

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 60 of 2000 of 1997

DATE OF DECISION. 4-2-2000

Shri Biswanath Banerjee

PETITIONER(S)

Mr. G. Sarma, Ms. B. Rajkhowa

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mr. S. Sengupta,

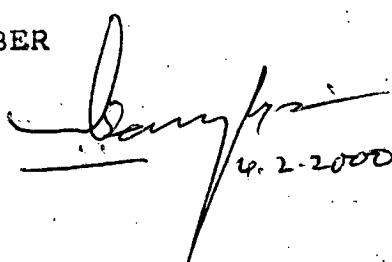
ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE D. N. BARUAH, VICE-CHAIRMAN

THE HON'BLE HON'BLE MR. G. L. SANGLYINE, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble ADMINISTRATIVE MEMBER


4.2.2000

12

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 60 of 97

Date of Order : This the 4th Day of February 2000

HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN

HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri Biswanath Banerjee,

S/o late Sudhir Chandra Banerjee,
Makum Junction, Digboi Road,
(Near Assam Sahitya Sabha Bhawan),
P.O.Makum Junction,
Dist.Tinsukia(Assam) PIN-786170.

By Advocate Mr.G.Sarma, Ms.B.Rajkhowa

-Vs-

1. Union of India represented by the Chairman,
Railway Board, Rail Bhawan, New Delhi.
2. The General Manager,
N.F.Railway, Maligaon,
Guwahati-781011.
3. The Chief Mechanical Engineer,
N.F.Railway, Maligaon,
Guwahati-781011.
4. The Chief Personnel Officer,
N.F.Railway, Maligaon,
Guwahati-781011.
5. The Divisional Railway Manager,
N.F.Railway,
Tinsukia.
6. The Divisional Mechanical Engineer,
N.F.Railway,
Tinsukia.
7. The Divisional Railway Manager(Mechanical)
N.F.Railway,
Tinsukia.
8. The Divisional Railway Manager(Personnel)
N.F.Railway,
Tinsukia. ... Respondents.

By Advocate Mr.S.Sengupta,

O R D E R.

G.L.SANGLYINE, MEMBER(A):

This application was submitted by the applicant
seeking the following reliefs :-

" a) To set aside and quash the order of appointment of Board of Inquiry issued under order No.ES-B/334 dated 2.12.96(Annexure A-1) in reference to the charge sheet of 6.10.89 as clarified vide letter No.ES-B/334 dated 10.12.96(Annexure A-2).

b) To direct the respondents to pay the applicant the arrears of pay and allowances with effect from 29.9.92(i.e. subsequent to 28.9.92 when the DAR enquiry ended in favour of the applicant) and treat the period as on duty for all purposes. And to allow the applicant to resume duty.

c) To treat the period from 18.6.88(i.e. the date from which the alleged unauthorised absence was shown in the charge sheet Ni.ES-B/334 dated. 6.10.89) to 28.9.92(i.e.. the date when the DAR enquiry was held) as due 'leave-on-average pay' (in short LAP) and rest as extra-ordinary leave on the principles of justice, equity and good conscience for the following purposes :-

i) For counting the period for qualifying service for epnsionary and incremental benefits and other consequential benefits as per existing rules.

d) To pass any other order/orders as deemed fit and proper under the facts and circumstances stated in this application as per law and on the principles of justice, equity and good conscience.

e) Cost of the case.

f) To set aside - 'but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for', as appearing in para (ii) of Annexure A.24."

The respondents have contested the application.

2. We have heard learned counsel of both sides. We are of the view that this application has no merit. Prayer No.(a) has become infructuous in view of the letter dated.1.7.1997 issue by the Divisional Railway Manager(P) Tinsukia to the effect that constitution of Board of Enquiry by Annexure (A-1) was cancelled. Annexure (A-2) is a corrigendum issued by the respondents to read memorandum EB-S/334 dated.2.12.96 as original memorandum No.ESB/334 dated.6.10.89. In view of the aforesaid letter dated. 1-7-1997 this corrigendum has lost significance. Prayer No.(f) above is premature in view of the contents of the letter dated.1.7.1997. After cancelling the constitution of the Baord of Enquiry dated.2.12.1996 the disciplinary authority made the following observations in the aforesaid letter :

"(i) Major Penalty Chargesheet was not framed in proper way as can be seen from the office copy of the chargesheet at SN-101 and 102 that

(a) No definite charge of Article-1 of Annexure-1 was mentioned. It simply mentioned as under "That said Sri E.N.Banerjee while functioning as Confidential Steno/TSK during the period- is charged as under"

(b) Statement of Imputation of misconduct/ misbehaviour was not completely brought out in Article-I of Annexure II and that also without any relevant reference of Service Conduct Rule.

(ii) On going through the enquiry report and notings and counter notings available in the file, I am in the conclusion that though Sri B.N.Banerjee, Confidential Steno/TSK cannot be held responsible for being unauthorised absence from duty w.e.f. 18.6.88 to 8.7.88 as he applied for leave and denied by sanctioning

15

authority, but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for. Thus, before finalising the case an opportunity should be given to Shri B.N.Banerjee, Confidential Steno to represent within 15(fifteen) days as to why he could not be taken up for misconduct remaining unauthorised absence from duty w.e.f. 9.7.88 with violation of Rule 3(i) (ii) & (iii) of Railway Service Conduct Rule."

It appears that according to this letter the disciplinary authority came to the conclusion that the proceeding started was defective. However he contemplated a fresh proceeding and for the purpose the applicant was given an opportunity to prefer an written brief within 15 days for considerations before finalising the disciplinary proceedings. It appears that the question before the disciplinary authority was whether the applicant could be charged for unauthorised absence from duty after expiry of the period of leave applied for. The applicant did not avail of the opportunity provided to him and did not allow the disciplinary authority an opportunity to come to a conclusion after hearing him whether such charge could be taken against him. Thus this prayer is premature. The applicant may submit a written brief as called for by the respondents authority within 1 month from the date of receipt of this order and, if action of the disciplinary authority is against him, the applicant is at liberty to agitate afresh without prejudice to the contention in this present application. Prayer No.(b) and (c) are of consequential nature. Moreover, we have

no records to show that the disciplinary proceeding had ended on 29.9.1992. The applicant may submit representation to the competent authority of the respondents in these regards within 1 month from the date of receipt of copy of this order and the respondents shall communicate speaking order in these regard to the applicant. If the applicant is still aggrieved, he may agitate before the appropriate authority.

The respondents shall communicate to the applicant speaking order on the matters mentioned above within 3 months from the date of receipt of this order.

Application is disposed as above. No costs.


(D.N.BARUAH)
VICE-CHAIRMAN


4.2.2000
(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER

LM