sr. Divisional Personnel Officer,
वार्षिक वायर रेलवे, हुबली,
South Central Railway HUBLI.

ATTESTOR
Deputy
सहायक कालिक अधिकारी,
Assistant Personnel Officer,
वार्षिक वायर रेलवे, हुबली,
South Central Railway HUBLI.

By taking the above points into consideration the actual qualifying service of the applicant is worked as under:

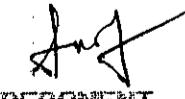
	Years	Months	Days
Total service as on 26.12.92	21	03	25
Total Non-qualifying service	02	02	04
	-----	-----	-----
Total qualifying service	19	01	21
	-----	-----	-----

6. In reply to para 8, it is submitted that it is a fact that the applicant had to his credit 8 days LAP and 224 days LHAP as on 26.12.92. But this period of leave cannot count for qualifying service unless it has been sanctioned by the competent authority.

Competent Authority has regretted the applicant's request for leave (Copy enclosed as Annexure R-III).

In all the actual qualifying service of the applicant is only 19 years, 1 month and 21 days which is less than the required qualifying service, i.e., 20 years for accepting the voluntary retirement, hence the applicant's claim for voluntary retirement cannot be accepted.

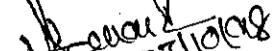
The applicant vide his application dt. 16.12.91



DEPONENT

दरिष्ठ मंडळ कामिन अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

ATTESTOR



सहायता कामिन अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुबली,
South Central Railway HUBLI.

(copy enclosed as Annexure R-IV) while requesting for acceptance of resignation has clearly stated that since he is not eligible for Voluntary Retirement, he has come to the conclusion of resignation.

In view of vigilance case pending against him (copy enclosed as Annexure R-V) the applicant's request for acceptance of resignation as requested vide his application dt. 16.12.91 (copy enclosed as Annexure R-IV) was not agreed by the competent authority (copy enclosed as Annexure R-VI).

7. For the reasons stated above, the applicant has not made out any case either on fact or on law and there is no merit in the O.A. It is, therefore, prayed that this Hon'ble Court may be pleased to dismiss the O.A. with costs and pass such further and other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.



DEPONENT

दरिल शंकर शास्त्री अधिकारी,
Sr. Divisional Personnel Officer,
दक्षिण मध्य रेलवे, हुबली,
South Central Railway HUBLI.

Solemnly and sincerely affirmed

this 27 day of October 1998

and he signed his name in my presence.

Before me



ATTESTOR

सहायता कामकाजी अधिकारी,
Assistant Personnel Officer,
दक्षिण मध्य रेलवे हुपगी,
South Central Railway HUBLI.

(8)

Estt. Serial No. 41/67

Circular Letter No. P (R) 564. dated 29-12-66

Copy of Railway Board's letter No. E(NG) 65LRI-1 dated 1.9.1965 is forwarded for information and guidance.

Copy of Railway Board's letter No. E(NG) 65LRI-1 dated 1.9.1965.

Sub: Substitutes-Engagement of Grant of temporary status to.

Reference directives issued by the Railway Board from time to time in regard to the engagement of substitutes and the basis of their remuneration. The Board have had under consideration the question of specifying the circumstances under which the substitutes should be engaged on the Indian Railways. In supersession of all earlier orders on the subject, the Board have decided to lay down the following comprehensive instructions which should be given immediate effect, i.e., from the date of issue of this letter.

2. "Substitutes" refer to persons engaged in Indian Railway Establishments or regular scales of pay and allowances applicable to posts falling vacant because of absence on leave or otherwise of permanent or temporary railway servants and which cannot be kept vacant.

3. Ordinarily, there should be no occasion to engage substitutes having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. Occasions may, however, arise when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective e.g. heavy sickness, etc., or where the leave reserve is available, but it is not possible to provide the same, say at way side station. On such occasions, it may become absolutely necessary to engage substitute even in vacancies of short duration, as otherwise, the railway service may be adversely affected.

4. Substitutes should as far as possible, be drawn from a panel of suitable candidates selected for Class III and IV posts and should be engaged subject to the observations made in para 3 above, only in the following circumstances :-

- i) Against regular vacancies of unskilled and other categories of Class IV staff requiring replacement for which arrangements cannot be made within the existing leave reserves.
- ii) Against a chain vacancy in the lower category of Class IV Staff arising out of the incumbent in a higher Class IV category being on leave where it is not possible to fill the post from within the existing leave reserve, and where otherwise, the railway services will be affected.
- iii) Against posts in categories for which no leave reserve has been provided.

88

iv) Against vacancies in other circumstances specified by the Railway Board from time to time.

5. Substitutes so engaged should be paid regular scales of pay and allowances admissible to such posts irrespective of the nature or duration of the vacancy.

6. Substitutes should be afforded all the rights and privileges as are admissible to temporary railway servants on completion of six months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts, after selection.

7. The break in service arising out of following cases of absence will not be considered as break in service for the purpose of determining six months' continuous employment referred to in para 6 above, viz :

- (a) the periods of absence of a substitute who is under medical treatment in connection with injuries sustained on duty covered by the provisions under the Workmen's Compensation Act;
- (b) authorised absence not exceeding 15 days during the preceding six months;

Note :— i) unauthorised absence or stoppage of work will be treated as a break in continuity of employment.

(c) days of rest given under the Hours of Employment Regulations or under the Statutory Enactments and the days on which the Establishment employing the substitute remains closed will not be counted against the limit of 15 days authorised absence referred to above. The term "authorised absence" for this purpose covers permission granted by the Supervisory Official in charge to be away from the work for the period specified;

(d) periods involved in journey etc., for joining the post on transfer from one station to another station or within the same station itself, in the exigencies of service but not exceeding in any case normal period of joining time permissible under the rules.

8. The conferring of temporary on the substitutes in accordance with para 6 above does not entitle them to automatic absorption/appointment to railway service unless they are in turn, for such appointment on the basis of their position in select lists

89

and/or they are selected in the approved manner for appointment to regular rail posts.

9. A register should be maintained for recording the names of all substitutes employed according to the unit of recruitment, e.g., Division, Work P.W.L's lengths etc., strictly in the order of their taking up substitute engagement at the time of their initial engagement.

10. Substitutes who have already completed six months continuous service should be afforded with temporary status with effect from the date of issue of this letter.

11. Substitutes now working on the Indian Railways on Casual labour terms be brought on to the regular scale of pay and allowances applicable to the post the date of issue of this letter, provided it is permissible to engage them in accordance with paras 3 and 4 above and they should like-wise be afforded temporary status.

12. Please acknowledge receipt.

Received
27/10/66
fice.

ANNEXURE B

R2

G.S. 3/1.

PARTICULARS OF SERVICE

Left Thumb Impression.

Signature of Employee.....

9

Date.....

Signature of Witness.....

Designation..... Date.....

Name (in full) D.R.V.R.Kadarkarai, T.Nalaganathan..... Ticket No.....

Father's Name..... T.S.Paul.....

Permanent Address..... D.T.Nalaganathan.....

C/o. S. S. Thulai Rani.....

Present address..... Tamil Teacher, T. Mural (Part) Hospital.....

Nationality..... Indian..... Caste..... Religion..... Christian.....

Date of birth (in words) 28.1.1953 (Twenty eight..... Anno Domini nineteen hundred and fifty three)

Medically examined on 28.1.1953 at Amo/USL, M.R.B.C.R/692, Class..... B.I.....

Height..... 5' 6" ft..... Inches.....

Marks of Identification. 1. A. Scar on Left Lower Arm.....

2. A. Scar on Left Lower Arm.....

Date of appointment..... 15.11.73

Capacity. A.P.C. Secy. / K.halabi / H.P.T. on pay Rs..... 70..... in scale..... 70-85

Place of Appointment..... Hospital.....

Education..... Passed S.S.L.C. Exam.....

Speaks..... Reads..... Writes.....

PREVIOUS SERVICE

With	From	To	Nature of work

Date..... 7.2.79

Signature & Designation of Attesting Officer.
Asst Personnel Officer
S.S. Thulai Rani

Date of Leaving service.....

Cause of leaving service.....

Length of service.....

Date of which "Service certificate" if due issued.....

Character, Conduct and abilities as shown in Service Certificate.....

Date on which gratuity/special contribution to P. F. if due paid.....

Asst. Personnel Officer

S.S. Thulai Rani

Signature & Designation of Attesting Officer.

Note.—Date of Birth given by an employee at the time of first appointment will not be altered.

CENTRAL RAILWAY

No. H/P.420/IV/Pm/Eng fr/II

LG/Hubli?

10
16
Divisional Office,
Personnel Branch,
Hubli, Dt:28/10/1991.

Annexure I

28/10/91

R3

1525

To: LG/Hubli

CC:

CCP

Sub: Grant of 90 days ^{LHAF} From 1.11.91 to on Works
in favour of Shri. T. D. Thimbathur,
Designation B1Makur,
Station LG Hubli

Ref: Party's application dated 16.10.91.

Reference to Party's letter cited above, his request
for the grant of 90 days ^{LHAF} is regretted.

Please note and notify the party, accordingly.

29/10 (By orders of AME/Loco/VR).

Party may apply for LHAF
if eligible.

Handwritten signature
/DIVL. RAILWAY MANAGER/HUBLI.

T. C.R.

Handwritten signature
Addl. Asstt. P.G. Secy. (Clerk)
Refugee and Poor Unit.
South Central Railway HUBLI.

HUBLI.
Dt: 16/12/91.

From,

J. D. INBANATHAN,
B.M. T.NO. 326,
HUBLI.

To,

The Sr. IPO/S. C. RLY.
HUBLI.

Through Loco ForeMan Loco shed S. C. Rly. HUBLI.

Respected Sir,

Sub: Request for acceptance of Resignation.

I the under signed beg to bring a few lines to your kind consideration please.

I was called by God to do His ministry as per the reference from the Bible.

1) OLD TESTAMENT. II CHRONICLES CHAPTER 29 VERSES: 11
2) NEW TESTAMENT. II THORNTY CHAPTER 14 VERSES: 5

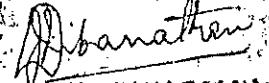
Hence I have decided to leave the job and go for the Gospel preaching because our LORD JESUS CHRIST second coming is very soon.

Since I am not eligible for the voluntary retirement, and after deep consideration on all aspects I came to the conclusion to resign from Railways.

I will not come up with a request for re-emburishment or re-appointment after my resignation is accepted.

Thanking you,

Yours faithfully,


(J. D. INBANATHAN)

Boiler Maker,
B.M. T. NO. 326,
Loco shed,
HUBLI.

Submitted in Duplicate.

Copy to D.M.G. Loco HUBLI

Present Address:

J. D. INBANATHAN
ZION PRAYER HOUSE
Teachers Colony,
VANIYAMBADI Post, N.A. Dist.
TAMIL NADU.

PF NO 326 L 17/12/91
Forwarded to S. C. RLY
For disposal please

James
Loco Foreman/HUBLI

Received 21/10/92
Clerk Head and S. C. RLY
South Central Railway HUBLI

NO.: H/CS/V/LOCO/17/91.

Annexure V R-5
CONFIDENTIAL

NOTE

12
C/1522

Divisional office
General Branch
Hubli 20-5-92

153

Sub: Vigilance case against Sri. Inbanathan
Boiler YAKAR L.F./O/UBL

Ref: L.F./UBL's letter No: G.116/1A/ sub-ltting
Ans dated 11-5-92

L.F./UBL vide his letter cited above, has advised to this office, that the above named employee has submitted his resignation to S/o: DPO/Office/UBL.

It is hereby brought to your notice that the employee has been involved in Vigilance case and the same is pending. The employee is away from duty.

This is for your kind information.

Redaction

OS/GS/II/condi/UBL

TO

OS/Cadre/P branch/UBL

~~RECORDED~~

see f-52
20/5/92

Received 21/5/92
C. O. S. L. B.
South Central Railway

In the C.A.T
Byd Beinh

MA 531/98
in
Out 1561/97

Reply Statement



Filed by -

N. R. Devay

copy of filing
S/MSA

13 Annexure VI
South Central Command R-6
152
Dharmapuri
Tirupur
Kodaikanal
Date: 15.01.1

No. H/PS/9/IV/ R&E I

Shri J. D. Inbarathnam
Bank Mktg/ I/1/2
(thru L+LCL)

Sub: Accepting of resign

In view of disciplinary action
initiated against you for negligence
angle you request for acceptance
of resignation vice you letter dated 16.12.
has not been agreed to by the
competent authority.

Please note.

for: Sr DPL

Ambedkar
South Central Command

see to Balaji

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

M.A. No.531 of 1998

IN

O.A. No.1561 of 1997

Between :

J.D. Inbanathan

AND

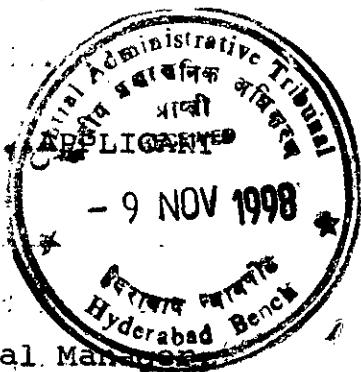
Union of India,

Rep. by The General Manager,

South Central Railway,

Secunderabad & (5) others.

RESPONDENTS



Received
9/11/98
Dr. N. R. Dey

Filed on : .11.1998

Address of the Advocate:

G.S. Rao, M.A., LL.B. (Spl)
A D V O C A T E.
H. No: 24-2/1, Plot 83.
Vimaldevi Nagar Colony
Malkajgiri, Hyderabad-500047.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

AT HYDERABAD.

M.A.No.531 of 1998
in
O.A. No.1561 of 1997

Between:-

J.D. Imbunathan

...APPLICANT

AND

Union of India,
rep. by the General Manager,
South Central Railways,
Secunderabad and (5) others

...RESPONDENTS

REJOINDER TO REPLY STATEMENT OF R-4 FILED ON 30.10.98
IN M.A.531/98 IN O.A. 1561 OF 1997.

For the reasons stated in the accompanying rejoinder
the applicant humbly prays that this Hon'ble Tribunal may be
pleased to quash the R-4 letters dated 1.2.93 and 17.7.74, and
further direct R-4 to sanction leave at his credit, count 50%
of the substitute service and also accept voluntary retirement
from 26.12.1992 and pay all the consequential retiral benefits
and pass such other order/orders as the Hon'ble Tribunal may
deem fit and proper in the circumstance of the case and also
in the interest of natural justice.

DATE : .11.1998


COUNSEL FOR THE APPLICANT.

HYDERABAD.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

M.A.NO. 531 of 1998

IN

O.A.NO. 1561 of 1997

Between:..

J.D.Inbanathan
R/o. Bethel Prayer House No.31/A
Govinda Swamy Street, Jolarpetta
Vellor, CHENNAI - T.N. 635851.Applicant

AND

1. Union of India represented by the General Manager, South Central Railway, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Secunderabad.
3. Addl. Divisional Railway, Manager, South Central Railway, Hubli, Dharward, Dist. Karnataka.
4. Sr. Divisional Personnel Officer, South Central Railway, Hubli, Dharward Dist. Karnataka.
5. Sr. Divisional Mechanical Engineer, South Central Railway, Hubli, Dharward Dist. Karanataka.
6. Divisional Mechanical Engineer, South Central Railway, Hubli, Dharward, Dist. Karanataka.

... Respondents

REJOINDER TO REPLY STATEMENT OF R-4 FILED ON 30.10.98
IN M.A.531/98 IN O.A. 1561 OF 1997.

I J.D.Inbanathan S/o Jaya Paul aged 45 years occupation evangelist bethel prayer house 31/A R/o Jolar Petta north Arcot Dist. 635851 of Tamil Nadu do hereby Solemnly affirm and state as Follows:-

1. I am the applicant as such I am fully acquainted with the facts ~~of~~ ^{of} the case. The material averments in reply to O.A and M.A are denied save those that are specifically admitted here under. The R-4 is put to strict proof of the all such averments except that are specifically admitted hereunder.

2. Regarding Para 2 of the reply statement:-

It is submitted that the applicant is at liberty to amend or add any matter to the O.A. as per the Rules in force before the orders of the Hon'ble Tribunal in terms of the Rule 12 (6) of the Central Administrative Tribunal (procedure) Rules 1987. Therefore the objection raised by the R-4 have no legs to walk in such unwanted pleas quite contrary to the law and rules in force.

3. Regarding Para 3 and 4 of the reply statement:-

It is submitted that the applicant have no objection to raise regarding the service of substitute khalasi from 10-06-70 to 30-06-70 (i.e) 20 days but the applicant was recruited to the post of loco khalasi in scale Rs 70-85 in a regular vacancy. His appointment was on compassionate grounds due to his father sudden demise while working in Railway service. The applicant father worked as a engine fitter from 27-09-1947 to 14-08-1969 (service certificate enclosed as A-1. The applicant ^{was} sent for medical examination to AMO/UBL who examined him and made fit in B-1 category and issued medical fitness certificate in his letter No. AMO/UBL M.C No. BCR/692 dated 27-05-70/3-06-70. Further it is submitted that the applicant was appointed on 01-03-1971 against regular vacancy of loco khalasi and continuously working without break the service should have been taken from the date of appointment (i.e) 01-03-1971 onwards only, it is not known why the service from 01-03-1971 to 01-09-1971 (i.e) 6 months period is taken as substitute khalasi when the applicant appointed against regular vacancy his name should have been taken from 01-03-1971 but not 01-09-1971 it is clear violation of establishment

:(3):

rules in force. It is submitted that the service of the applicant should have been regularised W.E.F 01-03-1971 instead of 15-11-1973 as the same is contradictory to the rules in force. Hence the same was strongly rebutted.

4. Regarding para 5 of the reply statement:-

It is submitted that the total service rendered by the applicant as admitted by the R-4 from the date of 01-09-1971 to 26-12-1992 (i.e) from the date of v/retirement believing to be true, the R-4 should account for the 6 months service from 01-03-1971 to 01-09-1971, actually the ~~xxxx~~ service from 01-03-1971 to be taken ~~xx~~ for regularization as he is continuously working without break.

Taking granted 6 months service as substitute for counting of service for the purpose of pensionary benefits that is 3 months to be added to qualifying service in terms of letter No.F 12 (1) EV/68 dated 14-05-1968 from the ministry of Finance Railways Board New Delhi where in it was stated that the President is pleased to decide that half of the service paid from contingencies will be allowed to count towards pension. Therefore 01-03-1971 to 01-09-1971 that is, 6 months half is 3 months to be added to the said qualified period of 19 years 1 month 21 days is ~~xx~~ works to 19 years 4 months 21 days.

5. Regarding para 6 of the reply statement:-

It is submitted that R-4 admitted at para 6 at page 6 that the applicant have 8 days LAP and 224 days LHP (i.e) total 232 days leave at his credit that is 7 months 22 days. If the leave is sanctioned as requested by the applicant then 7 months 22 days

is to be added to 19 years 4 months 21 days is worked out to 20 years 13 days to substantiate this it is stated that it was held by the ~~ATC~~ ATC 1996 (34) vol 34 Hon'ble CAT/Jodhpur in O.A.No 1594/1996 dated 27-02-1996 at page 30 to 38 the observations of the Hon'ble Justice Ramaswamy and Jeevan Reddy J.J of the apex^{court} is as under :-(under rule 25 of the swamys FR & SR part III leave rules) it has been decided as follows

Rule 25 absence after expire of leave:- unless the authority competent to grant leave extends the leave, a government servant who remains absent after end of the leave is entitled to no leave salary for the period of such absence and that period shall be debitted against his leave account as though, if were half pay leave to the extent such leave due, the period in excess of such leave^{is due}, being treated as extraordinary leave. Therefore the applicant is eligible for sanction ~~of~~ of the leave at his credit in view of the said obserations of the apex court.

It is further submitted that the competent authority is utterly failed to observe the rules in force for sanction of leave at credit of the applicant. As per the liberalised leave rules, the leave is an asset of the employee when applied it shall be sanctioned without any hinderance to the applicant.

It is submitted that R-4 is intentionally created bad impression against the applicant by saying absenteeism and a little bit of 12 days suspension taking the advantage of this to creat more trouble with bias mind for the reasons best know to the R-4.

The applicant is a permanent Railway servant who put up more than 22 years of service. Due to family troubles the applicant absented 12 from service for the said period to the reasons beyond his control. The suspension of 12 days is due to engine failure on account of mechanical defects. The R-4 should not take advantage of the such situation for disadvantage of the applicant. It is a fact that it is not possible to ever expect an employee to work perfectly all the service. It is quite common sometime to face certain problems in service, by itself cannot judge that the employee is always bad. The employee is the sufferer if absented from duty as no pay will be paid.

It is submitted that his application dated 16-12-1991 asked resignation duly vexed by the harrasment by the respondents in not accepting the V/retirement in terms of para 67 of Railway services (pension rules 1993 at any time after a railway servant has completed 20 years qualifying service, he may by giving notice of not less than 3 months in writing to the appointing authority retire from service.

It was held by Hon'ble CAT/Bombay ATC 1997 Page 219(B) resignation letter can be treated as V/Retirement U/R 1993 , 67(1) pension rules of Railways service.

Further it is submitted that the vigilence case is not for ~~the~~ any offence, it is only due to not vacating the railway quarters.

In The Central Admini-
strative Tribunal of Hyderabad
Bench at Hyderabad

Mat no 1531 of 1998

in

on 15.6.1997

Before

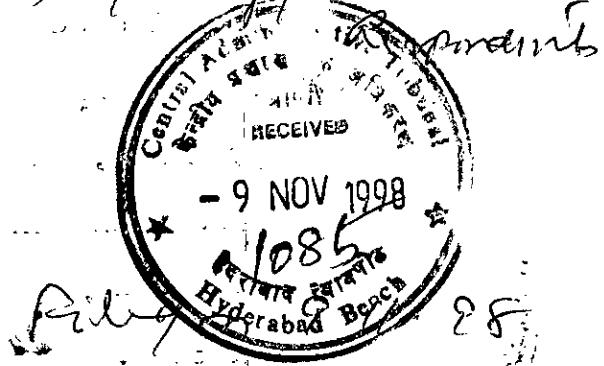
J. D. Inbarathnam

Applicant

And

not represented by

Gm/Secy/Se



Address of addressee

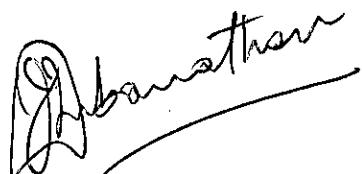
G-5-A-17 Hyderabad
H-21 24-25, Plot 83
Kondapuram
Mallayyapet Hyderabad

8/11/98
MoS 8/11/98

I was on leave from 01-11-1991 the Railway qts is in my possession upto my V/retirement (i.e) 26-12-1992 and the same was vacated on 17-12-1991 as per^{rules} in force. I was not committed any offence nor guilty of any crime by mere absence from duty is not a serious issue. The R-4 elaborated the situation taking advantage of my absence from duty and unnecessaryly misleading the Hon'ble Tribunal for no fault of mine to gain~~the~~ the favour from the Hon'ble Tribunal. It is nothing but observing unfair labour practice on the part of R-4.

In view of the details it is humbly prayed that the Hon'ble Tribunal^{may be} pleased to quash the R-4 letters dated 01-02-1993 and 17-07-1994¹¹⁻¹¹⁻⁹⁶ and further direct R-4 to act as per the rules and law

- a) for counting 50% substitute service. //
- b) For sanction of leave at credit that is 8 days LAP 224 days LHAP.
- c) and also accepts V/retirement from 26-12-1992.
- d) to pay all consequential retiral benefits such as gratuity, and other penisonery benefits.
- e) pass such other orders /orders as the Hon'ble Tribunal may deem fit and proper in the interest of Justice.



(Deponent)

Solemnly and sincerely affirmed
this 9th day of Nov 1998

and he signed his name in my presence.

Admitted by G. S. Narasimhan

Before Me


ADVOCATE

ORIGINAL

M.A.No: 531/98
in
O.A. 1561/98

24.7.98

बैच केस/BENCH CASE

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD

M.A.No.

531 of 1998

IN

O.A.No.

1561 of 1998

Heard Mr G. S. Rao
Notice to the Respondents
to file a reply to
the rea. within four
weeks. Lise it
hereafter.

Res.
MRS. S. P.
MCA)

8/2/98
HTRP
MCA)

Notice in MA
21.8.98

Or
27/7/98

Amendment Petition

Issued
29/7/98

4/9/98

At the request for the
learned standing counsel for
the Respondents, two weeks
time is granted for filing
counter. To be posted
as 18/9/98.

8/9/98
HTRP
MCA)

8/9/98
HTRP
MCA)

Mr. P. Rathnaik

COUNSEL FOR THE APPLICANTS,
AND,

Mr. N. R. Deva Raj

Sr. ADDL. STANDING COUNSEL FOR C.G.Rly.

AS
no 531/PC in
of 1561/P2

18/9/88

Decided on 23/9/88 at
request of applicant's counsel.

~~17/9/88~~
17/9/88
M(A)

HDHN
VC

23.9.88.

Heard Mr. G. S. Rao
for the applicant and
Mr. N. R. Devraj for the
respondents.

Four weeks ^{time} for
reply to the M.A. list
it thereafter

18/9/88
HARL
M(A)

HDHN
VC