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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 386/2000

Sri. Swadhin Dutta Applicant.

versus

Union of India & Ors Respondents.

For the Applicant(s) *Mr. A.K. Ray*
Mr. J. Gogoi

For the Respondents.

Ry. Advocate

NOTES OF THE REGISTRAR

DATE

ORDER

22.11.00 Present : The Hon'ble Mr Justice D
N. Chowdhury, Vice-Chairman

Heard Mr A.K. Roy, learned couns
for the applicant and Mr S. Sengupta
learned Railway standing counsel.

Application is admitted. Issue
usual notice. Call for the records
List on 22.12.2000 for written
statement and further orders.

Vice-Chairman

pg

A.K. Roy
22/11/00

22.12.2000

Four weeks time is granted
to the respondents to file written
statement on the prayer of Mr. S.
Sengupta, learned Railway Advocate.

List on 25.1.01 for written
statement and further orders.

Vice-Chairman

mk

21-12-2000

- ① Service Completed,
- ② No. written statement
has been filed.

22/11/00

This application is in form
but no fee is paid. It is
for the purpose of the
ITC/E 503842
Dated 13.11.2000

Dy. Registrar.

BW

Nat. Requisite filed

A.K. Roy
22/11/00

Notice prepared and sent to
D/Sec for issuing the Respondent
No. 1 to 4 by hand vide D/No
2835 to 2838 dtd 29/11/00

24/11/00

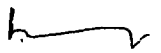
25-1- No S.B. Adjourned to 7.2.2001.

By
A.K. Singh
35/1.

- ① Service completed.
② No written statement
has been filed.

7.2.01

List on 14.3.2001 to enable the respondents to file written statement.


Vice-Chairman

By
6.2.01

trd

14.3.01

On the prayer of learned counsel for the respondents 6 weeks time is granted for filing of written statement. List on 9.5.01 for orders.

13-3-01

No H/S has been
filed so far.

lm


Member

9.5.2001

No written statement so far have been filed.

List on 15.5.2001 to enable the respondents to file written statement.

No written statement
has been filed.


Vice-Chairman

By
14.6.2001

bb

15.6.01

Mr.S.Sengupta, learned Bly. Counsel for the respondents prays for four week time for filing of written statement.

Prayer is accepted. List is on 28-7-2001 for orders.


Member (A)

bb

1.9.01

No written statement
has been filed.

No written statement so far filed. List the case be posted for hearing on 12.9.01.

By
11.9.01


Vice-Chairman

lm
12.10.01

Mr.S.Sengupta appearing for the respondents state that though number of opportunities given he could not file written statement. He requests for further time to file written statement. Prayer allowed. List on 9.10.2001 for orders. the respondents to file written statement as last chance.

Notes of the Registry	Date	Order of the Tribunal
No. Written Statement has been filed. By 18.10.2001	12.9.01	Mr.S.Sengupta, appearing for the respondents states that though number of opportunities were given, he could not file written statement. He requests for further time to file written statement. Prayer is allowed. List on 9.10.01 to enable the respondents to file written statement as last chance. K. K. Sharma Member
No. Written statement has been filed By 20.11.01	19.10.01	Request is made by Mr.S.Sengupta, learned Rail counsel for the respondents for adjournment of the case on the ground that written statment is almost ready and he will be filing written statement before the next date of hearing. Request is accepted. List for hear- in on 21.11.2001. K. K. Sharma Member
No. W/s has been filed. By 6.12.01	21.11.2001	The respondents failed to submit their written statement despite directions. The case be listed for hearing on 7.12.01. In the meantime the respondents, if they so desire, may file written statement. If written statement is not filed the case shall be heard without written statement. Vice-Chairman
No. Written Statement has been filed. By 11.02	7.12.2001	Learned counsel for the applicant is present. Learned counsel for the respondents is on accommodation. List again on 2.1.2002 for hearing. Member(J) K. K. Sharma Member(A)

(4)

4

Notes of the Registry	Date	Order of the Tribunal
<p>No. written statement has been filed</p> <p><i>By</i> <i>9/1/02</i></p>	<p>2.1.02</p> <p>1m</p>	<p>List on 1.2.02 to enable the respondents to file written statement.</p> <p><i>K. U. Shetty</i> Member</p>
<p><u>13.2.02</u></p> <p>Copy of the Judgment has been sent to the Office for issue two more copies as well as to the Advocates for the Respondent.</p> <p><i>SC</i></p>	<p>1.2.02</p> <p>1m</p>	<p>Judgment delivered in open Court. Kept in separate sheets. Application is dismissed. No costs.</p> <p><i>[Signature]</i> Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 386 of 2000

Date of Decision... 1.2.02

Sri Swaddin Dutta

-----Petitioner(S)

Mr.A.K.Roy , Mr.I Gogoi

-----Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

-----Respondent(s)

Mr.S.Sengupta, Railway counsel

-----Advocate for the
Respondent(s)

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

THE HON'BLE

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 : VICE-CHAIRMAN

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.386 of 2000

Date of Order: This the 1st Day of February, 2002

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

1. Shri Swadhin Dutta
Son of Late Nani Gopal Dutta
Resident of Bhimra Bhawan,
Gate No.3, Maligaon
Guwahati-781011 ... Applicant

By Advocate Mr.A.K.Roy, Mr.I Gogoi

1. Union of India, represented by the
General Manager, N.F.Railway
Maligaon, Guwahati-781011
2. The General Manager,
N.F.Railway, Maligaon
Guwahati-781011
3. Financial Adviser & Chief Accounts Officer,
N.F.Railway, Maligaon.
Guwahati-781011
4. Chief Cashier, N.F.Railway,
Maligaon, Guwahati-781011. ... Respondents.

By Advocate Mr.S.Sengupta, Railway Advocate

O R D E R.

CHOUDHURY, J.(V.C.):

This is the fourth round of litigation. The applicant is agitating for benefit of Pension in the following circumstances:

1. The applicant was served under the Respondents as Junior Clerk in the office of the Chief Cashier, N.F. Railway, with effect from 1.12.1964 and subsequently he was promoted as Senior Clerk. He applied for the post of Lecturer in Hojai College and the applicant was offered appointed as Lecturer in that College. He applied for Extra Ordinary Leave for six months with effect from 1.12.1981. The applicant was released

contd/-

to join the College by letter dated 30.11.1981(Annexure-A)
the relevant part of the letter reads as follows:

- " 1. Your lien will be retained in this Department for a period of two years (2 years) (in exceptional) case one year more). If you are not permanently absorbed within this period from the date of your appointment in the new post, you should immediately, on expiry of the said period, either resign from the Railway service or revert to this office.
2. Your pay will be fixed in the pay scale of the new post and will be subject to the condition that your pay should not exceed 30% of your basic pay of Rs. 100/- which ever is more(i.e Rs. 601.00 which is below the minimum of the scale viz Rs. 700/-).
3. You will have to deposite the service contribution with this Railway regularly at the prescribed rate during the period of your lien is retained in this office failing which you would be liable to be recalled for breach of the undertakings."

The applicant was finally absorbed in the College with effect from 2.12.84. He submitted his resignation on 6.2.85. The Chief Cashier, N.F.Railway, vide his letter dated 24.6.85 accepted the resignation with effect from 2.12.1984. Since the applicant was not paid Pension Gratuity by the Respondents therefore, the applicant submitted a representation. The authority informed the applicant that the Pension Gratuity could not be paid to him, because he did not render 20 years qualifying service. The applicant then moved this Tribunal seeking appropriate directions by way of O.A. which was numbered and registered as Original Application No.39 of 1991. The Tribunal disposed the same on 30.8.95 with directions on the Respondents to re-examine the matter, the light of directions issued. The Railway Authority thereafter, rejected his claim by an order dated 4.3.86. The applicant again moved this

contd/-

Tribunal by filing Original Application No.219 of 1997. The said Original Application was disposed of by this Tribunal with a direction to the Respondents to dispose of his representation. The Railway Authority again re-affirmed its stand that the pension could not be paid because he did not complete the qualifying service. Then the applicant moved this Tribunal by filing the Original Application No.61 of 1998, which was disposed of on 19.1.2000, directing the respondents to re-consider the matter afresh. The Respondent No.3 FA & Chief Accounts Officer by a reasoned order dated 11.7.2000 turned down the case of the applicant. Hence this Application :

2. Heard Mr.A.K.Roy, learned counsel for the applicant. Mr.A.K.Roy learned counsel for the applicant submitted that the respondent authority merely stressed on the technicalities without going into substance of the matter and thereby faltered in the decision making process. The learned counsel submitted that the applicant was sent on lien by the concerned authority for two years. The order itself mentioned that if he was not permanently absorbed within the period prescribed from the date of his appointment in the new post he should immediately on expiry of the said period, either resign from the Railway Service or revert to the office. The order also contained the direction of the authority advising the applicant to make deposit the leave Salary and Pension contribution regularly during the period of lien. The learned counsel submitted that the Respondents now in a most arbitrary fashion held back the Pensionary benefits to the applicant. Mr.A.K.Roy learned counsel referred to the Rules cited in the Indian Railway Establishment Manual

contd/-

as well as the administrative instructions issued by the Railway. The learned counsel referred to us the decision rendered by the Hon'ble Supreme Court in Union of India and another, Vs. Vishwa Nath Pandey reported in 1998 SCC 563 as well as the decision rendered by the Supreme Court in Yashwant Hari Katakhar, Vs. Union of India and Others 1996(7) SCC 113.

3. Mr. S. Sengupta learned counsel appearing on behalf of the Respondents submitted that the Railway authority examined all aspects of the matter. On examination it was found that the applicant did not complete the statutory qualifying period and therefore, he could not be granted the Pensionary benefit. The case of the applicant was sympathetically considered by the FA & C.A.O., but he did not find any scope to grant any relief. Mr. S. Sengupta learned counsel for the Respondent submitted that the Pensionary benefit cannot be granted as per rules. The learned counsel referred to the order itself which clearly and explicitly dealt with the matter and therefore the claim of the applicant was rejected. I have given our anxious consideration on the matter. As mentioned earlier the applicant is pursuing the matter before this Tribunal since 1991. The reason assigned by the FA & Chief Accounts Officer cannot be said to be unlawful. The financial authority looked the matter strictly in terms of the Rules. The applicant had retired with effect from 2.12.1984 vide communication dated 6.2.1985. The learned counsel Mr. A.K. Roy submitted that the resignation of the applicant would not have been accepted retrospectively more so, on the face of the Railway's own circular No. E/207/0/P.XIX(q) dated 28.11.97. According to Mr. Roy the action of the Railway Authority in accepting the

contd/-

the resignation is unlawful.

4. The controversy is as to whether the period of three years with effect from 2.12.1981 to 1.12.1984 could be added from total qualifying service of the applicant. The minimum qualifying period of service is prescribed for a Railway employee for grant of Pension and D.C.R.G. The Respondent No.3 addressed his mind to those aspect of the matter and held that under Rule 244 Railway Manual Establishment Code Vol-1 that the retention of lien would arise only in case of permanent Railway servant appointed under another Central/State Government Department. The applicant admittedly did not serve under the Central/State Government Department/office or Public Sector undertaking owned wholly by Government or an Autonomous or a Semi Government Organisation. Therefore, the provision of Rules 1401 and 1404 also could not be given effect to. The applicant was held to be an employee a private concern Organisation. Mr.Roy learned counsel submitted that the applicant was serving in a deficit College against Government sanctioned post. For all intends and purposes the applicant rendered services under the State Government within the meaning of Article 12 of the Constitution. I find it difficult to accept the contention of Mr.Roy and come to conclusion that the Hojai College, to be a Government Department against which post the applicant was appointed as a Government sanctioned permanent post. In the light of the observations made above and the reason given by the Respondent No.3 rejecting the claim of the applicant cannot be said to be unlawful requiring interference of this Tribunal. Mr.A.K.Roy learned counsel submitted that Rules do not prohibit the Railway Authority

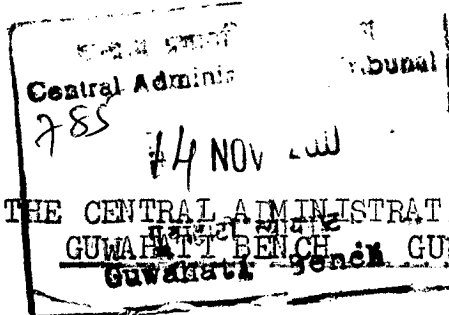
contd/-

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to consider the case of the applicant for providing the Pensionary benefits after relaxing the necessary rules. The appeal made by Shri Roy to us at best should be made to the Railway authority and not to us to issue.

5. The application is accordingly dismissed. The dismissal of the application shall however, will not preclude the applicant to make an appropriate application before the Railway authority to consider his case sympathetically, in the light of the facts. If such application is made to the General Manager, the General Manager, N.F. Railway, may send the same to the Railway Board, enabling them to make an appropriate decision as per law. Subject to the observation made above the application stands dismissed. No costs.


(D.N. CHOUDHURY)
VICE-CHAIRMAN

LM



(An application under Section 19 of the Administrative Tribunal Act, 1985)

Original Application No. 386 /2000

Shri Swadhin Dutta : Applicant.
- VS -
Union of India & Others : Respondents.

I N D E X

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For use in the office : -

Date : - 14-11-2000

Signature.

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Filed by the applicant -
Swadhin Dutta Through -
Gerchani Borgei
Advocate, 13/11/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Administrative Tribunal Act, 1985)

BETWEEN

Shri Swadhin Dutta,
Son of Late Nani Gopal Dutta
Resident of Bhimra Bhawan,
Gate No. 3, Maligaon
Guwahati - 781 011.

... Applicant

-AND-

1. Union of India, re-presented by
the General Manager, N.F.Railway
Maligaon, Guwahati - 781 011.
2. The General Manager,
N.F.Railway, Maligaon
Guwahati - 781 011.
3. Financial Adviser & Chief Accounts Officer,
N.F.Railway, Maligaon, Guwahati-781011.
4. Chief Cashier, N.F.Railway,
Maligaon, Guwahati -781011.

... Respondents

1. Particulars for which this application is directed -

This application is made due to : -

- (a) Non payment of the pensionary amount to the ~~petitioner~~
applicant.
- (b) Against the decision of the respondents as has been
communicated vide letter under No. CP/EP/S.Dutta
dated 2.1.98 issued by the FA & CAO for General Manager,
N. F. Railway.
- (c) Against the decision of the FA & CAO as has been
communicated vide letter No. CP/EP/S.Dutta dated
4.3.96.

Cont d.....P/-

Swadhin Dutta

2. Jurisdiction :-

The applicant declares that this application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation :-

The applicant also declares that this application is made within the limitation period as prescribed in section 21 of the Administrative Tribunal Act 1985.

4. Fact of the case:-

(i) That, the applicant is a citizen of India and as such is entitled to all the rights, privileges and protections guaranteed by the Constitution of India.

(ii) That, the applicant after getting retired from defence service, was appointed as junior clerk in the office of the Chief Cashier, N.F.Railway, with effect from 1.12.64 and was subsequently promoted as senior clerk. The applicants being a Master degree holder in Arts from Gauhati University and having requisit qualification, applied for the post of Lecturer in Hojai College and was selected for the said post. Accordingly, he was offered appointed as Lecturer in that College in Scale of Rs. 700- 1600/- as per U.G.C norms. As he was selected for the said post, the applicant applied for extra ordinary leave (without pay) for six months with effect from 1.12.81 with permission to accept the said appointment during the leave period as per the existing Rule. But, instead of giving extra ordinary leave, the Chief Cashier, N.F.Railway vide letter dated 30.11.81 agreed to realese him on lieu for two years with a certain terms and conditions, at which the applicants gave his consent and thereafter he was relieved from the office of the Chief Cashier, under office order

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dated 1-12-81 and he joined the Hojai College as Lecturer showing the relieve order to the Principal.

Two copies of the letter dated 30.11.81 and order dated 1.12.81 are annexed herewith as Annexure - A and B.

(iii) That, as per the office order dated 1.12.81 the applicant was to deposite the leave salary and pension contribution to the Railway. The Chief Cashier, therefore, under his letter dated 7-9-82 asked the applicant to submit the pay drawn particulars for calculating the foreign service constibution of leave salary to be deposited by the applicant. Immediately, on receipt of the ~~same~~ the applicant submitted the particulars of pay and allowances drawn, by his letter dated 25.9.82.

Copies of Chief Cashier's letter dated 7.9.82 and applicants letter dated 25.9.82 are annexed herewith as Annexure - C and D respectively.

(iv) That, the applicant states that as the lien period was about to be denied, he applied to the Chief Cashier N.F.Railway for further extension of lien period for one year and the said application was duly forwarded by the Principal, Hojai College. Accordingly, the Chief Cashier, under his letter dated 14.11.83 extended the lien of the applicant for further one year with effect from 2.12.83 of the date of absorbtion which ever is earlier. Accordingly, the applicant continued in the said post and ultimately he was permanently absorbed in the Hojai College on 2.12.84. The principal of the Hojai college informed the Chief Cashier about his absorption by his letter dated 14.11.84 with

*Shashi
Dutta*

request to release the applicant accordingly.

Copy of the letter dated 14.11.33 is annexed herewith as Annexure - E

(v) That after absorption in the post of lecturer ~~tm~~ the applicant submitted his resignation vide his letter dated 6.2.85 with request to accept his resignation w.e.f 2.12.34. After receiving the said resignation letter, the Chief Cashier vide his letter dated 24.6.85 accepted his resignation w.e.f. 2.12.34.

Copies of the letter dated 6.2.35 and Chief xCashier's acceptance letter dated 24.6.85 are annexed herewith as Annexure - F and G

(vi) That as the Chief Cashier did not inform him about the amount of service contribution and leave salary which was required to be deposited by the applicant, he sent a letter dated 18.6.34 to the Chief Cashier requesting him to inform about the same. But the Chief Cashier did not furnish the same for a long time and ultimately under his letter dated 4.6.85 advised the applicant to deposit Rs. 6,752/- on account of the said contribution and enclosed the calculation sheet with the said letter.

Copy of the letter dated 4.6.85 with the calculation sheet is annexed herewith as Annexure - H.

(vii) That, in response to the said letter dated ~~4x~~ 4.6.85 the applicant deposited the said amount of Rs. 6,752/- to the N.F.Railway and informed the same to the Chief Cashier by his letter dated 12.6.85.

copy of the letter dated 12.6.85 is annexed herewith as Annexure - I

Deva Singh
Pulla

(viii) That, the applicant was paid his P.F. money and amount of leave salary. He was asked to submit the pension paper(including DCRG) on 1.7.85 and he submitted the same on the same date. Thereafter, under Chief Cashier's letter dated 30.12.86 opinion of the Sr. Personal Officer/ Ruling was communicated to the applicant that he had not completed 20 years of qualifying service before joining Hojai College and for this his case for pension could not be considered. The Chief Cashier however wanted to know the period of defence service of the applicant before joining the Railway, for calculating qualifying service. In this connection, it is stated that the applicant worked in defence for 8 years three hundreds eleven days with effect from 6.9.85. The supporting documents are available in the personal case of the applicant. The applicant submitted his reply under letter dated 13.1.87.

Copy of the letter dated 30.12.86 and 13.1.87 are annexed herewith as Annexure - J and K respectively.

(ix) That, the Chief Cashier under his letter dated 28.4.87 again informed the applicant that he had not completed 20 years of service on 2.12.81 and therefore was not eligible for pensionary benefits. The Chief Cashier also informed that the applicant should get leave salary for 82 days only though he had been given leave salary for 172 days. Be it stated that the applicant was a Railway servant upto 2.12.84 (on deputation from 3.12.81 to 2.12.84 out of Railway keeping lien with Railway). Be it stated here that his resignation has been accepted by the Railway authorities w.e.f 2.12.84. Hence, till resignation is accepted he was a Railway servant.

D. S. P. Datta

Therefore, he was correctly given leave salary for 172 days and he was eligible for pension as he had completed 20 years of qualifying service and hence he submitted his reply on 20.5.87.

Copy of the letter dated 28.4.87 is annexed herewith as Annexure-L

(x) That the applicant submitted several representations for payment of pensionary benefits. The F.A & Chief Accounts Officer, N.F.Railway under his letter dated 21.12.87 took a different plea that the applicant had violated the condition No. 2 of office order dated 1.12.81 and this disqualified him from any right to lien in Railway. It is stated that the contention of the Railway is not correct. The applicant submitted his reply on 25.1.88.

Copy of the letter dated 21.12.87 is annexed herewith as Annexure - M

(xi) That, under letter dated 20.7.88 issued from F.A & C.A.O., N.F.Railway, the applicant was informed that on 1.12.81 he had not completed 20 years of service and therefore, not eligible for pensionary benefits. This letter also said that he had violated condition No. 2 of office order dated 1.12.81. It was also advised that a Cheque for Rs. 1,359/- would be sent to him. The applicant had however returned back the Cheque when the same was given to him.

Copy of the letter dated 29.7.88 is annexed herewith as Annexure - N

(xiii) That, by letter dated 5.9.88 the applicant returned the Cheque for Rs. 1,359/- issued to him and stated that he was not agree to accept the cheque till his case

Dwajendra

was finalised. The applicant submitted reminders and got the reply from Chief Cashier under letter dated 7.11.90 rejecting his claim.

Copies of letter dated 5.9.88 and 7.11.90 are annexed herewith as Annexure - O and P respectively.

(xiii) That, being aggrieved with the decision of the respondents, the applicant approached this Hon'ble Tribunal by filing an application being numbered as Original & Application No. 39 of 1991 and This Hon'ble Tribunal was pleased to dispose of the said application by an order dated 30.8.95. In the said order dated 30.8.95, This Hon'ble Tribunal directed the respondent No. 2 i.e. F.A & C.A.O. to reconsider the claim of the applicant in the light of the order and pass necessary order in this respect.

Copy of the order dated 30.8.95 is annexed herewith as Annexure - Q.

(xiv) That after the said order dated 30.8.95 of this Hon'ble Tribunal, the F.A. & C.A.O., N.F. Railway re-examined the matter after providing a personal hearing to the applicant and passed an order dated 4.3.96 rejecting all the claims of the applicant. The said order has been communicated to the applicant by the Chief Cashier vide his letter dated 4.3.96.

Copy of the order dated 4.3.96 is annexed herewith as Annexure - R

(xv) That, the applicant states that before personal hearing, the Chief Cashier vide his letter dated 23.1.96 asked the applicants to produce ruling from defence authority

Dwarka Datta

whether his service under defence would be counted for the service under Railways. After getting the said letter, the applicant submitted one representation dated 30.1.96 to the F.A & C.A.O, N.F.Railway requesting him to give a Certificate in this regard so that he may be able to obtain the ruling from the defence authority, but the respondent did not issue the same and hence he failed to collect and produce the same.

Copies of letter dated 23.1.96 and representation dated 30.1.96 are annexed herewith as Annexure - S and T respectively.

(xvi) That, the applicant states that the F.A & C. A. O did not re-examine / review the whole matter in the light of the order of this Hon'ble Tribunal and without following the observations and directions of the Hon'ble Tribunal, the authority rejected the claim of the applicant mainly on the ground of breach of contract.

(xvii) That, against the order dated 4.3.96 the applicant submitted representation on 27.5.96 and one reminder dated 26.6.96 to the F.A & C. A. O stating about the illegality of the order and as to why he is eligible to get pensionary benefit, but as he did not respond to the same, the applicant submitted one representation on 4.6.97 to the General Manager for his necessary action.

Copies of representation dated 27.5.96, reminder dated 26.6.96 and representation dated 4.6.97 are annexed herewith as Annexure - U, V, and W respectively.

(xviii) That as the said representation dated

Dwashi Putta

4.6.97 was not disposed of by the General Manager, the applicant approached this Hon'ble Tribunal by filing an application being numbered as Original Application No. 219 of 1997 and this Hon'ble Tribunal disposed of the same by an order dated 24.9.97 directing the General Manager to dispose of the representation .

One copy of the order dated 24.9.97 is annexed herewith as Annexure - X

(xix) That, after the said order of this Tribunal, the said representation has been disposed of by the F.A & C.A.O for the General Manager and the decision of the authority has been communicated vide letter dated 21.1.98 issued by the F.A. & C.A.O. In this letter the authority has taken new plea of rejecting the claim of the applicant. Now, the authority has accepted that it was a lapse on the part of the administration in releasing the applicant on lien but as rule does not permit to provide the lien the applicant is not entitled the pensionary benefit.

Copy of the letter dated 2.1.98 alongwith the decision of the administration is annexed herewith as Annexure - Y.

(xx) That being aggrieved with the order of F.A & C.A.O the applicant approached this Hon'ble Tribunal by filing original application No. 61 of 1998 and the same had been disposed of by this Hon'ble Tribunal by an order dated 19.1.2000 with certain observation and thereby directed the respondents to reconsider the case within 3 months keeping open about the question on equity and conscience.

Swasini Patta

One copy of the order dated 19.1.2000 is
Annexed as Annexure - Z.

(xxi) That after the said order of this Hon'ble Tribunal the respondent No. 3, passed a speaking order dated 11.7.2000 rejecting the claim of the applicant.

Copy of the order dated 11.7.2000 is annexed
as Annexure - Z₁

(xxii) That, being aggrieved with the decision of the authority the applicant again approach this Hon'ble Tribunal by filing this application under Your Lordships protective hand.

5. Grounds for Relief : -

(i) For that the respondent has accepted the resignation of the applicant w.e.f. 2.12.84 vide their letter dated 24.6.85 (Annexure - G) and hence till that date the applicant was a Govt. servant and hence he has completed 20 years of qualified service to get the pensionary benefit.

(ii) For that the lapse, if any occurred, was on the part of the administration and that part is already over and hence deprivation of pensionary benefit to the applicant does not arise.

(iii) For that the respondents themselves granted the lien to the applicant and that part i.e the lien period has already over and hence they can not deny the same as lien period and can not deprive the applicant of the due benefit of the said period.

(iv) For that the Railway authority, after knowing the position of the college and about his selection granted the lien for two years initially and thereafter extended

Dwarka Puri

for another one year with certain terms and condition and hence they can not deny the said period as lien.

(v) For that the Railway authority themselves imposed the terms and condition and hence they can not deny those terms and conditions but are bound to follow the same.

(vi) For that the lapses, if any occurred on the part of the Railway authority, that was the lapses of the administration and hence the poor employee should not suffer.

(vii) For that as the respondents themselves, instead of giving extra-ordinary leave for ~~xx~~ six months, granted lien to the applicant, they can not deprive the due pensionary benefit, moreover, when that period is over.

(viii) For that as the respondents have accepted the foreign service contribution (i.e. pension contribution and leave salary contribution) after getting all the particulars about his pay scale and leave for the tenure of lien period, they can not go back and refuse to give the pensionary benefit.

(ix) For that if the respondents did not grant lien, the applicant could have continue this service in the Railway till March 1995.

(x) For that what ever the wrong ? if any, done by the administration by granting the lien to the applicant can not be corrected at this stage in as much as that period is already over.

(xi) For that at any rate the action of the respondents is not sustainable in the eye of law and hence is liable to be set aside and quashed.

Devasi Panta

(xii) For that the action of the respondents is depriving the applicant of his due pensionary benefit is illegal and arbitrary in as much as it violates the provision of Article 14 and 21 of the Constitution of India.

xiii) For the due to illegal and arbitrary action of the respondents an old aged employee should not be deprived of his long period of service benefits.

xiv) For that the action of the respondents is against the principle of natural justice and administrative fair play and is not maintainable in the eye of law.

xv) For that the pension ~~is~~ is the only livelihood of a retired employee and hence that should not be deprived of by the arbitrary and illegal action of the respondents.

6. Details of remedies availed :-

That the applicant declares that he has taken recourse to all the remedies available to him as stated in paragraphs 4 above but failed ~~to~~ and hence there is no other alternative remedy open to him other than to approach this Hon'ble Tribunal.

7. Matter previously filed or pending before any court :-

That, the applicant declares that he previously filed original Application NO.39 of 1991 ~~xxx~~, O. A NO. 219 of 1997 and O.A NO. 61 of 1998 which have been disposed of with certain directions but ~~inspite~~ of that fact he has not get justice from the administration and hence he again approach this Hon'ble Tribunal. He also declares that at present no application, writ petition or suit is pending before any court or Tribunal.

Dwaipati

8. Reliefs sought for :

Under the fact and circumstances stated above the applicant prays for the following reliefs :

- (i) To direct the respondents to count the applicant's service in the Railway upto 2.12.84 i.e., the date with effect from which his resignation has been accepted counting the lien period as in Railway service.
- (ii) To quash and set aside the order dated 4.3.96 (Annexure R) and order /decision dated 2.1.98 (Annexure -Y) and order dated 7.11.2000 (Annexure -Z1)
- (iii) To direct the respondents to pay the pensionary benefits including DCRG for his service in Railway.
- (iv) To direct the respondents to pay interest on the pensionary benefits to the applicant.
- (v) Cost of the litigation.
- (vi) Any other further order /orders as Your Lordships may deem fit and proper.

9. Interim relief, if any :-

Under the fact and circumstances stated above, the applicant does not pray any interim reliefs .

10.

11. Particulars of Indian Postal Order :-

- | | | | |
|------|---------------|----|--------------|
| i) | I.P.O.NO | :- | 2G 503847 |
| ii) | Date of issue | :- | 13 /11/ 2000 |
| iii) | Payable at | :- | Amwahi |

12. List of enclosures :-

As stated in the Index.

Devasi Dulla

VERIFICATION

I, Shri Swadhin Dutta, son of Late Nani Gopal Dutta, aged about 62 years, resident of Bhimra Bhawan, Gate No. 3, Maligaon, Guwahati - 11 do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 13 of the application are true to my personal knowledge and rests are my humble submissions before this Hon'ble Tribunal and I have not suppressed any material fact of the case.

And I sign this verification on this the 12th day of November 2000, at Guwahati.

Date :- 12.11.2000

Place :- Guwahati

Swadhin Dutta
APPLICANT

N.F.Railway.

No. CP/EP/S.Dutta

Dated : 30-11-81

To,

Shri Swadhin Dutta,
Sr. Clerk
Pay & Cash, N.F.Railway,
Maligaon.

Sub : Appointment as lecturer under principal,
Hojai College, Hojai.

Ref : Your application dtd. 13.11.81 to F.A. & C.A.O.

As agreed to by the Administration you may be released from this office on the following terms and conditions.

1. Your lien will be retained in this Department for a period of two years (2 years) (in exceptional case one year more). If you are not permanently absorbed within this period from the date of your appointment in the new post, you should immediately, on expiry of the said period, either resign from the Railway service or revert to this office.
2. Your pay will be fixed in the pay scale of the new post and will be subject to the condition that your pay should not exceed 30% of your basic pay of Rs. 100/- which ever is more (i.e. Rs. 601.00 which is below the minimum of the scale viz. Rs. 700/-)
3. You will have to deposite the service contribution with this Railway regularly at the prescribed rate during the period of your lien is retained in this office failing which you would be liable to be recalled for breach of the undertakings.

Please indicate if you are willing to be released on the above terms and conditions giving on undertaking to abide by conditions stated above.

Sd/-

Chief Cashier
N. F. Railway, Maligaon
Guwahati.

Attested by
Jendharil Gogoi
13/11/2000
Advocate.

N. F. Railway,

Office order No. CP/156

Dated - 1.12.81

Having been selected for appointment as lecturer in Bengali at Hojai College vide Principal and Secy's letter No. HC/C-6/7374 dated 04.11.81, Shri Swadhin Dutta, Sr. Clerk drawing pay at Rs. 428.00 plus Rs. 35/- special pay P.M. in scale Rs. 330/-560/- is relieved from this office w.e.f 01.12.81(AN) on the following terms and conditions:-

1. His lien will be retained in this office for a period of two years (in exceptional case upto 3 years). If he is not parmanently absorbed within the above period from the date of his appointment in the new post he should immediately on expiry of the said period either resign from the Railway service or revert to his parent office.
2. His pay in the ex-cadre post will be fixed in the pay scale of that post subject to the condition that his pay in the new post should not exceed 30% of his pay or Rs. 100/- whichever is more.
3. He will have to deposite the leave salary and pension contribution with this Railway regularly at the prescribed rate during the period of his lien is retained in this office, failing which he will be recalled for ~~breath~~ of the undertaking.

Sd/-

Chief Cashier,
N.F.Railway, Maligaon,

No. CP/EP/S.Dutta

Dated 30.11.81

Copy to :-

1. The Principal , Hojai College, Hojai
2. F.A & C.A.O/ AD
3. AAO/ PF
4. AAO/ EN
5. Shri Swadhin Dutta, Sr.Clerk for information and necessary action.

Sd/-

Chief Cashier
N.F.Railway, Maligaon.

Attested by
Indrakant Gogoi
12/11/2000
Advocate.

Annexure - C

BY REGD WITH A/D

Office of the Chief Cashier
N.F. Railway,
Maligaon.

No. CP/EB/S.Dutta

Dated - 7-09-82

To,

Shri S. Dutta (Lecturer)
Hojai College
P.O. Hojai
Dist. Nagaon.

Sub: Deposits for Foreign service contribution

In terms of Clause 3 of this office order No. CP/156 dated 01.12.81, you are required to deposite the leave salary and pension contribution with this Railway from the date of your assumption to the new assignment.

Kindly furnish this office the pay drawn particulars with effect from 02.12.81 and onwards early so as to enable this office to calculate your foreign service contribution and leave salary.

An early reply will be appreciated.

Sd/-

Chief Cashier
N.F. Railway, Maligaon

Copy to forwarded to F.A. & C.A.O/ EN/ Maligaon in ref. to his letter No. PNC/EN/250/160 dated 09.08.82 for information.

Sd/-

Chief Cashier
N.F. Railway, Maligan.

Witnessed by
Sandhanil Gogoi
12/11/2000
Advocate.

To,

The Chief Cashier,
N.F.Railway, Maligaon,
Guwahati - 781011.

Sir,

Sub : Deposit of Foreign Service contribution

Ref : Your letter No. CP/EP/S.Dutta dated 7.9.82

In reference to your above, I have the honour to submit herewith the particulars of pay and allowance drawn by me at Lecturer Hojai College.

Dec. 81 W.E.F. 31x 3.12.81 to 31.12.81		Pay Rs. 700/- 654.84	DA @ 42.5% 878.31
January	'82	700.00	297.50
February	'82	700.00	297.50
March	'82	700.00	297.50
April	'82	700.00	297.50
May	'82	700.00	297.50
June	'82	700.00	297.50
July	'82	700.00	297.50
August	'82	700.00	297.50

My next increment date is 03.12.82 @ Rs. 40/-

Yours faithfully,

Sd/- Swadhin Dutta,
25/9/82
Lecturer
Hojai College
782435 Hojai

2000-01 by
Perchovril Gogoi
13/11/2000
2000-01

ANNEXURE - E

BY REGD. POST

N.F.Railway

Office of the Chief
Cashier , Maligaon

No. CP/EP/S.Dutta

Dated 14.11.83

To,

The Principal
Hojai College,
Hojai, Assam.

Sub: Application of Shri S. Dutta, Lecturer
in Bengali for the extension of his lien.

Ref: Your letter No.HC/C-38/8534 dated 6.10.83

The service of Shri S. Dutta, Sr.Clerk, cash and
pay Department. Now on deputation as Lecturer in the Hojai
College, Hojai for a period of two years w.e.f. 02.12.81
are further extended for a period of one year w.e.f. 02.12.83
or the date of absorption in the College whichever is earlier
on the terms and condition laid down in this office order No.
CP/156 dated 1.12.81.

Shri Dutta may be asked to deposite the leave salary
contribution etc. with the Railway and to submit full details
of deposite of the contribution immediately.

Sd/-

Chief Cashier
N.F.Railway, Maligaon.

Copy to : -

- i) F.A & C.A.O./ AD/ MLG
- ii) AAO/ PF
- iii) AAO/ER.
- iv) Shri S. Dutta, Lecturer, Hojai college
Hojai (Assam) for information.

Sd/-

Chief Cashier
N.F.Railway, Maligaon.

Attested by
Jyotirmil Gogoi
18/11/2000
Advocate.

ANNEXURE - F

To,

The Chief Cashier,
N.F. Railway,
Maligaon.

(Through the Principal, Hojai College, Hojai, Assam)

Sub : Resignation from the Railway service
and settlement thereof.

Sir,

Having been absorbed in Hojai College as Lecturer
I beg to offer my resignation from the Railway service w.eff.
2.12.84 and request your honour to arrange early settlement.

Regarding payment of Railway dues i.e. service
contribution and leave salary etc. I beg to state the
following : -

(a) Leave salary :- As I did not availed of any leave
during the period of my lien I may be exempted from the
payment of leave salary.

(b) Service Contribution :- Till date I did not
received any bill on the subject as such I am not in a
position to deposit the amount. Kindly let us know the
amount I am ~~to~~ to deposit at an early date.

Yours faithfully

sd/- Swadhin Dutta,
Ex. Sr. Clerk, Cash & Pay.

Dated : -

P.O. ~~Hajai~~ Hojai (Assam)
The 6 th February, 1985.

Registered with A/D
Memo No. HC/G-38/9486 dated 7.8.85

Forwarded

Sd/-

Principal
Hojai College, Hojai
6.2.85

Attested by
Indranil Gogoi
13/11/2000
Advocate.

N.F.Railway

Annexure - G

Office of the
Chief Cashier
N.F.Railway, Maligaon

O.O NO. CP/ 317

Dated 24.6.85

On account of absorption as lecturer, in Hojai College the resignation tendered by Shri Swadhin Dutta , Sr. Clerk on lien to Hojai College is accepted w.e.f 2.12.84 (AN)

Sd/-

Chief Cashier
N.F.Railway, Maligaon

No. CP/64 pt. II.

Dated 24.6.85

Copy forwarded for information and necessary action to

1. Principal, Hojai College,
2. AAO/ ADMN/Maligaon
3. AAO/ EN/ Maligaon &
4. AAO/ PF/ Maligaon &
5. Staff Concerned.

Sd/-

Chief Cashier
N.F.Railway, Maligaon.

Attested by
Sandhanil Gogoi
13/11/2000
Advocate.

: 22 P

ANNEXURE - H

Office of the
Chief Cashier/ N.F.Railway
Maligaon.

No. CP/EP/S. Dutta

Dated - 04.06.85

To,

Shri S. Dutta (Ex.Sr.Clerk)
Cash & Pay , Now Lecturer,
Hojai College,
Hojai.

Sub : Deposit of Railway dues for acceptance
of your resignation as well as to settle
your case finally.

Ref : Your letter dated 06.02.85.

In terms of your letter under reference you are
hereby requested to deposit early the amount of Rs. 6,752/-
(Rs. Six thousand seven hundred fifty two) only on account
of leave salary contribution and pension contribution as shown
in the enclosed statement for early settlement of your case.

Sd/-

Chief Cashier
N.F.Railway, Maligaon.

Enclo : As above.

Attested by
Sachinil Gogoi
18/11/2000
Advocate.

Statement showing the calculation of pension contribution and leave salary contribution of Shri Swachin Dutta, Sr. Clerk in scale Rs. 330/-560/-of CCs office/ Maligaon w.e.f 02.12.81 to 02.12.84 (AN).

Date of appointment - 01-12-84

Date of Deputation - 02.12.81

Pension contribution :-

From 02.12.81 to 31.12.81	13% of 560.00 151.20 27% B.P.' 86.80 + 15½ %	
	<u>798.00</u>	- Rs. 103.74
From 01.01.82 to 31.12.82	13% of 798.00 103.74 x 12	- Rs. 1,244.88
From 01.01.83 to 31.12.83	13% of 798.00 103.74 x 12	Rs. 1,244.88
From 01.01.84 to 31.12.84	14% of 798.00 111.72 x 11	Rs. 1,228.92
From 01.12.84 to 02.12.84		<u>Rs. 7.45</u>
		<u>Rs. 3,829.87</u>

Leave salary contribution :-

From 02.12.81 to 31.12.81	@ 11% of 654.84	-	Rs. 72.00
From 01.01.82 to 31.12.82	@ 11% of 700.00 = 77 x 12	-	Rs. 924.00
From 01.01.83 to 31.12.83	@ 11% of 740.00 = 81.40 x 12	-	Rs. 976.80
From 01.01.84 to 30.11.84	@ 11% of 780.00 = 85.80 x 11	-	Rs. 943.80
From 01.12.84 to 02.12.84		-	Rs. 5.53
			<u>Rs. 2,922.13</u>

Pension contribution + leave salary contribution
Rs. 3,829.87 + Rs. 2,922.13 = Rs. 6,752.00
Total amount Rs. 6,752.00 only.

Sd/-

Asstt. Accounts officer/EN
N F Railway/ Maligaon.

Attested by
Sachin Dutta
13/11/2000
Advocate.

ANNEXURE - I

To,

The Chief Cashier,
N.F.Railway, Maligaon
Guwahati.

Sir,

Sub : Payment of pension contribution and leave
salary contribution.

Ref : Your letter No. CP/EP/S. Dutta, dt. 4.6.85.

I have the honour to state that in reference to
your letter dated 04.06.85 I deposited Rs. 6,752/-
(Rupees six thousand seven hundred fifty two) only with
ACC/E vide GI Receipt No. 32/12069 dtd. 12.06.85.

Kindly arrange early payment of my settlement
dues.

GI Receipt No. 32/12069 dtd. 12.06.85 is enclosed
herewith for your necessary action please.

Yours faithfully

Sd/-

(Swadhin Dutta)
Ex. Sr. Clerk
Pay & Cash

C/O Mr. S. Dutta
61/A, West Maligaon
Guwahati-781011.

Dated Maligaon
the 12th June 1985.

Attested by
Jendharil Gogoi
13/11/2000
Advocate.

Office of the
Chief Cashier N.F. Railway
Maligaon, Guwahati - 11

NO. CP/EP/S. Dutta

Dated 30.12.86

To,

Shri S. Dutta
(Ex.Sr. Clerk/Cash & Pay office)
Lecturer, Hojai College,
Hojai - 782435
Nagaon (Assam)

Sub : Payment of pension etc.

Ref : Your representation dated 29.07.86
addressed to Shri P.N.Maini, the
then F.A. & C.A.O/ Maligaon.

Please refer to this office letter of even number
date 04.08.86 under which you were adviced that the matter
was referred to SPO/ Rulling for his opinion.

SPO/Rulling has opined that since you did not
render 20 (twenty) years of qualifying service before
joining Hojai College, your case for pension can not
be considered. From the record, however, it is seen
that you had served with Defence Organisation. Please
advise the period from which you were with the Defence
Organisation and also obtain rulling from Defence Orga-
nisation as to whether your period of service with the
Defence Organisation can be counted towards working out
the qualifying period for service.

Sd/-

Chief Cashier.

Attested by
Jendroenil Gogoi
13 / 11 / 2000
Advocate.

To,

The Chief Cashier,
M.F.Railway, Maligaon
Guwahati - 781011.

Sir,

Sub : Payment of pension etc.

Ref : Your letter No. CP/EP/S.Dutta, dt. 30.12.86

In reference to your letter as indicated above,
I beg to say the following : -

Regarding SPO/ Rulling's Opinion :-

I was granted three years lien by you and leave salary and pension contribution was deposited by ~~at~~ me for the period as per your advice. You accepted my twenty years service and paid me leave salary. You also sanctioned my pension and forwarded the same to F.A. & C.A.O/ pension for payment, who returned the case to you with some accounts observation.

Regarding my military service:

I served in the Indian Airforce for eight years three hundred eleven days w.e.f. 06.09.1955. Supporting documents may kindly be seen from my P/ case.

Regarding my obtaining rulling from the Defence :

As to my obligation to obtain ruling from Defence Organisation, I beg to put forward that the point may be settled from your and because Defence Organisation has little to do anything regarding my service under the Railway Organisation.

Yours faithfully,

Sd/-

(Swadhin Dutta)

Attested by
Jendharil Gogoi
18/11/2000
[Signature]

ANNEXURE - L

Office of the
Chief Cashier/ N.F.Railway
Maligaon, Guwahati -11.

Ho, CP/EP/S.Dutta

Dated the 28th April, 1987

To,

Shri Swadhin Dutta,
Ex. Sr.Clerk under
Chief Cashier,
N.F.Railway, Maligaon
Guwahati.

Sub : Pension and other retirement benefit

Ref : Your letter dated 30.01.87

Since on the day of your quitting service i.e. on 02.12.81 you did not complete 20 years of continuous service you are not eligible for any pensionary benefits. You are therefore hereby informed that since your service in the Railway falls short of 20 years no pension is admissible to you.

You had deposited an amount of Rs. 6,752/- on account of Foreign service contribution and leave salary contribution for retention of your lien on this Railway. Since retention of lien is not permissible the amount of Rs. 6,752/- is refundable to you. It may however be mentioned here that you have been paid Rs. 7,081.24 for encashment of leave for 172 days on your quitting the service but it is found on review of your case, that you had only 82 days leave due on the day of your quitting service i.e. on 02.12.81 and as per Railway Board's order on the subject you were entitled to pay for encashment of only 41 days LAP being half of 82 days amounting to Rs. 1,687.97. As such an amount of Rs. 5,393.27 has been paid to you in excess erroneously.

You will therefore get a refund of Rs. 1,358.73 being difference between Rs. 6,752.00 and 5,393.27.

Sd/-

Chief Cashier.

To,

Shri Swadhin Dutta,
Ex.Sr.Clerk/Cash & Pay office
Lecturer, Hojai College,
Hojai - 782435
Nagaon (Assam)

Attested by

Indrajit Dey
13/11/2000
Advocate.

ANNEXURE - M

Office of the
E.A. & Chief Accounts Office
N.F.Railway, Maligaon
Guwahati-11

Dated the 21st December, 1987

No. CP/EP/S.Dutta

To,

Shri Swadhin Dutta,
Ex.Sr.Clerk under
Chief Cashier,
N.F.Railway, Maligaon
Guwahati - 11.

Sub : Your representation for pensionary benefits.

Ref : Your application dated 05.08.87

With reference to the above, you are hereby informed that you were released from Railway service to join Hojai College under Chief Cashier, N.F.Railway Maligaon's office order No. CP/156 dtd. 01.12.81 under certain terms and conditions. According to item 2 of the terms and conditions your pay in the new post was to be fixed in the pay scale of that post subject to the condition that your pay in the new post should not exceed 30% of your pay or Rs. 100/- which ever is more. It has been noticed that you violated this condition by accepting more pay in the new post and this by itself would disqualify you from any right to a lien against Railway service. As such it has been deemed that you have resigned from Railway ~~service~~ service from the date you left the service under Chief Cashier, N.F.Railway, Maligaon.

Sd/-

For F.A & Chief Accounts officer
N F Railway, Maligaon.
Guwahati - 11.

Attested by
Sandhanil Gogoi
18/11/2000
Advocate.

: 29 :

Annexure - N

Office of the
F.A. & Chief Accounts Officer
N.F.Railway, Maligaon .

No. PNO/AD/76/435

Dated 29.07.88

To,

Shri Swadhin Dutta,
Lecturer,
Hojai College,
Dist. Nagaon(Assam)
Pin - 782 435.

Sub : Non payment of pensionary benefits.

The necessary replies were issued to you under letter No. CP/EP/S.Dutta dated 28.04.87 and 21.12.87 which may be connected at your end.

However, as desired by Dy. Director, Estt.(R) I Railway Board, you are informed hereby as under : -

You were released to join the college service w.e.f 01.12.81 vide O.O No. GP/156 dated 01.12.81 on the express terms and conditions with 2 years lien vide No. CP/EP/5/S.Dutta dated 30.11.81. Subsequently, the lien of 2 years sanctioned earlier was extended for one year more w.e.f 02.12.83 vide NO.CP/EP/S. Dutta dated 14.11.83, thereafter, your resignation was accepted w.e.f 02.12.84 vide O.O. No. CP/317 dated 24.06.85.

The agreement point under para 2 of O.O No.CP/156 dated 01.12.81 was breached by you wherein you were permitted to accept the pay scale of College Organisation subject to the conditions that your pay in the new post should not exceed 30% of your pay or Rs. 100/- whichever was more (i.e.Rs. 601/- which is below the minimum of the scale viz. Rs. 700/-). But from the particulars furnished by the College authorities your pay was allowed to Rs. 700/- with subsequent increment which was higher than Rs. 601/-. This is an infringement of the terms and conditions as laid down.

On the date of your release w.e.f 01.12.81 your 20 years continuous service was not completed and as such pensionary benefits was not admissible as per rules.

A pay order bearing NO. 4471/18 dated 28.07.88, however, for Rs. 1,359/- (Rupees one thousand three hundred fifty nine) only has been drawn in your favour towards payment of your arrears. Arrangement is being made to arrange the above payment through Cheque at your home address.

Sd/-

(Ravi Prabhat)

Dy. CAO/T

For F.A & Chief Accounts Officer,
N.F.Railway, Maligaon.

Attested by
Indrovarul Gogoi
18/11/2000
Adv. Secy.

Copy forwarded for information to : -

1. The Chief Cashier, N.F.Railway, Maligaon in reference to his office No. at N/25 of P/ Case No. 33 of Shri Swadhin Dutta, Ex. Sr. Clerk.
2. Dy. Director, Estt. (R) I,
Ministry of Railways,
Railway Board,
Rail Bhawan
New Delhi - 110001

This is in reference to his NO. E(REP) 1188 AES - 45
dated 29.06.88

Sd/-

(Ravi Prabhat)
Dy. CAO/T
For FA & Chief Accounts Officer
N.F.Railway, Maligaon.

Attested by
Pandurangh Gogoi
13/11/2000
Advocate.

Swadhin Dutta,
Lecturer,
Hojai College,
P.O. Hojai -782435.

To,

The F.A. & C.A.O
N.F.Railway, Maligaon
Guwahati-781011

(Through the Chief Cashier, N.F.Railway)

Sir,

Sub : Cheque No. 019778/0988373 dt. 09.08.1988
for Rs. 1, 359/- (Rupees one thousand three
hundred fifty nine) only drawn in favour
of S.Dutta on SBI, Maligaon.

I have the honour to return herewith the above mentioned
cheque and request you to note the following :

1. The forwarding memo of the cheque in question states that the payment was on account of leave salary. The payment of leave salary including the period of leave accrued to me during the lien period was made to me in the year 1985. Hence, no leave salary is due to me.
2. The amount of the cheque (with a difference of twenty , seven paise) might be the difference as was stated by the Chief Cashier in his letter No. CP/EP/S.Dutta dtd. 28.04.87. As I did not accept the contents of the said letter and represented my case to the Hon'ble Ministry of state for Railway, I am not agreeable to accept the cheque till my case is finalised.

Yours faithfully,

Sd/-

(Swadhin Dutta)

Enclo : - Cheque No. 019778-0988373 dt. 09.08.88

Attested by
Indranil Choudhury
13/11/2000
Advocate.

ANNEXURE - P

Office of the
Chief Cashier/ N.F.Railway
Maligaon, Guwahati-11

No. CP/EP/S. Dutta

Dated 7th November 1990

To,

Shri Swadhin Dutta,
(Ex.Sr.Clerk, Cash & Pay office)
Maligaon,
Lecturer, Hojai College,
Hojai - 782435
Nagaon(Assam)

Sub : Non-payment of pension etc.

Ref : Your letter No. Nil dated 20.08.90
addressed to Shri A. Prasad, F.A & CAO
N.F.Railway, Maligaon.

Your appeal quoted under reference has been carefully examined and it has found that your contentions brought out in it are not supported by Rules. Therefore, your claim cannot be acceded to.

This issue with the approval of FA & CAO.

Sd /-

(M.K. Biswas)
Chief Cashier
N.F.Railway, Maligaon
Guwahati - 11.

Attested by
Jyotsnâ Gogoi
18/11/2000
Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 39/91

Date of order : This the 30th day of August 1995.

JUSTICE SHRI N.C. CHAUDHARI, VICE - CHAIRMAN.

Shri Swadhin Dutta, S/O
Late Nani Gopal Dutta,
Hojai College, Hojai. ... Applicant.

By the Advocate Mr. J.L. Sarkar and Mr. M. Chanda.
- Versus -

1. Union of India through General Manager
N.F. Railway, Maligaon, Guwahati - 11.
2. F.A. & Chief ~~Cashier~~ Accounts Officer,
N.F. Railway, Maligaon, Guwahati - 11
3. Chief Cashier
N.F. Railway, Maligaon, Guwahati - 11

By Advocate for Mr. B.K. Sharma. ... Respondents.

O R D E R

CHAUDHARI J. (VC) :

1. The applicant was employee of the N.F. Railway as Chief Cashier on 01.12.1964. He opted to join as Lecturer in Hojai College and was relieved from the N.F. Railway on 01.12.31. His lien with the Railway was kept. The lien was extended for one year on 02.12.33. He was absorbed in the Hojai College w.e.f. 02.12.34.
2. Having ceased thus to be a Railway employee, he requested for working out his pension and leave salary to be deposited by him and on the advice of the Chief Cashier of the R^spondents deposited an amount of Rs. 6,752/- on 04.06.35 towards the above payments. He has been paid his

Attested by
Sundaril Gogoi
18/11/2000
Advocate.

P.F. money and amount of leave salary and was advised on 01.07.35 to submit pension papers. He was however informed by the respondents by letter dated 30.12.36 that as he had not completed 20 years of qualifying service till joining Hojai College his case for pension can not be considered. The applicant submitted representations against the aforesaid decision. He also claimed that he was entitled to get leave salary for a period of 172 days but was given only for 82 days wrongly. In reply to his representation he was informed by the F.A. & C.A.O of the respondents on 21.12.37 that since he had violated condition none of the office order dated 01.12.31 was disqualified to enjoy the benefit of the lien with the Railway and thus he had not completed 20 years qualifying service for pensionary benefits. The applicant therefore, approached this Tribunal by filing the instant O.A on 26.02.91. He prays that respondents be directed to pay him the pensionary benefits including DERC for his service in the Railway counting his service with the Railway upto 02.12.34 and not 01.12.31 together with the interest on the pension and DERC amount. He has also sought an order to the effect that he cannot be asked to refund the leave of salary paid to him for 172 days. He has made a further prayer that the service rendered by him in the defence before joining the Railways may be directed to be counted as qualifying service for pension.

3. The respondents resist the applications. They contend that as the applicant had violated the conditions of the order dated 01.12.31, therefore, his qualifying service has fallen short of 20 completed years. Hence, he is not entitled to get pension. They also contend that on correct calculation the applicant was entitled to get leave salary only for 82 days and was wrongly paid the excess amount which is recoverable

from him.

One of the conditions on which the applicant was allowed to retain the lien on his post in the Railways under order dated 01.12.81 was as follows : -

2." His pay in the Ex-cadre post will be fixed in the pay scale of that post subject to the condition that his pay in the new post should not exceed 30% of his pay or Rs. 100/- which ever is more "

3." He will have to deposit the leave salary and pension contribution with this Railway regularly at the prescribed rates during the period of his lien is retained in this office, failing which he will be recalled for breach of the undertaking".

4. The impact of the conditions was that the applicant could not draw the pay in excess Rs. 600/- p.m. However, he was appointed on the scale of Rs. 700/-. He neither informed the Railways about it nor deposited the excess amount nor made the contribution towards leave salary and pension contribution regularly. It was only on 04.06.35 ~~bx~~ that he gave the necessary particulars and deposited the amount of Rs. 6,752/-. Since that amounted to the breach of the condition on which the lien was allowed to be retained it cannot be held that the decision of the respondents to disqualify him from the right of lien is erroneous. The decision taken is in accordance with the rules as there is not dispute on that point. It is not therefore, possible to hold that the lien was available and the period of deputation should be counted towards the qualifying period for pension.

5. The applicant appears to have resigned from the Hojai College on 02.12.94. By reason of the lien not having

been retained the period of three years from the date of joining the Hojai College till the resigned has been excluded from the calculation although from the date of his entry in the service with the Railways on 1.12.64 he would have completed 20 years service on 2.12.84.

6. The question that arises is as to whether the respondents could deny the benefit of the lien to the applicant on the ground of violation of the conditions of the order dated 1.12.81. The relevant rule in that respect has been produced and going by the order dated 1.12.81 it would appear that in event of the violation of the conditions the applicant could be recalled for breach of the undertaking. There was however no occasion for the respondents to recall him as the fact of the breach of the conditions appears to have been noticed by them in 1984. However, the respondents cannot also take the shelter behind that circumstance as they could have noticed the failure of the applicant to make regular deposits much earlier. This aspect needs scrutiny.

7. Another point which merits consideration is the contention of the applicant that the period of his earlier Defence service should be taken into account while calculating the qualifying period for pension.

8. From Annexure - G dated 20.12.86 it is seen that the applicant was advised by the Chief Cashier that the period from which he was with the Defence Organisation should be intimated and ruling be obtained from the Defence Organisation as to whether the period of his service towards working out the qualifying period for service. The applicant however failed to produce the said particulars nor did he obtained the ruling. It appears that he had requested the respondents

to call for the same from the defence organisation. The respondents however did not think it proper to do so and did not move in the matter. The matter rested there. The result is that the benefit of the period of that service to make up the qualifying period for pension has not been available to the applicant. Annexure - E dated 13.1.37 shows that the applicant had served in the Indian Airforce for 8 years and 311 days w.e.f. 6.9.1955.

9. Having regard to the letter of the respondents dated 20.12.86 it appears somewhat unfair that the applicant should be required to suffer in the matter of pension because he has not been able to obtain the ruling from the defence organisation. A pension is the source of livelihood for a retired person and it is a matter of right and not a bounty. Ordinarily a person should not be deprived of the full benefit for purely technical reasons. Approach of the authorities concerned should be to see that pension should not as far as possible be denied for technical reasons ~~xxx~~ when otherwise the person may be found eligible for the same. In such cases the concerned person should be given adequate assistance and an opportunity to secure his pension. In the instant case there cannot be denying of the fact that the applicant had been in the Airforce for considerable length of time. He was in fact employed with the Railways as Ex-Defence personnel and had served the Railways till he was allowed to join the Hojai College.

10. Having regard to the ~~several~~ circumstances discussed above it would be in the interest of justice to direct the respondent No. 2 to apply of his mind afresh to the case of the applicant and take an appropriate decision.

11. In the result following order is passed :

- i) The FA & Chief Accounts Officer, N.F.Railway ,Guwahati, respondent No. 2 is hereby directed to re-examine the claim of the applicant for pension and DCRC in the light of the circumstances discussed above in this order.
- ii) The respondent No. 2 will decide in accordance with the relevant rules as to whether violation of the conditions of the letter dated 1.12.81 could be a ground to deny the benefit of the lien as the order itself provided only that on failure to abide by the conditions the applicant could be re-called.
- iii) In the event of the respondent No. 2 coming to the conclusion that the denial of benefit of the lien was not permissible he shall consider extending the benefit of pension to the applicant taking into calculation the period ~~period~~ of three years of service for which period the lien would be available.
- iv) The respondent No. 2 to give reasonable opportunity to the applicant to produce the required ruling from the Defence Organisation. He will also permit the applicant to rely in the absence of Defence ruling upon relevant rules if any applicable to the defence organisation to show that the period of Defence service could be taken into account for calculating the qualifying period for pension. The respondent No..2 may also assist the applicant in that behalf.
- v) The respondent No. 2 to determine afresh the period for which leave salary was payable to the applicant .
- vi) The respondent No. 2 will also sympathetically consider as to whether the recovery of excess amount of leave salary may be waived.
- vii) The respondent No. 2 shall give a personal hearing to the applicant.

- viii) The respondent No. 2 to take a decision in the light of the above directions within a period of three months from the date of receipt of copy of this order and convey the same to the applicant.
- ix) If the claim is rejected the respondent No. 2 shall briefly record reasons in support of the order.
- x) If the applicant feels aggrieved by the decision of respondent No. 2 taken as aforesaid he will be at liberty to adopt such legal remedies as he may be advised in accordance with the law including approach this Tribunal.

The O.A is partly allowed in terms of the aforesaid order and is disposed of. No order as to costs.

Sd/- VICE CHAIRMAN

Attested by
Jeeharil Gogoi
13/11/2000
Advocate.

: 40 :

ANNEXURE - R

N.F.Railway

Office of the
F.A. & Chief Accounts Officer
(Pay & Cash office)
N.F.Railway, Maligaon.

No. CP/EP/S.Dutta

Dated 04-03-1996

To,

Shri Swachin Dutta,
Lecturer,
Hojai College,
Hojai,
Dist. Nagaon (Assam)

Sub : O.A. No. 39/91 dated 30.08.1995 of the
Hon'ble CAT, Guwahati Bench.

I enclosed herewith the Review and decision of
F.A. & C.A.O in connection with the order and directive
given by the Hon'ble Central Administrative Tribunal,
Guwahati Bench in the above mentioned case, for your
information.

(J.C. Barai)

Chief Cashier (J. R)

N.F.Railway, Maligaon.

Enclo : As above.

Attested by
Sandhanil Gogoi
13/11/2000
Advocate.

Sub : - Order and directives of the Hon'ble Central Administrative Tribunal, Guwahati Bench dated 30th August 1996.

In obedience to the Hon'ble Courts (Central Administrative Tribunal, Guwahati Bench) directives as embodied in its order dated 30.08.1995, received by the undersigned (Respondent No. 2, F.A & C.A.O/N.F.Railway/Maligaon), the entire case of Shri Swadhin Dutta, as Ex-employee in the Chief Cashier office of N.F.Railway, Maligaon has been gone through de-novo and carefully and sympathetically re-examined and considered to find out the feasibility of extending the benefit within the framework of the rules and laws of the subject and the circumstances prevailing broadly on the points of grant of pensionary benefits including DCRC for his service on the Railway upto 02.12.84 (and not 01.12.81) together with interest elements, waiver of excess amount paid on account of encashment of leave salary (i.e. leave salary for 172 days minus 41 days = for 131 days paid in excess) and to compute his period of service in the Defence Department also as qualifying service on the Railways for purpose of grant of pension on the Railway etc. I could find no rule or legal provision by which I could order for extending any relief to Shri Dutta as sought for by him. My observation against the relevant sub-paras of para 11 of the above said order are put herein below in seriatim, sub-para wise

Sub - paras :

i) The request of the applicant for grant of pension and D.C.R.C. in the light of the circumstances narrated in the order has been thoroughly gone through and no rules and procedures could be found out which would warrant reversal of the previous action of the Railways administration on the subject :

ii) &

iii) As all actions of the executives in the Government Department are to be exercised within the frame work of the relevant rules, ~~Laws~~, the circulars and instructions of the Railway Board (Ministry of Railways), Ministry of Home Affairs, Ministry of Finance etc. on the subject and the employee and employees relations are based on the set rules and the mutual contract and there is little scope of declaring any violation of the said contractual stipulations as legal one. These points have also been elaborately discussed in paragraphs 3 & 4 of the Hon'ble Tribunal's aforesaid order.

As Shri Dutta was serving in the non-Government Organisation, the ~~same~~ onus to deposit his required contribution etc. to the Railways for service in other organisation for retention of his lien on the Railways was on him, if he desired to keep his lien on the Railways. Shri Dutta was continuing in his new profession in the college and never expressed his intention to come back to his Government post and the plea of recalling him also neither arose nor can it be a valid ground to rectify the illegality and breach of contract by him which already brought the contract to a nullity by own volition of Shri Dutta.

iv) As ordered by the Hon'ble Tribunal, all necessary facilities were afforded to Shri Dutta to produce any rulings/ circulars etc. of the Defence Department or to mention any specific on the subject so that his Defence Service of about 8 years or so could be counted in the Railways for purpose of calculation of qualifying service for pension on the Railways. But nothing could either be produced by him or by the Defence Department which could come to his aid. Rather, during the personal hearing before the undersigned (Respondent No. 2)

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F.A & C.A.O/ N.F.Railway), it as clearly stated by Shri Dutta that for the period of Defence Service, he is already a receipt of monthly pension from the Defence Department of the Government of India. Moreover, from records it reveals that even after confirmation in the Railway Service, he abstained from exercising the necessary option to the Railway Administration which is the main pre-requisites for counting his Ex-military service on the Railway while computing the qualifying service for the purpose of grant of monthly pension by the Railway administration as required under Railway Board's letter No. P(E) II 7PNI/19 dated ~~16~~ 15.10.1977 so that necessary adjustment of his pension for his Military and Railway service could be carried out on Service share basis. Further, there is no scope of affording him fresh options at this distant date and that too when he ceases to be in Railway Service. Under such situation, I regret that the extant rule do not permit for computation of qualifying services for the purposes of pension on the Railways by taking into consideration his services in the Defence Services also., for which period he is already enjoying gross disability pension amounting to Rs. 465/- per month from the Defence Department as reveals from his statement before the undersigned during personal hearing on 17th January, 1996.

v) Shri Dutta did quite the Railway service on 1st December 1981 and at the time of quitting he also applied for 3 months L.W.P (Leave without pay) etc. on the date of quitting the service on the Railways, he had 82 days LAP due at his credit. As he has already been absorbed in the private/non-Govt.College, he has not returned back to his former post in Railways and as he was absent from Railway service from 01.12.81 and did not return to his parent cadre (i.e. Govt. Department

on the Railway) from his new Ex-cadre post of lecturer in a private College, the question of earning/accumulation of any leave during the period of his non-service on the Railway from 2nd December, 1981 to 2nd December 1984 does not arise. As such, as per extant rules on the subject, he was entitled to encash half of the leave due at his credit on the day of quitting the Railways Service. For purpose of calculating of leave period for such encashment etc. the period of three years (which he claim to be a deputation period) cannot be counted as per rule. Hence, the previous calculation of 172 days leave (upto period 01.12.84) which was found to be erroneous had to be recast to 82 days taking the date of quitting the Railway Service as 01.12.1981. As such, recovery of the over payment made erroneously to him for undue encashment of 131 days (i.e. 172 minus 41 days) of leave salary has already been effected from his due amount payable by the Railways prior to the date of filing the application (O.A.39/91) by him before the Hon'ble Tribunal and the same was already intimated to him under this office letter No. CP/EP/S.Dutta dated 28.04.1987 and letter No. PNO/AO/76/435 dated 29.07.1988 and hence question of waiver and /or refund does not arise at this stage and no papers can be processed for such waiver/ refund when recovery of the excess payment has already been effected after detention of excess amounts not due to him.

vii) As ordered by the Hon'ble Tribunal, I have also given a personal hearing to the applicant Shri Dutta on 17th January, 1996 and rendered all necessary assistance to him to represent his case, I also made all efforts to find out the feasibility to granting any relief to Shri Dutta ~~within~~ within the ambit of extant rules etc.

viii) The order of the Hon'ble Tribunal dated 30.08.96 was received by me (Respondent No. 2) on 06.12.1995. After thorough re-examination of the case with a sympathetic view and due application of mind, I find no scope for granting any relief as prayed for by the applicant as acceding to the claim of the applicant will involve violation of the Railway Rules and extant orders on the subject leaving aside the question of lapse on the part of the staff. I am therefore, constrained to regretfully reject the claims of the applicant.

The above is in compliance to the Hon'ble Tribunal order dated 30.08.1995 and this decision need to be communicated to Sri Dutta (The applicant in O.A No. 39/91) within the target dated as fixed by the Hon'ble Tribunal.

Sd/-

F.A & C. A.O.

Dtd. 04.03.96

Attested by
Indranil Gogoi
18/11/2000
Advocate.

N F Railway

Office of the
Chief Cashier(JA)/N.F.Railway
Maligaon, Guwahati-11

No. CP/EP/S.Dutta

Dated 23.01.96

To,

Shri Swadhin Dutta,
Lecturer,
Hojai College,
Hojai
Dist. Nagaon (Assam)

Sub : O.A No. 39/91 dts. 30.08.95 of
CAT/ Guwahati.

In terms of honourable CAT/ Guwahati's order vide item NO. 11(iv) of the above O.A No. 39/91, Shri Swadhin Dutta is requested to produce the required ruling from the Defence Organisation that even though he is obtaining disability pension, his service under Defence , will count towards pension for the service under Railways.

Immediate action may kindly be taken.

Sd /-

Chief Cashier (JA)

N.F.Railway, Maligaon.

Attested by
Parthasarathi Gogoi
19/11/2008
Advocate.

To,

The F.A. & C.A.O
N.F.Railway, Maligaon
Guwahati.

Dated : 30.01.96

Sub : Honourable CAT/ Guwahati's OA No. 39/91

Ref : Chief Cashier(JA)/ N.F.Railway, Maligaon
letter No. CP/EP/S.Dutta dtd. 23.01.95

Sir,

I have the honour to draw your kind attention to the Chief Cashier (JA)'s above letter and say the following : -

1. Vide para 2 of the Chief Cashier letter No. CP/EP/S.Dutta dated 11th July'90 he had stated, "As regards paras of your appeal quoted above, it is observed that since in the matter of Railway pension, we are guided by the MRPR (Manual of Railway pension Rules), the Defence authority will not be in a position to rule over a matter which is governed by the MRPR".
2. As desired by the Hon'ble CAT/ Guwahati and pinpointed by the Chief Cashier vide his letter dated 23.01.96 I am to produce Defence ruling regarding coupling of my military service towards Railway Pension, though I am in receipt of Disability Pension.
3. As per item 11(iv) of the Hon'ble CAT/ Guwahati's order quoted by the Chief Cashier, you are to assist me in this regard.
4. Kindly extend your assistance in this regard by issuing a Certificate to the effect that there exists no Railway rule in the MRPR/Circular to count the Military service of an Ex-Serviceman who entered the Railway service and is in receipt of disability pension sanctioned by the Military authority.
5. Your Certificate as prayed for in para 4 will help me to approach the Defence authority for their ruling in this regard and will avoid the chance " to rule over a matter which is governed by the MRPR.
6. In view of the above you are requested to issue the certificate at the earliest to enable me to approach the Defence authorities as it appears that your final order / decision as directed by the Hon'ble CAT/ Guwahati is held up for want of Defence Ruling.

With regards.

Yours faithfully,
Sd/-
(Swadhin Dutta)
Lecturer, Hojai College,
Hojai - 782435

Attested by
Sardar Lal Gogoi
18/11/2000
Advocate.

From :
Swadhin Dut a/ Lecturer
Deptt. of Bengali
Hojai College,
Hojai - 782435.

No. SD/39-91/4/96.

To,

The F.A. & C.A.O
N.F.Railway, Maligaon
Guwahati - 11.

Through : The Chief Cashier (JA), N.F.Rly.

Sub : O.A. No. 39/91 dated 30.08.1995 of Hon'ble
CAT/ Guwahati Bench.

Ref : ~~XXXX~~ Chief Cashier (JA)'s letter No. CP/EP/S.Dutta
Dated 04.03.1996.

I have the honour to draw your kind attention to your observation regarding sub-para ii & iii of para II of the Hon'ble CAT, Guwahati's above order and beg to highlight the action taken by your executives regarding grant of lien to me and to join the Hojai College service. : -

A) On being selected by the College authority for appointment I prayed for six months extra ordinary leave as per para 2108 (b) of RII (1974 reprint) on 13.11.81.

B) On 30.11.81 the Chief Cashier proposed to retain my lien for two years with his department under certain terms and conditions and I agreed to abide by the conditions on the agreement letter on 30.11.81.

C) The Chief Cashier relieved me of my duties w.e.f 01.12.81 (AN) vide his office order NO.CP/156 dtd.01.12.81.

D) Since pay & allowance drawn statement submitted by me on 25.9.82 in the office was not received by the Chief Cashier (as stated in the defence) I could not deposite the leave salary and pension contributions regularly (for want of Bill from the Chief Cashier) as per condition 3 of the O.O. No. CP/156 dated 01.12.81 and yet the Chief Cashier

extended my lien vide his letter NO. CP/EP/S.Dutta dated 4.11.83.

E) Pay and allowances drawn statement submitted by me on 30.07.84 was forwarded by the Chief Cashier to AAo/EN for calculation of various Railway Contributions on 12.10.84. A copy of the O.O. NO. CP/ 156 dated 01.12.81 was also given to AAo/ EN.

F) On 13.12.84 the Chief Cashier requested the principal, Hojai College to intimate the particulars of leave granted and pay and allowances paid to me w.e.f. 03.12.81 to 02.12.84. The principal, Hojai College forwarded the said particulars on Feb. 7, 1985.

G) In myx statement dt. 13.07.84 I had shown that I accepted my College pay @ Rs. 700/- p.m. with subsequent increments, but neither your Chief Cashier nor your AAo/ EN termed it a violation of condition 2 of the O.O. No. CP/156 dated 01.12.81.

H) On receipt of the information from the College authority AAo/EN calculated my Pension and leave salary contribution on 03.06.85. It may kindly be seen that my leave salary contribution was calculated having taken College pay @ Rs. 700/- with subsequent increments.

I) On 04.06.85 the Chief Cashier asked me to deposit the Contributions as calculated by the AAo/ EN and the same was deposited by me on 12.06.85 vide GI Receipt No. 32/ 12069 dated 12.06.85.

J) Leave salary including the leave accrued to me during the period of lien i.e. w.e.f 03.12.81 to 02.12.84 was paid to me. Pension and pensionary benefit were sanctioned to

me and my final settlement case was also sent to your pension section.

As per your observations against sub-para ii & iii of para II of the Hon'ble CAT/ Guwahati's order dated 30.8.95 on O.A. No. 39/91 all the above actions were taken within the frame work of the relevant rules, laws, the Circulars etc.

I, therefore, request your honour to kindly favour me with the Photo copies of the rules, laws and circulars within which frame work the following actions were taken by the Railway Administration, I promise to bear the cost of photo copy is if required.

1. Grant and retention of lien to join a private/ non-Government college w.e.f. 01.12.81 (AN)
2. Fixation of my Ex- cadre post pay below the minimum of the scale of that post and calculation of leave salary and acceptance of the same by taking ex-cadre post pay @ Rs. 700/- p.m. with subsequent increments.
3. The fact that condition No. 2 and 3 were violated by me and for which the benefit of lien was not permissible was known to the Administration on 03.06.85 (if not earlier) yet your Administration asked me to deposit the contribution and accepted the same on 12.6.85.
4. The Railway Administration had circulated my leave ~~xxxx~~ salary contribution taking my college pay @ Rs. 700/- with subsequent increments and credited the same to the Railway revenue on 12.06.85 and stated the acceptance of minium of the College pay i.e. Rs. 700/- as villation of condition No. 2 of the O.O. No. CP/156 dt. 01.12.81.
5. Para 2151 (FR-120) RII (5th reprint 1974) reads.
"A Railway servant in ~~xxxx~~ foreign service may not elect

to withhold contributions and to forfeit the right to count as duty in Railway service the time spent in xforeign employee. The Contributions paid on his behalf maintain his claim to pension, or to pension and leave salary as the case may be, in accordance with the rules of the service of which he is a member ".

Your Administration, after accepting pension & leave salary contribution tried to deny my right to draw pension and leave salary, your observations in 2nd para of page two reads as under :

" Shri Dutta was continuing in his new profession in ~~SShank~~ the College and never expressed his intention to come back to his Government post and the plea of recalling him also neither arose nor can it be a valid ground to rectify the illegality and breach of contract by him which already brought the contract to a ~~na~~ validity by own volition of Sri Dutta"

* Hon'ble CAT in para 6 of the order dtd. 30.08.95 rightly observed that

" However, the respondents can not also take shelter behind that circumstances as they could have noticed the failure of the appellant to make regular deposit much earlier".

The Railway Administration was to recall me for my failure to make regular deposit of Railway dues as per condition 3 of the O.O No. CP/156 dtd. 01-12-81 and not my willingness to come back.

"The relevant rule in that respect has not been produced" observed, Hon'ble CAT / Guwahati.

I therefore, request your honour to provide me with photo copies of relevant rules, laws and circulars in support

of the actions taken in my case to deprive me of the benefit of lien. Your observations regarding counting of my ex-military service towards Railway pension is really shocking & painful. Whenever any concession is granted to the ex-serviceman by the supreme commander of the Armed Forces, the Defence Ministry sends the copies of the order to all the Ministries of the Govt. of India, Ministries issue circulars to their departments hence all the rules and circulars should be available in your department.

In my letter dt. 13th Jan. 1987 I requested the Chief Cashier to settle the point i.e. obtaining rulings from the Defence.

Para- 438 of MRPR 50 interalia clearly states that before passing the order for counting Military service towards Railways pension the service has to be verified from the authority concerned mentioned in para 438. So, it was the broad duty of the Railway Administration to get my service verified if they were willing to count it.

I did not seek Defence help regarding counting of ex-military service because to make an appeal to the Supreme Commander through the Defence Organisation I was to state that there exists no Railway Rule regarding counting of ex-military service. I requested your honour to issue a certificate to that effect vide my application dtd. 30.01.96 a reply to which is still awaited.

I called your observations as shocking because being the Head of the Accounts Department, it is not known to you that unless your department count my ex-military service towards Railway pension I should continue to draw my dis -

ability pension. I could not draw disability pension w.e.f. April' 79 to Feb 27-86 owing to my own difficulties.

Your observations regarding exercising ~~option~~ Railway Board's letter No. F(E)/III 77PNI/19 (and not F(E) III7 PNI/19 as stated) dt. 15.10.77 was a correction slip to rule 2314 (CSR - 356) and correction slip 41 of MRPR 50.

Both the correction slip disclosed that it was the authority issuing the substantive appointment to obtain the option from the employee.

Railway Board vide their letter NO. P(E)III78PNI/22 dated 03.11.78 extended the date of option w.e.f. 03.11.78 to 02.05.78 and vide letter NO. F(E)III 80PNI/1 dated 25.02. 80 from 25.02.80 to 24.08.80 and I was in Railway service upto 30.11.81. However, CPO/Maligaon while circulating the above letter to the head of the Dept . directed that ex-serviceman may be asked to exercised option. As I was not asked to exercised option question of " abstained " would not arise in my case.

I was appointed to do the works of the Chief Cashier office and as an ex-serviceman I did not know that in the Railway service an employee was to findout rule, laws & circulars for his ~~welfare~~ and state the same to the employer.

As I shall be out of Hojai w.e.f. 01.06.96 to 31.07.96 during the period of summer vacation your reply may kindly be mailed to the following address : -

Swadhin Dutta,
C/O. J.S.BHIMRA
BHIMRA BHAWAN
Gate No. 3
Maligaon, Guwahati-781011.

Yours faithfully,

Sd/-

Swadhin Dutta,
Dt. 27.05.96

Dated Maligaon,
the 27th May, 1996.

Attested by
Indranil Chatterjee
13/11/2000
Advocate.

:54 :

ANNEXURE - V

From :-

Swadhin Dutta,
(Lecturer, Hojai College,) 67
C/O. J.S.Bhimra
Bhimra Bhawan, Gate No. 3
Maligaon, Guwahati-781011.

NO. SD/39-91/96.

Dated 26th June, 1996.

To,

The F.A. & C.A.O.
N.F.Railway, Maligaon
Guwahati - 781011.

Sir,

Through the Chief Cashier (JA)/N.F.Railway

Sub : O.A. NO.39/91 Dtd. 30.08.95 of Hon'ble
CAT/Guwahati Bench / Guwahati.

Ref : Application NO. SD/39-91/4/96 dt. 27.5.96.

I have the honour to draw your kind attention to
my application NO. SD/39-93/4/96 dated 27th May 1996 and
request an early reply to the same.

Yours faithfully,

Sd/-

(Swadhin Dutta)

Lecturer,

Hojai College,

At Maligaon.

Attested by
Jendranil Gogoi
13/11/2000
Advocate.

From :-

Swadhin Dutta,
(Ex. Sr. Clerk Cash & Pay)
Bhimra Bhavan, Gate No. 3,
Maligaon, Guwahati-781011.

NO. SD/39-91/1/97

Dated - 4th June 1997.

To,

The General Manager,
N.F. Railway, Maligaon
Guwahati -781011.

Sir,

Sub : O.A. NO. 39/91 of the Hon'ble CAT/Guwahati
Bench.

I have the honour to enclosed herewith the photostate
copies of the following documents for your kind perusal and
early necessary action : -

1. Order of the Hon'ble CAT/ Guwahati Bench dt. 30th August '95.
2. Review and decision of the F.A. & C.A.O in connection with the above order communicated to me vide the Chief Cashier (JA)'s letter NO. CB/EP/S.Dutta dated 04.03.96.
3. My appeal NO. SD/39-91/4/96 dtd. 27th May'96.
4. My reminder NO. SD/39-91/5/96 dtd. 26.06.96.

In this connection I have the honour to state as follows :-

A. I could not accept the charge of **violation** of conditions of the agreement letter dtd. 30.11.81 and the O.O. NO. CP/156 dated 01.12.81 for the following reasons.

- (1) The alleged violation of condition No. 2 i.e. acceptance of more pay (Minimum of the College scale of pay) was known to the Railway Administration on 13.07.84 (Annexure 'D' to the written statement of the Respondents)
- (2) My lien was valid upto 02.12.84, but the Railway Administration did not me as per the condition NO. 3 of the agreement letter dt. 30.11.81 and O.O. NO. CP/156 dtd. 01.12.81.
- (3) I could not deposit the Railway dues i.e. pension contribution and leave salary contribution prior to

Attested by

Jindranil Gogoi
13/11/2000
Advocate.

12.06.85. The fact was best known to the Railway Administration, but the Administration did not re-call me as per the condition of the agreement letter and the office order mentioned above on the contrary the Railway Administration extended my lien for further period of one year w.e.f. 02.12.83 vide letter NO. CP/EP/S.Dutta dated 14.11.83.

4. Copy of the office order NO. CP/156 dt. 01.12.81 along with my pay drawn statement was forwarded to AA0/ EN by the Chief Cashier on 12.10.84.

5. It was known to the Railway Administration that conditions NO. 2 & 3 of the O.O No. 156 were violated by me and no pensionary benefits were admissible to me yet, the Railway Administration had calculated my pensionary contribution and leave salary contribution. It may kindly be seen from the enclosure of the Annexure 'E' (page 15 of the OA) that the AA0/EN had calculated my leave salary taking my college pay as Rs. 700/- with subsequent increments. I was asked to deposit the Railway dues as calculated, vide letter NO.CP/EP/S.Dutta dated 04.06.85. The amount of leave salary and pension contribution was accepted by the Railway administration on 12.06.85.

B. In view of the facts stated above it is not clear to me how could the Railway Administration treat the acceptance of more pay (Minimum of the scale of pay) as violation of condition No. 2 of the O.O.No. 156 dated 01.12.81 on 21st December '87 when the same Administration had calculated my leave salary contribution taking my college pay Rs. 700/- with subsequent increment on 03.04.85 and accepted the amount on 12.06.85.

C. As the F.A & C.A.O. in his review and decision had stated that all the actions of the executives were exercised within the frame work of the relevant rules, laws etc. I request him to provide me with the photo copies of the relevant rules, I also promised to bear the cost of the photo copies in my appeal dtd. 27.05.96, but I was not favoured with the same in spite of my reminder dtd. 26.06.96.

I submit the above fact for your necessary early action.

Yours faithfully,

Sd/-

(Swadhin Dutta)
Ex. Sr. Clerk
Cash & Pay office
N.F.Railway
Maligaon, Guwahati.

Encl : Sixteen sheets as above.

Attested by
Sandramil Gogoi
13/11/2000
Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O. A. NO. 219 / 97

Shri S. Dutta ... Applicant
-VS-
Union of India & Ors. ... Respondents.

Mr. A. K. Ray, S. Sarma ... Advocate for the Applicant

Mr. B. K. Sharma ... Advocate for the Respondents.

ORDER

24.9.97 Mr. A.K.Ray, learned counsel for the applicant is present. None for the Railway respondents.

Heard Mr. A.K.Ray. The applicant has submitted his last representation NO. SD/39-92/1/97 dated 4.6.97 (Annexure -U) to the General Manager, N.F.Railway, Maligaon, Guwahati. This representation is pending disposal. Therefore, the O.A. NO. 219/97 is disposed of with a direction to the General Manager, N.F.Railway Maligaon to dispose of the representation dated 4.6.97 within 45 days from the date of receipt of this order.

Application is disposed of. NO. order as to cost.

Sd/- MEMBER (A)

Attested by
Sachin Choudhary
13/11/2008
Advocate.

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ANNEXURE - Y

FINANCIAL ADVISER & CHIEF
ACCOUNTS OFFICER
N.F.Railway, Maligaon
N.F.Railway Headquarters,
Guwahati - 11.

NO. CP/EP/S. Dutta

Dated 2nd January 1998

To,

Shri Swadhin Dutta,
Ex.Sr.Clerk under Chief Cashier/Maligaon
Bhimra Bhavan
Gate No. 3,
Maligaon.
Guwahati - 781011.

Sub : O.A. 219/97 to Hon'ble CAT/Guwahati
Order of 24-09-97 thereon.

With the order and directive given by the Hon'ble
CAT/ Guwahati Bench as mentioned above your case has
been reviewed and the result of review and decision
thereon, as approved by the General Manager, N.F. Railway,
Maligaon is endorsed to your information.

Sd/-

FA & Chief Accounts Officer
N.F.Railway, Maligaon
for General Manager,
N.F.Railway, Maligaon.

Enclo : As above in 2 sheets.

Attested by
Jendranil Gogoi
13/11/2000
Advocate.

N. F. Railway

Sub : Hon'ble CAT/ GHY's Order dated ~~22x~~ 24.09.1997 against O.A NO.219/97 on non-payment of pension to Shri Swadhin Dutta, Ex. Sr. Clerk under Chief Cashier, N.F.Railway, Maligaon.

As directed by the Hon'ble CAT/Guwahati Bench vide their order dated 24.09.1997 against O.A No. 219/97 on non-payment of pension to Shri Swadhin Dutta, Ex.Sr.Clerk under Chief Cashier / N.F.Railway/ Maligaon, the case has been reviewed and the decision is appended below : -

1. Shri Swadhin Dutta, Ex.Sr.Clerk under Chief Cashier joined this Railway on 01.12.1964 as junior Clerk.
2. In November 1981, he got an appointment from the Principal, Hojai College for post of Lecturer in Bengali.
3. Shri Dutta applied for six months' extra ordinary leave (without pay) and permission of the competent authority to accept the appointment.
4. At that time the rule in force was as under :
"Appointments of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation (para 3.4 of Ministry of Finance. Department of Expenditure O.M NO. F1(11)- E-III(B)/75 dated 07-11-1975."

Shri Dutta was appointed by the principal, Hojai College in competition with open market candidates on temporary basis, hence retention of lien after release from the Railway and joining to the new post was not permissible under the

Attended by

Indranil Choudhary
18/11/2000
Advocate.

provision of the rules in force as above, but inadvertently he was released from the Railway on the following terms and conditions.

- i) " Your lien will be retained in this Department for a period of 2 (two) years (in exceptional case - one year more), ~~More~~ If you are not permanently absorbed within this period from the date of your appointment in the new post , you should immediately, on expiry of the said period either resign from the Railway service or revert to this office.
- ii) Your pay will be fixed in the pay scale of new post and will be subject to the condition that your pay should not exceed 30% of your pay or Rs. 100/- whichever is more (i.e. Rs. 60/-) which is below the minimum of the scale viz. Rs. 700/-
- iii) You will have to deposit the service contribution with this Railway regularly at the prescribed rate during the period of lien is retained in this office failing which you would be liable to be recalled for breach of the undertaking ."

5. Although release of Shri Dutta on the above terms and conditions was a lapse on the part of the Railway Administration since there is no established rule to that effect, Shri Dutta was asked to deposit the Foreign Service contribution and leave Salary Contribution which he deposited with the Chief Cashier on 12.06.1986. His leave salary bill was also passed taking into account the assumed leave earned from 02-12-1981 to 01-12-1984 the period of his service at Hojai College, which was also a lapse on the part of the Railway Administration in absence of any order / authority in support thereof.

- 6) At the time of processing the pension case of Shri Dutta the above lapses came to light and his pension case was kept in abeyance.
- 7) Since all action of the Executives in the Government Department are to be exercised within the frame work of the relevant rules, laws, circulars and instructions of the Ministry of Railways, Home affairs. Finance etc. on the subject and omissions and commissions in past occasion, if any, cannot be accepted as of rules, this office could not oblige Shri Dutta by sanctioning pension in his favour as applied for as it is not covered by manual of Railway Pension rules 1968/Railway Service(Pension) Rules 1993.
- 8) At the time of quitting Railway service on 01.12.1981 Shri Dutta rendered service only for 17 (seventy) years which is less than the minimum qualifying service of 20 (twenty) years for sanction of pension.
- 9) As ordered by the Hon'ble CAT/Guwahati on 30.08.95 against O.A No. 39/91, all necessary facilities were afforded to Shri Dutta to produce any ruling / circulars etc. of the Defence Department so that his defence service of about 8 years could be counted in the Railways for sanction of pension from Railways. But nothing could be produced either by Shri Dutta or the Defence Department. On the contrary, during personal hearing before the undersigned he stated that he is a recipient of monthly invalid pension from the Defence department of the Government of India. Where an employee has been drawing an invalid pension by did not of his earlier service in the Defence Department there is no provision to compute the same period for counting as qualifying service in his subsequent appointment.
- 10) The present status of the case as under :-
 i) Sanction of pension - Not permissible.
 ii) Amount deposited on account
 of FSC and LSC - Refundable with suitable interest on balance after deducting Railway dues, if any.

Attested by

Jordhavit Gogoi
 13/11/2000
 Advocate.

ANNEXURE - Z

CENTRAL ADMINISTRATIVE TRIBUNAL. GUWAHATI BENCH.

Original Application No. 61 of 1998.

Date of Order : This the 19th Day of January 2000.

The Hon'ble Shri G.L. Sanglyine, Administrative Member.

Shri Swadhin Dutta,
Son of late Nani Gopal Dutta,
Resident of Bhiara Bhawan,
Gate No. 3, Maligaon
Guwahati - 11.

OA 19/91
OA 219/97

.. Applicant

By Advocate Shri A.K.Roy.

-Versus-

1. Union of India,
represented by the General Manager,
N.F.Railway
Maligaon, Guwahati-11.
2. The General Manager,
N.F.Railway, Maligaon
Guwahati - 11.
3. Financial Advisor & Chief Accounts Officer,
N.F.Railway, Maligaon, Guwahati - 11.
4. Chief Cashier,
N.F.Railway, Maligaon,
Guwahati - 11.

1.12.81 - or 14

.. Respondents.

By Advocate Shri S.Sengupta, Railway Counsel.

ORDER

G.L. SANGLYINE, ADMN. MEMBER

After retirement from the Defence service the applicant served as a Junior Clerk in the office of the Chief Cashier, N.F.Railway with effect from 1.12.1964. While in service in the Railway he applied for the post of Lecturer in Hojai College and he was offered appointment as Lecturer in the College in the scale of pay of Rs. 700-1600/- as per the norms of the University Grants Commission. He applied for extra ordinary leave without pay for a period of 6 months with effect from 1.12.1981 with permission to accept the appointment during the leave period as per existing rules.

However, instead of giving extra ordinary leave the Chief Cashier, N. F. Railway released the applicant to join the College by letter dated 30.11.1981 by laying down certain terms and conditions as mentioned therein. He was released by order dated 1.12.1981 on the stipulated terms and conditions. His lien was extended for a further period of one year by letter dated 14.11.1983 with effect from 2.12.1983 or the date of absorption in the College whichever is earlier on the terms earlier stipulated. The applicant was ultimately permanently absorbed in the college with effect from 2.12.1984 and the applicant offered his resignation on 6.2.1985 with effect from 2.12.1984. His resignation was accepted by order dated 24.6.1985 issued by the Chief Cashier , N.F.Railway.

Maligaon. The applicant was not paid pension and gratuity.

The respondents informed the applicant that since he did not render 20 years of qualifying service before joining the College , i.e. on 2.12.1981, his case for pension cannot be considered. The applicant submitted several representations and the Railway authorities informed him that since he violated the conditions laid down in the office order dated 1.12.1981, it was deemed that the applicant had resigned from service on 2.12.1981. Therefore, he was not entitled to pensionary benefits. The applicant submitted original Application No. 19 of 1991. This O. A. was disposed of on 30.8.1995. In para 6 of that order it was ~~and~~ recorded that the question that arose was as to whether the respondents could deny the benefit of the lien to the applicant on the ground of violation of the conditions of the order dated 1.12.1981. The Tribunal came to the conclusion that the matter needed scrutiny by the respondents. Therefore, in para 11 of the order directions were issued as follows : -

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"(i) The FA & Chief Accounts Officer, N.F. Railway, Guwahati, Respondent No. 2 is hereby directed to re-examine the claim of the applicant for pension and DCRG in the light of the Circumstances discussed above in this order.

(ii) The respondent No. 2 will decide in accordance with the relevant rules as to whether violation of the conditions of the letter dated 1.12.81 could be a ground to deny the benefit of the lien as the order itself provided only that on failure to abide by the conditions the applicant could be re-called.

(iii) In the event of the respondent No. 2 coming to the conclusion that the denial of benefit of the lien was not permissible he shall consider extending the benefit of pension to the applicant taking into calculation the period of three years of service for which period the lien would be available."

In compliance with the directions the respondents issued an order dated 4.3.1996 rejecting the claim of the applicant as below : -

" My observation against the relevant sub-paras of para 11 of the

above said order are put herein below in
seriatim, sub-para-wise -

1. The request of the applicant for grant of pension and D. C.R.G in the ligh^t of the circumstances narrated in the order has been thoroughly gone through and no rules and procedures could be found out which would warrant reversal of the previous action of the Railways administration on the subject; ✓

ii) &

- iii) As all actions of the executives in the Government Department are to be exercised within the framework of the relevant rules, laws, the circulars and instructions of the Railway Board (Ministry of Railways), Ministry of Home Affairs, Ministry of Finance etc. on the subject and the employer and employee relations are based on the set rules and mutual contract and there is little scope of declaring any violation of the said contractual stipulations as legal one. These points have also been elaborately discussed in paragraphs 3 & 4 of the Hon'ble Tribunal's aforesaid order.

As Shri Dutta was serving in the non-Government Organisation, the onus to deposit his required contribution etc. to the Railways for service in other organisation for retention of his lien on the

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Railways was on him, if he desired to keep his lien on the Railways. Shri Dutta was continuing in his new profession in the College and never expressed his intention to come back to his Government post and the plea of recalling him also neither arose nor can it be a valid ground to rectify the illegality and breach of contract by him which already brought the contract to a nullity by own volition of Shri Dutta."

(B) Thereafter the applicant submitted further representations with reference to the order dated 4.3.1996. Since there was no reply he submitted O.A.No. 219/97. The O.A was disposed of with the direction to the General Manager, N.F.Railway to dispose of the representations of the applicant. Consequent upon the directions the Annexure -Y order was issued. In that order the Railway authority had taken the plea that according to O.M.No. F1(11)-E-III(B)/75 dated 7-11-1975 appointment of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation. Hence retention of lien after release from the Railway and joining to the new post was not permissible under the provision of the rules in force as above, but inadvertently he was released from the Railway on the terms and conditions laid down in the order dated 01.12.1981. The respondents admitted that the release of the applicant on the terms and conditions set out in the order dated 1.12.1981 was a lapse on the part of the Railway

administration. But since the release on those terms and conditions was not in accordance with the relevant rules, laws, circulars and instructions of the Government on the subject, the applicant cannot be granted pensionary benefit under the Railway pension Rule. The respondents further maintained that the applicant did not complete 20 years of qualifying service in the Railway. The applicant has therefore submitted the present Original Application. In this application he has prayed for quashing and setting aside the Annexure-R order dated 4.3.1986 and Annexure -Y order communicated by letter dated 2.1.1998 and to direct the respondents to count his service in the Railway upto 2.12.1984 and to pay him the pensionary benefits including gratuity.

2. The application has been keenly contested by both sides, I have heard learned counsel. The contents of the office order No. CP/156 dated 1.12.1981 are re-produced below for convenience :

Having been selected for appointment as lecturer in Bengali at Hojai College vide Principal and Secy's letter No. HC/G-6/7374 dated 4.11.81, Shri Swadhin Dutta, Sr. Clerk drawing pay at Rs. 428.00 plus Rs. 35/- special pay P.M. in scale Rs. 330-560/- is relieved from this office w.e.f. 01.12.81 (AN) on the following terms and condition : -

1. His lien will be retained in this office for a period of two years (in exceptional case upto 3 years). If he is not permanently absorbed within the above period from the date of his

-7-

appointment in the new post he should immediately on expiry of the said period either resign from the Railway service or revert to his parent office.

2. His pay in the Ex-Cadre post will be fixed in the pay scale of that post subject to the condition that his pay in the new post should not exceed 30% of his pay or Rs. 100/- whichever is more.
3. He will have to deposit the leave salary and pension contribution with this Railway regularly at the prescribed rate during the period of his lien is retained in this office, failing which he will be recalled for breach of the undertaking.

Sd/-

Chief Cashier,

N.F. Railway, Maligaon.

The case of the respondents in short is that the applicant was wrongly granted retention of lien in the Railway service for the period from 2.12.1981 to 1.12.1984 he served in Hojai College, which was not a Government educational institution. He cannot therefore be granted pension by the Railway as his qualifying service with the Railway was less than 20 years as on date of his release to join service in the College. Erroneous actions of the officers of the Railway taken contrary to laws, rules, circulars, instructions etc. issued by the competent authority, which resulted in favour of the applicant cannot give him right to receive pensionary benefit.

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The applicant on the other hand supported the action of the Chief Cashier as reflected in the aforesaid order dated 1.12.1981 and the ~~other~~ order extending retention of lien dated 14.11.1983 and submitted that the actions were according to rules, policies and instructions of the Government. The fact that resignation of the applicant was accepted with effect from 2.12.1984 would further support that the service of the applicant in the Railway was upto 2.12.1984. In fact such resignation was only a technical resignation. In fact, as per law, resignation cannot be accepted with retrospective effect and his service in the Railway should have been counted upto 24.6.1985, the date of issue of the order accepting resignation of the applicant. It was also submitted that there was nothing wrong in the action of the Chief Cashier. The Hojai College is an aided college under deficit system of Grant-in-Aid. The post against which the applicant was appointed was a Government sanctioned permanent post and salary was paid by the Government from the Government revenue. Scale of pay was fixed according to the norms prescribed by the University Grants Commission. Selection for regularisation was conducted by the State Selection Board constituted by the State of Assam and regularisation was made by the Governor of Assam through the Director of Public Instructions. Assam who controls the whole matter of appointment, removal, termination, promotion, service conditions, salary etc. and the Governing Body of the College has nothing to say in regard to the post. As the post is a Government sanctioned permanent post and is under the State Government, deputation to the post could be made and after due consideration of the status of the college and the post the F.A. & C. A.O, N.F. Railway forwarded the application of the applicant for the

post and granted the lien. After permanent absorption in the post of Lecturer the applicant had tendered technical resignation as per rule. When the applicant was permanently absorbed in the college in such circumstances the ~~date~~ date of acceptance of resignation will be treated as the date of retirement and there is no question of the period of service of the applicant with the Railway falling short of the qualifying service of 20 years. At any rate, even if it is assumed that the applicant was wrongly granted the lien, it was not the fault of the applicant and therefore by applying the principle of equity and conscience pensionary benefit cannot be denied by excluding the period of 3 years from the calculation of 20 years qualifying service.

3. The applicant is a Master Degree holder and after having served the Railway for about 17 years he applied on 3.10.1981 for a post of Lecturer in Bengali in Hojai College with a no objection certificate issued by the F.A & C.A.O, N.F.Railway, Maligaon. He was selected for appointment to the post subject to the approval by the Director of public Instruction, Assam as a temporary Lecturer against a Government sanctioned permanent vacancy. The selection was subject to regularisation of his service by the State Selection Board and the Director of Public Instruction, Assam as provided in the Assam Aided College Employees Rules, 1960 and it is further governed by the Gauhati University and the ~~it is further governed by the G~~ Government of Assam Rules as in force from time to time. The Director of public Instruction, Assam approved the appointment subject to selection ~~Board-approved-~~ by the State Selection Board. Subsequently the Selection Board approved his appointment. On being appointed the applicant prayed that he may be

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granted 6 months extra ordinary leave without pay with effect from 1.12.1981 with the permission to accept appointment during leave in accordance with para 2108(b) of RII. He further stated that notice for resignation or voluntary retirement as required will be submitted by him in due course. The respondents however, released him from Railway service to join the new appointment on the conditions as stipulated in the order dated 1.12.1981 re-produced hereinabove. Probably while issuing the order dated 1.12.1981 the provisions of Code No. 244 of the Indian Railway Establishment Code (Vol.I) were kept in mind. The Code No. 244 is re-produced herein below :

" 244. Forwarding of application to another post in railway service or outside the Railways permission to a railway servant to submit an application for a post, to appear for an examination for a post, or to transfer his services to another post in railway service or in another office or Department under the Government of India or under a State Government shall not ordinarily be refused unless the head of the office or department in which he is employed considers that the grant of permission would not be consistent with the interests of the public service.

Railway Ministry's decision-(1) The applications from serving employees for employment elsewhere, submitted otherwisethan in response to advertisements or circulars inviting applications, should not be forwarded.
(E(NG)65-RC-1/186 dated 29.1. 1966)

(2) The lien of a permanent Railway servant appointed under another Central/State Government or office may be retained on the Railway for a period of two years (three years in exceptional cases). If he is permanently absorbed within this period in the new post, he should immediately on expiry of the said ~~xx~~ period, either resign from the Railway service or revert to his parent office. Applications should be forwarded only if an undertaking to abide by these conditions is given by the staff concerned.

(E(NG)-11-69-AP. 21 dated 7.3.1975.)

(3) The applications submitted by railway servants in response to advertisement issued by UN Agencies or other International Organisations in newspapers should not be forwarded. When a Railway servant applies on his own volition for a post under a foreign Government / U.N.Agency, he should mention in his application seeking permission that on his securing appointment under the foreign Government he will resign or retire from Railway service if the retirement is due under normal rules. On receipt of the application, the competent authority should examine, and decide whether permission should at all be granted to him. If the permission is granted the railway servant may be advised to apply for the post direct. The application should not be forwarded

through the Department to avoid the impression that the Government is sponsoring the individual for the post under the foreign Government.

(E(NG)-II-68 AP. 13 dated 10-10-69, MHA O.M.No. 27/53/77/EDP dated 22-3-78 and No. 78E(0)-II/2/21 dated 6-6-1978.)"

In 1986 onwards when the matter of granting pensionary benefit to the applicant was considered a view was taken without considering the provisions of this code. The respondents were twice directed by this Tribunal to look into the claim of the applicant for pensionary benefits and gratuity. However, it appears that the core of the matter was not addressed to by them, namely, whether in the facts of the case the post of Lecturer to which the applicant was appointed as a post under the State Government of Assam. In the order dated 2.1.1998 the respondents rejected the claim of the applicant to count the period of 3 years as lien by taking support of the O.M.NO. F1(11)-E/III(B)/75 dated 7.11.1975 issued by the Ministry of Finance, Department of Expenditure, which according to them reads : "Appointment of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation. " Nothing has been shown whether this O.M. has superseded or overruled the Indian Railway Establishment Code No. 244 and the decisions of the Railway Ministry thereunder mentioned above, IREM 3902 and other Railway circulars. In fact, it is seen from the note of the Chief Cashier dated 31.7.1986 and those of the superior officers onwards dealing with the pension matter

of the applicant submitted before this Tribunal that there was no application of mind to the nature of the post. This was not reflected in the letter dated 14.5.1986 of the D.P.I., Assam also. In those notes there was no mention of the office memorandum dated 7.11.1975. Thus it is clear that the order dated 2.1.1998 is without reference to the facts on records. In fact, it appears that the respondents took different stands at different time. For example in Annexure - 3 to the written statement dated 21.12.1987 it appears that the applicant lost the period of 3 years as he had violated certain terms and conditions. In Annexure -12 to the written statement dated 3.5.1988 it was stated thus : -

" On joining the Hojai College as Lecturer granting lien to Shri S.Dutta was however not regular as the Hojai College was not a Govt. college which has been received subsequently , by the competent authority and his lien to this Railway was disallowed and his release from this office w.e.f. 1.12.81 was treated as his resignation from service from that date (i.e.1.12.81)!"

Further, while in the order dated 2.1.1998 reliance was placed on the O.M. dated 7.11.1975, the learned counsel for the respondents relied on the Master circulars of the Railway in support of the contentions of the respondents. In the light of the above I dispose of this application with a direction to the respondents to consider afresh the claim of the applicant for pensionary benefits. While considering the matter they will have to specifically determine whether the said post of lecturer was a post under the state Government of Assam. For this purpose enquiry may be made

from the Government of Assam. They shall also take into consideration among others the provisions of Indian Railway Establishment Code (Vol.I) No. 244, with Railway Ministry decisions thereunder. Indian Railway Establishment Code (Vol.II) No. 2433, Indian Establishment Manual para 3902, Office Memorandum No. Fl(11)-E-III(B)/75 dated 7.11.1975 and any other rules relevant to the matter of retaining lien. It is specifically directed that the respondent No. 3, Financial Adviser & Chief Accounts Officer, N.F. Railway, Maligaon, Guwahati shall personally hear the applicant before issuing the fresh order. He shall also take into consideration the facts on records. The order shall be communicated to the applicant within 3 months from the date of their receipt of this order.

Since the matter is to be re-considered by the respondents the other issue whether on equity and conscience the applicant can get relief is not considered at present. If the applicant is still aggrieved with the order of the respondents, he may approach the appropriate authorities including this Tribunal for redressal of his grievances.

Application is disposed of. No order as to costs.

Sd/- MEMBER (Adm)

Attested by
Ankuril Gogoi
13/11/2000
Advocate.

S P E A K I N G O R D E R

Reg. Compliance of the order and directions of the Hon'ble Central Administrative Tribunal Guwahati Bench dated 19.1.2000 in O.A. No. 61 of 1998 (Shri Swadhin Dutta -VS- Union of India and others).

On going through the aforesaid Order of Hon'ble CAT/Guwahati Bench, it is seen that the above original application was filed by Shri Swadhin Dutta, an Ex-Senior Clerk under the Chief Cashier, N.F.Railway, Maligaon, before Hon'ble CAT/ Guwahati Bench seeking the following reliefs : -

- (i) To direct the respondents to count the applicant's service in the Railway upto 2.12.84 i.e., the date with effect from which his resignation had been accepted, counting the lien period as in Railway Service ;
- (ii) To quash and set aside the order/Decisions dated 4.3.96 and 2.1.98 of the respondents ;
- (iii) To direct the respondents to pay the pensionary benefits including DERG for his service in Railway ;

AND

This application has been disposed of by the Hon'ble Tribunal vide the aforesaid order dated 19.1.2000 with interalia the following directions :

- (i) the Respondents are to consider afresh the claim of the applicant for pensionary benefits.
- (ii) while considering the matter they will have to specifically determine whether the said post of Lecturer was a post under the State Government of Assam and for this purpose enquiry should be made from the Government of Assam.

Attested by
Jendranil Bora
13/11/2000
Advocate.

- (iii) the respondents shall also take into consideration among others : -
- (a) the provisions of Rule 244 - of Indian Railway Establishment Code Volume - I with Railway Ministry's decisions thereunder ;
- (b) Rule 2433 of the Indian Railway Establishment Code Volume - II ;
- (c) Para 3902 of the Indian Railway Establishment Manual ;
- (d) the office Memorandum NO. F-1(II)-E-III(B)/75 dated 7.11.1975 and any others rules relevant to the matter of retaining lien ;
- (iv) The Respondent No. 3 i.e. Financial Adviser and Chief Accounts Officer, N.F.Railway, Maligaon, Guwahati should personally hear the applicant before issuing the fresh order, besides taking into consideration the facts on records.

In obedience to the aforesaid orders of the Hon'ble Tribunal, I have delved into the records and facts of the case thoroughly and have given ~~the~~ due consideration to each of the points as raised by the applicant vis-a-vis the provisions of the Rules in the Indian Railway Establishment Codes/Manuals and, the Office Memorandum as directed in the aforesaid orders dated 19.1.2000 by the Hon'ble Tribunal and have also made necessary enquiries, as directed, from the Government of Assam, to ascertain whether the said post of Lecturer in Hojai College was a post under the State Government of Assam. I have also granted a personal hearing to Shri Swadhin Dutta (the applicant) and gave him all opportunities to represent his case.

On going through the service records of the

applicant it is seen that the applicant - Shri Dutta while in service on the Railways applied for the post of a Lecturer in the Hojai College, Nowgong, Assam in response to the Hojai College Authority's open advertisement for ~~filling~~ filling up the post of a Lecturer and after being selected by the College Authorities and receiving the appointment letter issued by the Principal and Secretary, Hojai College (under letter No. HC/G-G/7374 dated 4.11.1981) for the post of Lecturer in that college, he applies for grant of 6 (six) months "Leave without pay" vide his application dated 13.11.1981 to FA & CAO/N.F.Railway, to enable him to join the post of Lecturer in that college, mentioning further that he would resign or retire voluntarily from Railway Service in due course. Instead, the Chief Cashier, N.F.Railway, under whom Shri Dutta was posted, released him with certain terms and conditions - like, retention of lien for 2 years at the initial stage, subject to extension by one year more, deposit of leave Salary and pension contribution, fixation of pay as of an Ex. Cadre post, etc. vide letter NO. CP/EP/S. Dutta dated 30.11.81 and 7.8.82, and Office Order NO. CP/156 dated 1.12.81, which were not permissible under extant rules and laws on the subject and which are, as per rules, applicable in case of deputation of Rly. Servant to another post under the Central Govt. or State Govt. or other Govt. undertakings or Govt. Autonomous Bodies ; ignoring the fact that, Hojai college does not come within the category of the above Institutions/Organisations. Records further reveal that Shri Dutta rendered only 17 years of qualifying service on the Railways w.e.f. 1.12.1964 (the date of his appointment on the Railways) to 1.12.1981, prior to his leaving the Railways job for joining the post of Lecturer in the Hojai College, and that, after expiry of 2 years period of service

in the college he further applied for 1 year's extension of the so called lien period w.e.f 2.12.83 to 1.12.84 and thereafter, submitted his resignation from Railway Service w.e.f. 2.12.84 under his letter dated 6.2.85 without returning back to Rly Service, following his regular absorption as Lecturer in Hojai College. Shri Dutta now wants to derive the benefits of Pension and DERG on the Railways, on the Authority of Chief Cashier's letters/office order referred to above claiming that, the so called lien period w.e.f 2.12.81 to 1.12.84 i.e. 3 years should be added to his earlier qualifying service of 17 years on the Railways (w.e.f 1.12.64 to 1.12.81) thereby to make a total qualifying service period of 20 years, which is the minimum prescribed qualifying period of service to be rendered by a Railway Employee to be entitled for grant of pension and DERG on the Railways as per provisions of the Manual of Railway Pension Rules/Railway Service (Pension) Rules, etc. Since such a request of Shri Dutta is unacceptable under the prescribed rules and laws of the Railways, his claim was rejected by the Railway Authority including the Ministry of Railways (Railway Board) and Shri Dutta was duly communicated about those decisions. Being aggrieved by the aforesaid rejection orders, Shri Dutta also filed O.A. Nos. 39/91 and 219/97 before Hon'ble CAT/Guwahati Bench against the rejection order / decision of the Railway Authority. While the O.A No. 39/91 was disposed of by the Hon'ble Tribunal by their Order dated 30.3.95 with directions to FA & CAO, N.F.Railways, Maligaon, Guwahati (Respondent No. 2 in the said O.A) to re-examine the claim of the applicant for pension, DERG etc. the O.A. No. 219/97 was disposed of by the Hon'ble Tribunal vide Order dated 24.9.97 with direction to the General Manager, N.F.Railway to dispose of the representation of the applicant.

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In compliance to the Hon'ble Tribunal's aforesaid orders, detailed Orders/Decisions of the FA & CAO, N.F. Railway and General Manager, N.F. Railway were already communicated to the Applicant (Shri Swadhin Dutta) rejecting his claim with reasons thereto, in both the cases. Shri Dutta again filed the present O.A. No. 61/98 before Hon'ble CAT/ Guwahati and the Hon'ble Tribunal has now disposed of this application vide order dated 19.1.2000 with certain specific directions as mentioned herein before.

While examining the case afresh in compliance to the Hon'ble Tribunal's Order dated 19.1.2000 in the present O.A. No. 61/98, I find no fresh point/reason which may call for, either, to revise or modify these decisions of the FA & CAO and G.M which were already communicated to him earlier and as such for the sake of brevity and avoiding repetition, I herein abstain from repeating/discussing those decisions of the FA & CAO and General Manager; and/ or to the causes/ reasons put in these orders, since the viability of those orders/decisions still subsists. As such, endeavour has been made to concentrate mainly on those points which have been specifically indicated/ directed in the Hon'ble Tribunal's Order dated 19.1.2000 in the present O.A. No. 61/98 and to find out feasibility of giving any relief as claimed by Shri Dutta in the said O.A. No. 61/98 within the ambit of the guide-lines/ directions laid by the Hon'ble Tribunal with due regard to the set rules, procedures, laws and orders of the Ministry of Railways (Railway Board), etc on this subject. As per direction of the Hon'ble Tribunal, reference was also made to the Govt. of Assam for their clarification on the points raised by Hon'ble Tribunal.

In reference to the queries made by the Railways, the Govt. of Assam have categorically clarified the follow -

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ing under their letter No. B(2) H.1110/93/Pt.II/51 dated 3.4.2000.

- (i) That, the post of Lecturer held by Shri Swadhin Dutta in Hojai College in the District of Nagaon, Assam is not a Govt. post.
- (ii) That, Hojai College is a non-Government aided college under the Deficit G.I.A (Grants - in-Aid) system as prevailing in Assam, and such Colleges are being Administered by Governing Body as per provision in Assam Aided College Management Rules, 1976.
- (iii) that, such Defi cit system of G.I.A (Grants-in-Aid) Colleges are given grants annually by the Government to meett the shortfall in the salary requirement of the college; and the Principal of the college is the pay disbursing Authority who is not a Government functionary ;
- (iv) that, the status of Shri S.Dutta is only that, of a non-Govt. Employee, and State Government is not the Appointing Authority in respect of Lecturer of Deficit Colleges.

In response to question put to Shri Swadhin Dutta (The Applicant) during the personal hearing before the FA & CAO / Maligaon (Respondent No. 3) on 28.3.2000, Shri Dutta clarified the following :

1. that, his basis for sustenance of his claim for counting the period of service rendered as Lecturer in Hojai College w.e.f 2.12.31 to 1.12.34 towards grant of pension, etc. on the Railways, was the Chief Cashier/ N.F.Railways' letter No. CP/EP/S. Dutta dated 30.11.31, wherein certain terms and conditions for granting him lien were stated

and another letter issued by the Chief Cashier (vide No. CP/EP/S.Dutta dated 7.3.32) asking Shri Dutta to deposit the leave salary and Pension contribution (Foreign Service Contribution). No other rules / authority could be cited by Shri Dutta in support of his claim.

2. In response to queries made as regards background and viability etc. of the Chief Cashier's letters / Orders etc. Shri Dutta clarified that while he agrees with the contention that the orders should have been issued by the Chief Cashier with the approval of the Head of Department under the extant rules and provisions ; he expressed that he is not in a position to say anything as to how such orders were issued by the lower official. In this connection the full text of question No. 2 and reply to same by Shri Dutta is extracted herein below for ready reference.

"Question No. 2 :- A Railway Employee is governed by the extent rules in Establishment matters. Even, if an employee is ignorant about the extant rules and various provisions, he is governed by the statutory Rules and provisions for that organisation and any power exercised by any Authority should be within those statutory provisions. Any order to be valid has to be issued in conformity with the statutory provisions. Any other order by any un-authorised person not competent to issue, and not in conformity with the statutory rules has no relevance and effectiveness. In your case, the extant provisions have not been properly followed. How do you react to this ? "

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Reply: " I agree with your contention that it should have been done with the approval of Head of Department under the extant rules and provisions. How it has been done by the lower official, I am not in position to say anything."

3. In response to other queries in the personal hearing Shri Dutta further clarified ~~xxx~~ as under : -

- (a) Hojai College is not a Government College in real terms but it receives financial support under deficit scheme.
- (b) His appointment letter was issued by the Principal and Secretary, Hojai College being Government Aided Institution.
- (c) xHe has no idea as to how he was given permission for retention of lien, etc by the Chief Cashier while his original application was addressed to FA & CAO for grant of 6 months L.W.P only to start with for joining the College.
- (d) He did not revert back to the Railway Cadre after he was released from the Rly for joining the Lecturer's post in Hojai College w.e.f. 2.12.81 on expiry of the terms of the so called lien period since he was absorbed in Hojai College Permanently.

On going through the various Rules and provisions in the Indian Railway Establishment Manuals, Indian Railway Establishment Codes, office Memorandum etc. and Railway Board's extant Instructions / orders on the subject besides those mentioned in the Hon'ble Tribunal's Order dated 19.1.2000, it

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is quite apparent that those rules / orders/ instructions are very much specific and donot support the claim of Shri Dutta even to the least as will be revealed from following observations : -

- i) Rules 244 of Indian Railway Establishment Code Vol. I relates to forwarding of application of Railway Servant to another post in Railway service or in another office or Department under the Government of India ~~for~~ under a State Government.

In the instant case, the application for appointment in a private college (i.e. Hojai College) submitted in response to an open advertisement from the College Authority cannot be said to be an application for posts under the State Government in terms of the clarification given by the Government of Assam vide their letter No. B(2) H 1110/93/Pt.II/51 dated 3.4.2000, and as such, question of granting lien, depositing leave salary and pension contribution (Foreign Service Contribution) etc. does not arise under extant rules/ laws. Further, Hojai College is managed by a Governing Body and not by Government functionaries and his appointment letter was also not issued by the Government of Assam.

Moreover, no such letters dated 30.11.81 and 7.8.82 and office Order NO.CP/156 dated 1.12.81 could have been issued by the Chief Cashier, N.F.Railway had he applied him mind by going through the contents of the application/ prayer dated 13.11.81 of the appkicant(Shri Dutta) and followed the extant rules and procedures etc. on the subject before issuing such erroneous letters/Orders. I also do not find any document as to believe that while issuing

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the letters/orders for grant of lien etc. to Shri Dutta, the lower Authorities had in their mind about the provisions of Rule 244 of Indian Railway Establishment code -Vol.I. Moreover, in the present case, no benefit of lien can be extended when the applicant never prayed for grant of lien before his release to join the Lecturer's post in Hojai College, and grant of such lien/deputation etc. sub-motu without valid provision/authority is not permissible and quite against rules/laws, and found to be un-authorised acts. The Assam Aided College Management Rules, 1976 also does not support the cause of the applicant. The distinction between Government college and Government Aided College is quite apparent.

The Ministry of Railways's decision as incorporated under Rule 244 of Indian Railway Establishment Code (Vol.I) inter-alia clearly provides that a question of retention of lien would arise only in case of a permanent Railway Servant appointed under another Central/State Government office / Deptt etc.

(ii) Rule 3902 IREM.

Rule 3902 of IREM (1968 Edn) lays down the procedure for forwarding of applications from serving Railway Employees for posts outside the Railways and in its sub-para (b) and Note thereunder which relate to an application for a post ~~in~~ a private concern, it is clearly laid down as under : -

"(b) The Railway Servant will have to sever his connection with the Railway, if selected.

Note :- In case of applications to private concerns, the Railway Servant must first offer to resign or retire from Railway Service".

(iii) Rules 1401 & 1404 of IREM:-

Rules 1401 and 1404 of IREM (Indian Railway Establishment Manual) clearly specify as to where and in which cases lien can be allowed to be retained in former Government post and the main criteria being Public interest aspect and also the status/nature of the other Establishment where the permanent Railway Employee seeks his employment i.e. whether that Establishment is Central/State Government Department/office or Public Sector undertaking owned wholly by Government (State or Union Government) or an Autonomous or a Semi-Government organisation, etc. In the instant case, no public interest is involved since Shri Dutta had joined the Hojai College at his own interest and against the Open Advertisement for the post from the College Authority, and the Hojai College is not a Government College / Institution. As such the provisions of the Rule 1401 and 1404 also do not support the claim of Shri Dutta as no question of lien or deputation or transfer of service of Shri Dutta from Government post to a private college under deficit grant system arises as per the provision of the rules.

Besides Rule 3902 of Indian Railway Establishment Manual, there is also clear provision under para 1403 of Indian Railways Establishment Manual for dealing with the application for employment in a private concern.

Rule 1403 of IREM Volume - I reads as under : -

"Para 1403- Application for employment in a
Private concern :

When a Railway Employee desires to apply for a post in a private concern he should first offer to resign or retire from Railway Service. For this purpose any Employment other than the employment under the Central Government or State Government, Public Sector Enterprise wholly or partly owned by the Central Government or a State Government, or an Autonomous body wholly or substantially financed and controlled by the Central Government or a State Government, will be treated as a Private employment. Rules 1404 and 1405 of the Establishment Manual also stipulate that the Employee has to submit technical resignation if permanently absorbed in the new post or does not revert back to the parent Cadre on expiry of such lien period. As the case of the applicant (Shri Dutta) clearly falls within the purview of Rule 1403 which relates to a private employment, no question of technical resignation arises since the employee should first resign or retire from Railway Service before joining a post in a private concern.

As per Rule 1403 of IREM Volume - I the applicant (Shri Dutta) is deemed to have submitted resignation w.e.f. (with effect from) 2.2.1981, i.e. the date on which he was released from the Railways for appointment to a private College. Further, it is also not a case of absorption in another Government Department.

Since, Shri Dutta was well aware that Hojai College is a private Institution, it was incumbent on him to first resign from the Railway Service prior to joining the private College in terms of strict provisions under Rule 1403 of IREM.

Instead, Shri Dutta acquiesced to a lower and unauthorised Official's erroneous, unwarranted and uncalled for letters/ order etc. granting him ineligibile and undue benefits of lien/deputation, etc. for service in a non-Government private Institution of which he (Shri Dutta) himself was fully aware and in all probability with the intention of deriving extra and undue benefits at a later stage. Hence, he cannot claim/ derive any undue benefits out of the Chief Cashier's erroneous/ unauthorised letter No. CP/EP/S.Dutta dated 30.11.81 granting lien Suo-Motu and O.O. No. CP/186 dated 1.12.81 and the letter dated 7.8.82 issued in connection with deposit of the Foreign Service Contribution, etc. since these letters/ Office Order were not issued in consonance with statutory rules and with the approval of competent Authority, i.e. FA & CAO/ N.F.Railway.

iv) Rule 2403 - RII :-

Again as per Rule 2403 of Indian Railway Establishment Code Vol. II (1974 Edn) the Service of an Officer does not qualify for Pension Rules unless it conforms to the following 3 conditions ;

- First - The Service must be under Government,
- Second - The Employment must be substantive.
- Third - The service must be paid by the Government.

Further, para 2405 of Indian Railway Establishment Code Vol. II(1974 Edn) further provides that, the service of an Officer does not qualify unless he is appointed and his duties and pay are regulated by Government or under conditions determined by Government. It is quite apparent that the applicant (Shri Swadhin Dutta) during these 3 years' period of service in that Private College draw his pay from the

private source i.e Hojai College which were provided from own fund of the College and partly from Aid/ Grants from Assam Government based on deficit finance scheme etc. and not in the form of salary from General Revenue of the Government of India or State Government of Assam. On this ground also these 3 years service in a private College cannot be computed as qualifying service for the purpose of granting pension, DERG, etc on the Railways, more so when extent Government rules/Laws do not permit for granting such benefits to him and he also never reverted back to his parent Cadre in the Railways, presumably with the intention to derive the benefit of the so called terms and conditions given in the Chief Cashiers letters/ orders mentioned herein before. Further, from own statement of Shri Dutta, it is quite evident that in the Hojai College, the service of the applicant (Shri Dutta) was purely on contributory system and not a pensionable one.

(v) On the point as to whether the O.M. No. F-1(II-E/ III(B)/75 dated 7.11.75 regarding deputation has superseded or over-ruled the Indian Railway Code/Provision of Rule 244 of Indian Rly. Estt.Code Vol.1, 3902 of IREM, and other Railway circulars, it is apparent that there is no question of over-ruling any of the provisions of the Codes of Manuals or circulars.

(vi) The Principle/rules regarding grant of lien / deputation, depositing Foreign Service Contribution, etc applicable to Railway staff and provisions for granting of pensionary benefits, etc have been clearly and elaborately laid down in the various provisions of the Indian Railway Establishment Codes, Indian Railway Establishment Manuals, Railway Boards' Circulars, Manual of Railway Pension Rules, Railway Services (Pension) Rules, etc and

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none of these Rules/Provisions supports the claim of Shri Dutta. The Pensionary benefits are granted to a Railway Employees on superannuation, death or quitting Railway Service after rendering minimum period of qualifying and satisfactory service on the Railways (which is 20 years period in the instant case), on reasons, whatsoever, and are admissible only in accordance with the provisions under Manual of Railway Pension Rules 1968, Railway Services (Pension) Rules 1993, etc and not on hypothetical basis or on the plea of some letters/office Orders issued by some unauthorised officials quite in contravention to statutory rules.

(vii) The Rule 311 of the Manual of Railway Pension Rule, 1950 also clearly lays down inter alia that no pensionary benefit or compassionate grant and / or allowances may be granted to a Railway Servant who resigned from Service. His resignation with effect from 2.13.84 was also not preceded by his rejoining the Railway Cadre rendering 20 years of qualifying service on the Railways.

The Rule of estoppel ought not to prevail against a plain and mandatory provision of law. Moreover, to be eligible for Pension, etc one's case must fall within the purview of the Manual of Railway Pension Rules, 1950 and Railway (Services) Pension Rules 1993, etc. It is also a cardinal Rule of law that all act or acts of any executive, high or low, that are inconsistent with the extant statutes are, to the extent of inconsistency, is invalid and ineffective, and on this ground also the letter of the Chief Cashier issued vide No. CP/EP/S.Dutta dated 30.11.81 and O.O. NO. CP/156 dated 1.12.81 and letter No. CP/EP/S.Dutta

dated 7.8.82 granting lien/deputation benefit, etc. to Shri Dutta (the Applicant) are invalid, ineffective and in-operative, since, the same were issued in contravention to the prescribed rules/ orders on the subject.

The Government is run by set rules and laws, and no deviation to it is permissible by any authority whosever and no official can flout the extant mandatory rules/laws at his whims etc and any act of any Official in contravention to set rules cannot confer any right for any sort of benefits to the claimant who is also aware of such lapses/default/irregularity and who apperantly acquiesced in the matter. Shri Dutta also did not question the matter when he received some letters/orders not in consistent with his prayer and set rules as well.

Since, the undue benefits of granting lien / deputation etc. to the applicant was extended in contravention to the statutory rules framed by the President of India and procedures laid down thereunder, the Union of India is not bound by any un authorised or illegal action of any of its officials. Besides no estoppel operates against the statutes.

I also find that the amount deposited by him as Foreign Service Contribution was refunded by the Railway Administration to Shri Dutta under Cheque No. C 988873 dt. 9.8.83 after due adjustment of over payment on account of leave salary paid to him earlier. The contention of sufferings/harrassment as indicated by Shri Dutta in course of personal hearing, are also not tenable in as much as the claim of Shri Dutta (the Applicant) for payment of Pensionary benefits etc. are not covered by any of the provisions

of the Manuals , Rules & Orders.

I also made all sincere efforts to find out feasibility of granting any relief to Shri Dutta within the ambit of the extant rules/orders/provision etc. After thorough examination of the case with a sympathetic view and deeply going through the facts of the case with the application of mind, I find no scope for granting any relief as prayed for by the applicant and to accede to his claim for grant of Pensionary benefits, etc as otherwise, the same would involve violation of the relevant Railway Rules and extant orders of the Government of India on the subject leaving aside the question of lapses on the part of the staff. I am, therefore, constrained to regretfully reject the claim of the applicant.

The present status of the case is therefore, as under : -

- i) Sanction of Pension & DCRG : Not admissible.
- ii) Clauses regarding grant of : Lacks legal validity and
 lien/deputation concerning enforceability since issued
 Foreign Service Contributi- unauthorisedly and in contra-
 on in the letters/orders iss- vention to extant rules ,
 used by Chief Cashier under Orders & provisions on the
 Nos. CP/EP/S. Dutta dated subject and as such ineffect-
 30.11.81 and office order ive to the extant of inconsis-
 No. CP/156 dt.1.12.81 and tency to extant rules and
 letter No. CP/EP/ S.Dutta Orders of the Government.
 dated 7.8.32.

The certified copy of Hon'ble Tribunals' Order dated 19.1.2000 in the O.A No. 61/98 was received

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through Railway standing counsel on 23.2.2000. Hon'ble Tribunal has also very kindly granted further time for 1½ month w.e.f 8.6.2000 for disposal of the case.

Chief Cashier(JA) now Dy. CAO (Cash & Pay),
N.F.Railway may please arrange to communicate the above observations/decision to the applicant Shri Swadhin Dutta immediately as directed by the Hon'ble Tribunal.

DY. C.A.O. (Cash & Pay)
N.F.Railway, Maligaon.

Sd/-

FA & Chief Accounts Officer
N.F.Railway, Maligaon.
Date 11.7.2000.

Attested by
Jeehanvit Gogoi
13/11/2000
Advocate.

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एच. मुख्य लेखा अधिकारी (रोलड एवं मुतातान)
Dy. Chief Accounts Officer (Cash & Pay)
पू० सी० रेलवे, मालीगाँव, गुवाहाटी-11
N. F. Railway, Maligaon, Guwahati-11

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

IN THE MATTER OF :

O. A. No. 386 of 2000.

Sri Swadhin Dutta

.... Applicant

Vs.

Union of India and others

.... Respondents.

AND

IN THE MATTER OF :

Written Statement for and on behalf of the Respondents.

The answering respondents most respectfully beg to
sheweth as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That, save and except those statements of the applicant which are specifically admitted hereunder or those which are borne on records all other allegations/averments of the applicant as made in the application are denied herewith and the applicant is put to strictest proof of the rest of the statements which are not specifically admitted by the respondents.

Filed by:
Sukomil Sen Gupta
2.1.2002
Railway Advocate
Guwahati

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 डी. मुख्य लेखा अधिकारी (संक्र. एवं भुगतान)
 Dy. Chief Accounts Officer (Cash & Pay)
 पृ० नो० ३३३, मालीगाँव, गुवाहाटी-११
 N. F. Railway, Maligaon, Guwahati-11

3. That, for the sake of brevity, the respondents have been advised to confine their reply only to those averments of the applicant which are relevant and material for a proper decision in the case and all other allegations to the contrary in the application are denied herewith and the meticulous denial of each and every allegations have thus been avoided, without admitting any such allegations.

4. That, the case suffers for non-joinder of necessary parties in the case and misrepresentation and misinterpretation of rules on the subject.

5. That, the case is hit under the principles of acquiescence. From the very nature of the case it would appear that the applicant was well aware from the initial stage that he was going to join ^{in a} private college where he was selected against an open advertised post and that prior to leaving the Central Government job for joining in a private college he was required to submit resignation in government job. His submission of application for grant of ^{extra-ordinary leave} (leave without pay) is a clear proof to exhibit that he was aware of the government rules and as such in his written application he did not mention for grant of lien or so, but only asked his Branch Officer (the Chief Cashier) to sanction leave without pay as to enable him to join in the Hojai College (a private institution) where he has been selected for the post of lecturer. In the face of the above, and as per rule, question of extending any

benefit of lien could not arise. But for cause best known to the applicant, the applicant never pointed out to his Branch Officer (Chief Cashier) about the anomalies in the matter of extending the benefit of lien while his application was for grant of leave only. It is thus quite evident that he rather acquiesced to the mistake^{lapses} committed by an official who was not authorised to issue such release letter under law and rules and could confer no such benefit under rules. As such, the attempt to confer some extra benefit to the applicant which is not permissible under rules and that too without obtaining prior approval of the competent authority i.e. the Head of the Department, can not bestow on the applicant the benefit of such mistake of a public officer passed on wrong promise and hence government cannot be bound by such illegal acts of the official and acquiescence to such mistake by the applicant. Further, the rule clearly provides that appointments of serving government servants made by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation. (Reference Para 3.4 of the Ministry of Finance, Department of Expenditure O.M. No.F 1(11)-E III (B) 75 dated 7.11.1975)

6. That, the case is fit one to be dismissed in limine.

7. That, the applicant has got no valid cause of action or right for filing the application.

As reveals from the application, (Paragraph 19 the application) the impugned matters in the application are :

- i) non-payment of the pensionary amount and
- ii) against the decision of the respondents issued under :

a) letter No.CP/EP/S.Dutta dated 2.1.98 issued

-: 4 :-

by the FA&CAO for General Manager, N.F. Railway,
and

b) decision of the FA&CAO communicated vide
letter No.CP/EP/S.Dutta dated 4.3.96.

It is submitted herein that since subsequent to
above order ^{dated 4.3.96} the applicant already approached this Hon'ble
Tribunal by filing O.A. No. 61/98 and in pursuance to the
order/direction dated 19.1.2000 in this O.A. No. 61/98,
the respondent FA&CAO already passed the speaking order
^{dated 11.7.2000}
in compliance to the Hon'ble Tribunal's order, which has not
been challenged. The present O.A. is not tenable under
law. Application thus suffers and liable to be dismissed
for want of valid cause of action.

8. That, with regard to averments at paragraph 4(i)
of the application, the answering respondents do not admit
anything contrary to the relevant records and law and rules
in force.

9. That, with regard to averments at paragraph 4(ii)
of the application it is submitted that except those which
are borne on records or are specifically admitted hereunder
all other averments are denied herewith and the applicant
is put to strictest proof thereof.

It is to submit herein that the extant rule never
permits granting of lien to any staff for joining a private
institution and as such granting of lien for two years
with terms and conditions embodied in erstwhile Chief
Cashier, N.F. Railway, Maligaon's letter No.CP/EP/S.Dutta
dated 30.11.81 and Office Order No.CP/156 dated 1.12.1981
(which matter came to light only at the time of processing
the case to decide on the pension matter for which the

Contd....5

महान्वय लेख अधिकारी (रोकड़ एवं मुताबिक)
Chief Accounts Officer (Rocks & Pa)
पू. रेलवे, मालिगाँव, मुंबई-11
N. F. Railway, Maligaon, Mumbai-11

-: 5 :-

applicant submitted application at a later date) are quite in-valid and void ab-initio.

In view of extant rules in force the applicant is deemed to have resigned from Railway Service with effect from 1.12.1981 (A.N.) i.e. from the date the applicant was released from the Railway's post by the Chief Cashier (i.e. his branch officer). Since there was no prior sanction/approval from the Head of the department of the Railway's Accounts Department or from the General Manager of the N.F. Railway, there is no locus standi of the aforesaid orders (with some extraneous terms/conditions/privileges laid down therein), more so, when extant rules do not permit to either issuing of such letter by a branch officer without approval from the Head of the Department/organisation or when such grant of privileges/benefits/terms and conditions are quite against the extant rules/laws/Railway Board's Orders etc. It also appears from the submissions of the applicant at paragraph 4(iv) of the application that the subsequent request of the applicant for grant of extension of lien for one year more was nothing but a ploy to put a claim for grant of pension for Railway service which requires rendering of at-least 20 years qualifying service in terms of extant pension rules, whereas the applicant, on the date of leaving the Railway service rendered only 17 years of actual service in the Railways.

In this connection, the relevant extracts from Rule 1403 of Indian Railways Establishment Manual (IREM in short) of 1989 edition and Rule 3902 (iii)(b) of IREM, 1968 edition regarding forwarding of applications from

Contd.....6

एच. एच. लेख अधिकारी (रिक्त एवं मुतासिल)
Chief Accounts Officer (Vacant & Pay
Dy. Chief Accounts Officer (Vacant & Pay
पू. सी. रेल्वे, मालगाँव, गुवाहाटी-11
N. F. Railway, Maligaon, Guwahati-11

serving railway employees for posts outside the Railways are reproduced herein below for ready perusal :

Extracts.

Rule 1403 - Application for employment in a private concern -

When a Railway employee desires to apply for a post in a private concern he should first offer to resign or retire from Railway service. For this purpose, any employment other than the employment under the Central Government or State Government, Public Sector Enterprise wholly and partly owned by the Central Government or a State Government or an autonomous body wholly or substantially financed and controlled by the Central Government or a State Government, will be treated as a Private employment

(E(NG) 57 R.C. 11/56 dated 21.1.1961 and E(NG)1/84 AP/9 dated 11.4.1986)"

Rule 3902 Procedure :-

" (i)

(ii)

(iii)

(a)

(b) The Railway servant will have to sever his connection with the Railway, if selected;

Note - In the case of applications to private concerns, the Railway servant must first offer to resign or retire from Railway service."

Copies of the letters dated 30.11.81/ 1.12.81 and

6.10.83 are annexed hereto as Annexure I, II and III respectively for ready perusal.

= 7 =

10. That, with regard to averments at paragraphs 4(iii) and 4(iv) of the application it is submitted that in view of the above position and rules as mentioned herein before, the letter in question issued by a branch Officer(Chief Cashier) su^omotu conferring some uncalled for and undue benefit which are not per^ymissible under rules, cannot be said to have sanction of law and rules and consequently the follow-up action undertaken by the then chief Cashier vide Letter dated 7.9.82, 25.9.82, ^{14.11.83} etc. in the matter, were erroneous and were against the provisions of the extant rules on the subject and there cannot bind the Government.

Further, the applicant himself also acquiesced to such lapses and illegal/unauthorised acts of the branch Officer (i.e.) the Chief Cashier) and did not point out the fact that what was mentioned in the letter of the chief Cashier dated 30.11.81 (Annexure A to the Application) was completely different from what he prayed, i.e. mention of extra-benefit like lien etc in his favour without addresseing to his specific request/Prayer for grant of extra-ordinary leave. Thus, it would appear that everything were based on wrong premises and absence of consensus ad-idem also. In any view , such illegal and unauthorised acts on the part of the then Chief Cashier Cannot bind the Government further, while mentioning some breaches etc, vide letter dated 21.12.87(Copy annexed as Annexure IV) and dated 29.7.88, (Copy annexed as Annexure ^{pension} to the W.S) the applicant's claim for etc. were rejected on the ground that his service on the railways fall short of the qualifing period of 20 years service.

Contd....9

In this case the applicant was already deemed to have resigned from Railway service with effect from 1.12.1981 (A.N.) being the date of his release from the Railway post for a private Government aided College as per extant rules and not from 2.12.84 as contended in his letter dated 6.2.85 (copy annexed to the O.A. as Annexure - 5). His case was not a case of deputation and hence question of payment of Foreign service contribution does not arise and his request for accepting resignation from back date from 2.12.84 is also against rules and not acceptable.

A copy of the F.A. & C.A.O./ N.F. Railways letter
No. P¹NO/AD/76/435 dated 29.7.88 is annexed hereto as
Annexure V for ready perusal.

13. That, with regard to averments at paragraph 4(viii) of the Application, it is submitted that as the Applicants actual period of service on the railways was only about 17 years upto the date of his release from the Railways and thus fell short of the 20 years qualifying service period as required under Railways Pension Rules, there is no question of sanctioning Pension in his favour for the period of 17 years service on the Railways and as said here in above the Applicant cannot claim for grant of Pension from the Railways which is purely based on statutory rules. It was also revealed that the service rendered in Defence Department for 8 years 311 days was not countable as qualifying service along with the Railway Service since the Applicant is still recipient of disability Pension from the Defence Ministry Continuously with effect from 13.7.64 which included service elements also and which was not surrendered by the Applicant while Joining the post of Junior Clerk in the Railways on 1.12.1964 or during the entire period of his service in the Railways. The Applicant was also intimated the correct position based on the provisions of the Manual of Pension Rules in force.

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20 years qualifying service in the Railways on 1.12.1981 (A.N.) i.e. on the date of his leaving the Railways, which is the required period to be eligible for pensionary benefits as per provisions in the Manual of Railway Pension~~ax~~ Rules (in short M.R. P.R), it was therefore correctly stated that as per extant Rules he was not eligible ~~from~~ for the pensionary benefits for his 17 years service on the railways which falls short of 20 years qualifying service . Further, the leave salary for 122 days was computed in excess. There was only 82 days leave at his credit on 1.2.81 and as such the Applicant was entitled to encashment of 41 days leave salary being half of the total leave at credit as per extant order of the Railway Board . Rectification towards the entitlement of leave salary for 82 days instead of 172 days was correctly done as intimated to the Applicant vide letter dated 28.4.87. The contention of the applicant that he was to be treated as a Railway Servant during the period from 2.12.1981 to 2.12.84 is not tenable in view of the fact that the retention of lien with further extension of 1 year at the applicants' request covering the above period is not sustainable being not supported by any rule/law besides the fact that the applicant never returned to the railway's cadre after leaving the railway job/ service on 1.12.1981 (A.N.).

Further, as was also pointed out to the applicant earlier ^{that} there had been breaches of undertaking and infringement of terms and conditions in regard to drawal of pay during the above questionable period.

that the

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A copy of the letter dated 29.7.88 is annexed hereto as Annexure V for ready perusal.

In this connection, it is to reiterate that grant of lien from Government organisation to Join in the post of a lecturer in a private college w.e.f. 1.12.81 (AN) was ~~without authority~~, erroneous, invalid and unauthorised in absence of any supporting rules thereto. Accordingly, the contention of the Applicant that the so-called violation of condition No. 2 of office order dated 1.12.81 etc. is the prime cause for

15/11/88
Dr. Chatterjee, Accounts Officer, Railway, Maligaon, Guwahati
(No. 11-12/1988)
(11-12/1988)
(11-12/1988)

his non-eligibility for pensionary benefit is not correct and cannot be accepted, especially in view of the Railway-Administrations letter dated 29.7.88 to the applicant and the mandatory rules/ laws as laid down by which the grant of such pensionary benefits to a railway staff is regulated and guided.

16. That, with regard to the averments at paragraphs 4.xiii and 4.xiv of the application, it is submitted that the respondents do not admit anything contrary to the relevant records and reiterate and re-affirm the statements made herein above. It is to state herein that the respondents have faithfully carried out and complied with the Hon'ble Tribunal's order and passed the necessary orders (by which his claim for grant of pensionary benefits were rejected) after granting the Applicant the personal hearing as ordered by the Hon'ble Tribunal and the order of the FA & CAO is quite a speaking order and based on extant rules etc and the fact of the case.

17. That, with regard to the statements at paragraph 4(xv) of the application it is submitted that his contention regarding counting of service under Defence Department is not relevant since he is already a recipient of disability pension from the Defence Ministry which fact has also been admitted by him at the time of personal hearings granted to him by FA & CAO/N.F. Railway, Maligaon before passing the speaking orders (as referred to by him in this application). Further, the applicant did not also surrender the service elements of his above Pension after Joining the railway post and he continued



19. That, with regard to statements made in paragraphs 4(xvii) and 4(xviii) of the O.A. it is to ^{state} ~~state~~ that the representation of the applicant dated 27.5.96 alongwith the last representation dated 4.6.97 as mentioned in aforesaid paragraphs of the application, were incorporated in the O.A. No. 219/97 filed by the Applicant, ^{which} was heard and disposed of by the Hon'ble Tribunal by order dated 24.9.97 with ~~Prinunax~~ ~~xxxxxxxxxxxx~~.

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Dy. Commr, Railway, Maligaon, (Teesta)
Dy. Commr - Jaintia, Maligaon, (Teesta)
Dy. Commr - Jaintia, Maligaon, (Teesta)

121
Dy. Commr, Railway, Maligaon, (Teesta)
Dy. Commr - Jaintia, Maligaon, (Teesta)
Dy. Commr - Jaintia, Maligaon, (Teesta)

20. That, with regard to averments at paragraph 4(xix) of the O.A., it is stated that the decision of the Railway Administration communicated to the Applicant as per direction of the Hon'ble Tribunal is based on the established rules and factual position. It came to light that Hojai College was not a Government College/Department/Organisation. The College was recipient of Grants-in-aid under deficit system, and run by a private Governing body as intimated by the Director of Public Instruction, Government of Assam under his communication/letter dated 14.5.86. Hence, release of the applicant on lien from the Railways (which is a Government Department) to a Private College with effect from 1.12.81 to Join the College was not covered by any rule/order of the Ministries of the Railways, Home Affairs and finance and as such based on wrong premises, especially when the applicant also appears to be aware of some as he applied for grant ^{extra-ordinary leave} of (leave without pay) (L.W.P.) for six months. It is very

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Dr. Chief Accounts Officer, Railway Accounts Department, Government of India
(No. 5110/1954-55)
(10/11/55)

surprising that the applicant never pointed out the mistake on the part of the Chief Cashier that against his prayer the release letter was issued by Chief Cashier incorporating some extra-benefits of lien etc. Further, the release letter was issued without any authority or approval of the competent Authority (i.e. of F.A. & C.A.O. who is the Head of the Department of the Railways Accounts Department), of which the Pay and Cash Section is a branch office. The Chief Cashier was only a senior scale officer of the Railways having no authority to permit any official to go either on deputation or on lien even in any Government Department also not to speak of conferring undue favour of lien to an official of his branch. It is thus evident that the Applicant simply acquiesced in such unauthorised action of the Chief Cashier of the Railways and such acts can not bind the Government of India which is run on set rules and regulations as prescribed by rules and laws of the country/Government organisations. Hence, the use of the term "lapse" as pointed out/alleged by the Applicant, cannot confer any extra benefit or lever on the Applicant and cannot over-ride the set rules on the subject of deputation, ~~foreign~~ foreign service, lien etc. Grant of lien to him was an illegal act.

Further, the Applicant has also failed to furnish or quote any appropriate authority/rule under which, the said act of releasing him on lien with some terms/conditions (which are quite foreign to the extant rules on the subject and its follow-up actions thereto) are covered, which ~~as otherwise~~ would have made him eligible to get the pensionary benefit. In view of this position, the applicant is deemed to have resigned from

B (2) 1110/93/Pt II/51 dated 3.4.2000

informed as under .

i) the post of a lecturer held by Shri Swadhin Dutta in Hojai College in the District of Nowgong is not a Govt. Post.

ii) Hojai College is a non-Govt aided College under the deficit G.I.A. (grant-in-aid) system and college is administered by governing body as per provision of Assam Aided College Management Rule 1976 .

iii) Such Deficit system of G. I. A . College are given grants annually by the Govt, to meet the short fall in the salary requirement of the College and the principal, who is not a Govt. functionary, is the pay disbursing authority .

iv) The status of Shri S. Dutta is only that of a non- Govt. employee and state Government is not the appointing authority in respect of lecturers of Deficit Colleges,

In this connection the photo copy of the afore - said letter dated 3.4.2000.) is annexed hereto as Annexure XIII for ready perusal.

contd....20

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BY. Chief, Accounts Officer (Type of Station)
(No. of Station) 11-12/2000
Railway, Maligaon, Guwahati

(b) Regarding provision of Rule 244 of the Indian Railway Establishment Code volume I with Ministry of Railway's decision there-under :-

The Rule 244 of R I (Indian Railway Establishment code volume I) lays down the rules regarding forwarding of application to another post in Railways or outside Railways in another office or Department under the Government of India or under a state Government and provides that such application for posts on the Railways or in other Central Government should not be withheld without permission from the head of the department etc .

Railway Ministry's decision under this para is asunder :

(1) The application from serving employees for employment else-where submitted otherwise than in response to advertisement or circulars inviting application should not be forwarded .

(2) The lien of a permanent Railway servant appointed under another Central/State Government or office may be retained on the Railways for a period of two years (three years in exceptional case). If he is permanently ~~absorbed in this new post he should immediately resign from railway service on the~~

absorbed in this new Post he should immediately resign from railway service on the expiry of the said period or revert back to railways in his present office etc.

In this connection, a photo copy of Rule 244 along with Railways ministry's decision thereof is annexed^{as} Annexure XIV for ready perusal .

c) Rule 3902 of the Indian Railways Establishment manual -

Rule 3902 of the Indian Railway Establishment Manual lay down the procedure for forwarding of applications from serving employees for posts outside the railways . It clearly provides that in case of private concerns the Railway Employee must first offer to resign or retire from railway service and shall have to sever his connection with the Railways, if selected & etc.

The Rule 2 3902 (iii) (b) provides that " the railways servant will have to sever his connection with the Railway, if selected".

A note under this para reads as under :

Note ,

" In the case of application to private concerns, the Railways servant must first offer to resign or retire from railway service " .

11-11-1954
 M. F. Railway, Maligaon, Guwahati-11
 Dy. Chief, Joint Office (M. F. Railway)
 (M. F. Railway)

The proviso clause^{to} 3909 above Rule 3902 IREM clearly mentions the Authorities Competent to forward Applications , which is as under :

Rule 3909 :-

" Applications of railway servants may be forwarded by the General Manager or head of Departments direct to the authorities concerned ".

Rule 3902 (b) (1) and 3902 (b) (2) also provides that in case of permanent Railway servant lien may^{be} retained in the permanent office for a period of 2 years and that if the employee is not permanently absorbed within the said period of 2 years he should either resign the railways^{post} or revert to parent office etc.

The above para-graph 3902 is also subject to provision in Rule 3908 which provides for cases transferred under public Interest.

Rule 3908 :- The orders contained in above paragraphs do not apply to cases of railway servants - whose applications have been forwarded through proper channel or when it is arranged in consultation with the head of the Department in which they were previously employed by virtue of their special qualification or experience. The transfer in such cases will be treated as in public interest.

In this connection a photo copy of the said Rule 3902, 3908 and 3909 is annexed hereto as Annexure VII for ready perusal .

Dr. C. R. Ravi Varma
Rajawade Sanshodhan Mandal,
Mumbai-11

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e) As regards any other rules relevant to the matter of retaining lien etc.

cont'd ... 26

of the legal and factual condition^{aspect} of the case.

(2) Para 1404 of IREM (1404 of Indian Railway Establishment manual) clearly specifies the cases where and in which case only lien can be allowed to be retained in former government post .

This paragraph clearly provides that question of retention of lien for 2 years will arise only when the employee is selected on the basis of his application for posts in other central government Department or Public sector undertaking only, whether incorporated or not, which are wholly or substantially owned by the government or state government or Autonomous bodies and semi-government organisations etc. etc.

Rule 1403 of IREM which provides inter-alia that when a railway employee desires to apply for post in a private concern he should first offer to resign or retire from railway service and further elaborates as to which employment / enterprise will be treated as private employment etc.

The photo copies of Rules 1403 and 1404 IREM has been annexed as Annexure ^{VII} to this written statement for ready perusal

(f) Rule 2403 of Indian Railway Establishment code
Volume II -

Rule 2403 - R II (Indian Railway Establishment code) clearly mentions that the service of an officer does not qualify for Pension unless it conforms to the following 3 conditions :

- i) the service must be under government ,

- 2i) The employment must be substantive

- iii) the service must be paid by
the Government ;

Rule 2405 of R - II clearly specifies that the service of an officer qualifies for pension only when he is appointed and his duties and pay are regulated by government or under conditions determined by government etc.

Photo copies of Rule 2403, 2405 et seq and Rule 2433-RU are annexed hereto as Annexure XVI Series.

C. The from above submissions it will well reveal that -

- (i) The impugned letter dated 30.11.81 issued by the then Chief Cashier was against the statutory provisions and extant rules, and is an unauthorized and illegal and not bonafide one and for alleged mistake/lapse on the part of the

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then chief Cashier, the Government of India cannot be held responsible under law,

2) The applicant himself acquiesced in such mistake/lapse etc. on the part of the then Chief Cashier and the applicant is debarred from deriving benefit out of such lapses or action of the then Chief Cashier to shower extra benefit of lien etc. on him and matter was in his knowledge.

3) The applicant rendered only 17 years of actual service on the railways when as per Pension Rules minimum period of 20 years qualifying service is required.

4) The amounts which he deposited as foreign service contribution was sent back to the applicant ,

5) The head of the department (i.e. FA & CAO / N.F. Railway and the head of the Railway i.e (G.M. N.F. Railway) were kept in complete darkness about his submission of application or appointment in private college or forwarding of his application. No authority was given to

contd ... 28

Handwritten signature and stamp:
N. F. Railway, Maligaon, Guwahati-1
(Chief Cashier)
(Date: 17-11-1954)
(Place: Guwahati)

the then Chief Cashier (who was a Senior scale officer posted in pay & cash branch of the Railway Accounts department) to issue any release letter to any Staff or to forward any application of staff for outside appointment, incorporate any terms in any letter which may be utilised by the staff to claim ~~lien~~ pensionary benefit etc. The action of the then Chief Cashier was only illegal and unauthorised one and the impugned letter dated 30.11.81 etc are void ab-initio .

6) No estoppel rules against the extant statutory rules.

7) Hojai College is a Private college (Government aided under deficit grant system) and the deputation of a central government staff in such college is out of question and against rules. Hence grant of lien is also illegal .

8) Deputation etc. of a government servant can not be arranged to another government or semi-government or public undertaking etc. as specified under rules and not applicable to a Private College and as such grant of lien is also illegal . Further, terms and conditions in deputation cases are settled in between government/Government department usually .

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M. E. Railway, Maligaon, Guwahati-781005
Chief Accounts Officer (Pay & Cash Branch)
(11-12-11)

D) That, after delving deep into the case thoroughly and after due consideration of all facts and rules etc. involved ^{the respondents} found that the applicant's case is not justified and not legally tenable and it does not fulfil any of the provisions of extant law/rules on the subject .

After taking into consideration all aspect of the case, and after giving due hearing to the applicant the F.A. & CAO, N.F.Railway , who is the head of the department of the Railway Accounts department (Respondant No. 3) passed the necessary speaking order on 1.7.2000 rejecting the claim of the applicant and same was also communicated duly to the applicant .

A copy of the speaking order dated 11.7.2001 passed by the FA & CAO N.F.Railway, Maligaon is annexed hereto as Annexure XVII, for ready perusal.

4 . That, with regard to grounds for relief sought for as stated at paragraphs 5 and 8 of the O.A. it is submitted that in view of the fact of the case and laws/rules

म. र. रेलवे, मालगाँव, गुवाहाटी-11
 (प. र. रेलवे, मालगाँव, गुवाहाटी-11)
 (प. र. रेलवे, मालगाँव, गुवाहाटी-11)
 (प. र. रेलवे, मालगाँव, गुवाहाटी-11)

involved and the submissions made herein before, in different paragraphs of this written statement, none of the grounds etc. put forward by the applicant are sustainable and hence these are not admitted and hence the Applicant is not entitled to any relief, as sought for.

In this connection, it is also submitted that any inadvertent commission or omission or unauthorised and illegal/irregular acts done by any official who is not authorised by the extant rules and Code/Manual's etc. Provisions, cannot be treated as if done in Pursuance to the mandatory rules/laws. The Railway Administration/Government can always rectify such inadvertent omission or commission, if it is not covered by any authority or instructions from the appropriate Ministries or Authority concerned, or supported by rules/laws. The Applicant has also failed to quote any authority or rule under which his claim for pensionary benefit for actual/effective service rendered in the railways (which fall short of the qualifying service period of 20 years as required under the Pension Rules — (Railway Pension Rules, 1968 Railway services, (Pension) Rules 1993 etc.). is sustainable.

The applicant rendered only 17 years actual service on the Railways service prior to joining in a private college

M. F. Railway, Maligaon
Dy. Chief Insps. General,
Maligaon-111

आचार्य जी महोदय को प्रार्थना है कि वे मेरी समस्या को ध्यान में रखकर कृपया आवश्यक कार्यवाही करें।
(व्यक्तिगत)

आचार्य जी महोदय का आभार।

मिलन मिश्र

Railway cadre.

Speaking order dated 11.7.2000

The factual aspect of the case and such rejection is quite legal, valid and proper.

and ~~pensies~~ in the letter dated 30.11.1981 (Annexure A to the Application) and no inconvenience may therefore cause to him in rejection of his illegal claim .

Tribunal to file additional written statement if found
necessary for ends of justice.

contd 33

28. That, under the facts and circumstances stated above, there is no merit in the O.A. and the same is liable to be dismissed with cost.

VERIFICATION

I, Sri K.S. ASLA

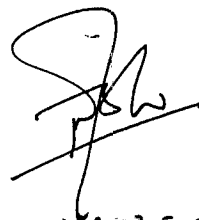
S/o. LT. COL M.S. ASLA

aged about 33 years now working as Deputy Chief

Accounts officer, (Pay & Cash) F.A & CAO/N.F.Railway

Maligaon office, do hereby solemnly affirm and verify that the statements made at paragraphs 1,2 & 3 of this written statement are true to my knowledge and those made at paragraph 9 to 21 are based on records of the case which I believe to be true and rest are my humble submissions.

Signed at ~~Maligaon~~ t



for and on behalf of
Union of India.

उप मुख्य लेखा अधिकारी (रोकड़ एवं भुगतान)
Dy. Chief Accounts Officer (Cash & Pay)
पू० सी० रेलवे, सालीगाँव, गुवाहाटी-11
N. F. Railway, Maligaon, Guwahati-11

ANNEXURE - I

To

The F. A. & C. A. O.
N.F. Railway,
Maligaon, Gauhati-11.

(Through proper channel)

Sir,

Sub:- Appointment as Lecturer in Bengali
under Principal, Hojai College.

Ref:- Principal & Secy. Hojai College,
Hojai's L/No. HC/G-6/7374 dated
4th November, 1981, copy enclosed.
....

I have the honour to present the following
for favour of sympathetic consideration and necessary
early action.

That Sir, I applied for the post of Lecturer
in Bengali under Principal, Hojai College for which a
no objection certificate was issued by your honour.

Principal, Hojai College vide his L/No. HC/G-6/
7374 dt. November 4, 1981 has offered me an appointment
for the post of Lecturer in Bengali. As my appointment
as stated in item 3 of the letter referred to is
temporary and subject to the approval of State Selection
Board and DPI, Assam, I pray that I may be granted
six months leave without pay (Extra ordinary leave)
w.e.f. 1st December, 1981 with the permission to accept
appointment during leave as per para 2108(b) of RII.

Notice for resignation or voluntary retirement
as required will be submitted by me in due course.

DA: As above.

Dated: Maligaon,
The 13th Nov/1981.

Yours faithfully,

(Swadhini Dutta)
Sr. Clerk (Cash & Pay)
N.F. Railway, Maligaon.

ANNEXURE - II.

E. P. Railway

OFFICE ORDER NO: CP/156

Dated: 30.11.81

having been selected for appointment as lecturer in Bengali at Hojai College vide Principal and Secy's letter No: HC/G-6/7874 dated 4.11.81, Sri Swadhin Dutta Sr. Clerk drawing Pay at Rs. 428.00 Plus Rs. 35/- Special pay P.H. in Scale Rs. 330-560 is relieved from this Office w.s.f. 1.12.81 (A) on the following terms and conditions

- 1). His lien will be retained in this Office for a period of TWO YEARS (in exceptional cases upto 3-years). If he is not permanently absorbed within the above period from the date of his appointment in the new post he should immediately on expiry of the said period either resigns from the Railway service or report to his parent Office.
- 2). His pay in the ex-cadre post will be fixed in the pay scale of that post subject to the condition that his pay in the new post should not exceed 30% of his pay or Rs. 100/- whichever is more.
- 3). He will have to deposit the Leave Salary and Pension contribution with this Railway regularly at the prescribed rates during the period of his lien is retained in this Office, failing which he will be recalled for breach of the undertaking.

Chief Cashier
E. P. Railway, Maligaon

No: CP/EP/S&Dutta

Dated: 30.11.81

- Copy to:
- 1). The Principal, Hojai College, Hojai
 - 2). PA & CAO/AD
 - 3). AAO/PP
 - 4). JAO/II
 - 5). Sri Swadhin Dutta, Sr. Clerk

for information and necessary action.

Chief Cashier
E. P. Railway, Maligaon

To The F.A. & C.A.O.,
N.F. Railway, Maligaon
P.O. Gauhati- 781 011.

Through Proper Channel:- (1) The Principal, Hojai College, Hojai
(2) The Chief Cashier, N.F. Railway, Maligaon,
Gauhati-781 001.

Sub: Extension of Lien for one year with effect from 2.12.1983

Ref: Chief Cashier's Office Order No. CP/156 dated 1-12-81.

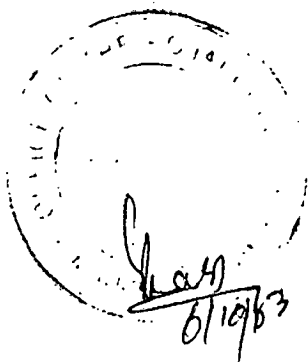
Sir,

I have the honour to say that on my being appointed Lecturer in Bengali, Hojai College, I was granted lien upto the 1.12.1983 vide your order cited above. My present appointment at Hojai College is against Govt. sanctioned post and as such I am required to be selected by the State Selection Board as provided in Assam Aided Colleges Employees Rules, 1960 as amended upto date. I already appeared at the State Selection Board and the result is yet to be published by the Govt. of Assam. My appointment has already been approved by the D.P.I., Assam, subject to the selection by State Selection Board for my permanent absorption.

In the circumstance, I request you to kindly extend the period of my lien for another one year with effect from 2.12.1983.

Yours faithfully,

At Hojai, The 6th Oct 1983



Swadhin Dutta
(SWADHIN DUTTA) 6.10.83
Ex Senior Clerk, Cash & Pay,
N.F. Railway, Maligaon

AND

Lecturer,
Deptt. of Bengali,
Hojai College,
HOJAI-782 435.

19/12/87

Office of the
FA & Chief Accounts Officer,
N. F. Railway : Maligaon.

No.CP/EP/S.Dutta. Dated, the 21st December, 1987.

Shri Swadhin Dutta,
ex Sr. Clerk under
Chief Cashier,
N.F.Railway : Maligaon.

Sub:- Your representation for pensionary benefit.

Ref:- Your application dated 5.8.87.

With reference to the above, you are hereby informed that you were released from Railway service to join Hojai College under Chief Cashier/N.F.Railway, Maligaon's Office Order No.CP/153 dated 9.12.81 under certain terms and conditions. According to item 2 of the terms and conditions your pay in the new post was to be fixed in the pay scale of that post subject to the condition that your pay in the new post should not exceed 30% of your pay or Rs.100/- ~~or~~ whichever is more. It has been noticed that you violated this condition by accepting more pay in the new post and this by itself would disqualify you from any right to a lien against Railway service. As such it has been deemed that you have resigned from Railway service from the date you left the service under Chief Cashier, N.F.Railway, Maligaon.

for FA & Chief Accounts Officer,
N. F. Railway : Maligaon,
Guwahati - 781 011.

Received at Maligaon
Dura Singh Dutta
23/12/87

.....

ANNEXURE - २२

Office of the
F.A. & Chief Accounts Officer
H.F. Railway / Maligaon

NO. PIR/AD/76/425

Dated 29.07.88

To,
Shri Swadhin Dutta.
Lecturer,
Bojai College
Dist- Nagaon (Assam)
Pin - 782436

Sub :- Non payment of pensionary benefits .

The necessary replies were issued to you under letter NO.CP/EP/S. Dutta dated 23.04.87 and 21.12.87 which may be connected at your end.

However, as desired by Dy. Director ,Estt.(R) I Railway Board ,you are informed hereby as under :-

You were released to join the college service w.e.f. 01.12.81 vide O.O. NO.CP/156 dated 01.12.81 on the express terms and conditions with 2 years lien vide NO. CP/EP/S/S. Dutta dated 30.11.81. Subsequently ,the lien of 2 years sanctioned earlier was extended for one year more w.e.f. 02.12.83 vide NO.CP/EP/S. Dutta dated 14.11.83 ,thereafter ,your resignation was accepted w.e.f. 02.12.84 vide O.O. NO. CP/317 dated 24.06.86.

The agreement point under para 2 of O.O. NO. CP/156 dated 01.12.81 was breached by you wherein you were permitted to accept the pay scale of College Organisation subject to the conditions that your pay in the new post should not exceed 30% of your pay or Rs. 100/- whichever was more (i.e. Rs. 601/- which is below the minimum of the scale viz. Rs. 700/-). But from the particulars furnished by the College authorities your pay was allowed to Rs 700/- with subsequent increments which was higher than Rs. 601/-. This is an infringement of the terms and conditions as laid down.

On the date of your release w.e.f. 01.12.81 your 20 years continuous service was not completed and as such pensionary benefits was not admissible as per rules.

A pay order bearing NO. 4471/13 dated 28.07.88, however ,for Rs. 1,359/- (Rupees one thousand three hundred fifty nine) only has been drawn in your favour towards payment of your arrears. Arrangement is being made to arrange the above payment through Cheque at your home address.

Sd/-

(Ravi Prabhat)

Dy. CAO/T

For F.A. & Chief Accounts Officer
H.F. Railway / Maligaon

Copy forwarded for information to :-

1. The Chief Cashier, N.F. Railway, Maligaon in reference to his office NO. at N/25 of P/Case NO. 33 of Shri Swachin Datta, Ex. Sr. Clerk.
2. Dy. Director, Estt. (R) I,
Ministry of Railways,
Railway Board,
Rail Bhawan,
New Delhi - 110001

This is in reference to his NO. E(REP) 1188 AEG-45 dated 29.06.88.

Sd/-

(Ravi Prabhat)

Dy. CAO/T

For FA & Chief Accounts Officer
N.F. Railway / Maligaon

N. F. Railway

Office of the Chief
Cashier, N.F. Railway
Maligaon.

No: CP/EP/S.Dutta

Dated: 14.11.83

To:

The Principal,
HOJAI COLLEGE, HOJAI
(Assam)

Subj: Application of Shri S.Dutta,
Lecturer in Bengali for the
extension of his lica.

Ref: Your letter No: HC/G-38/8534
dated 6.10.83.

The services of Shri S.Dutta, Sr.Clerk, Cash
and Pay Deptt now on deputation as Lecturer in the Hojai
College, Hojai for a period of two years w.e.f. 2.12.81
are further extended for a period of one year w.e.f. 2.12.83
or the date of absorption in the College whichever is
earlier on the terms and conditions laid down in this Office
O.O.No: CP/156 dated 1.12.81.

Sri Dutta may be asked to deposit the leave
salary contribution etc with the Railway and to submit full
details of deposit of the contributions immediately.

Chief Cashier
N.F.Rly-Maligaon.

Copy to: FA & CAO/Adm-MLG

ii).AAO/PF

iii).AAO/ET

iv). Sri S.Dutta, Lecturer Hojai College, Hojai (Assam)
for information.

Chief Cashier 14.11.83
N.F.Railway/Maligaon

CHAPTER XIV FORWARDING OF APPLICATIONS FROM SERVING RAILWAY EMPLOYEES FOR POSTS OUTSIDE RAILWAYS

1401. Railway employees may be given 4 opportunities in a year to apply in response to notices of Government Departments/Public Sector Undertakings/autonomous bodies wholly or substantially financed and controlled by Central or State Government except where holding of any such applications considered justified in the public interest by the competent authority. Applications in response to PSC advertisement will not be counted against the four opportunities mentioned above.

NOTE: The authorities should interpret the term 'public interest' strictly subject to the condition that forwarding of application should be the rule rather than the exception. In taking the decision to withhold the application the competent authority has to balance the interest of the state against the necessity of causing hardship to the individual. This discretion should be applied with utmost objectivity and not mechanically. While it is not feasible to lay down the specific exhaustive guidelines for withholding of applications, some of them can be listed illustratively as follows:-

- (i) The Railway employee is engaged on important time-bound projects and the work would be seriously dislocated if he is relieved.
- (ii) A railway employee is under suspension or is facing departmental proceedings/prosecution in a Court.
- (iii) A railway employee is applying for a post which is equivalent in status and rank.

[E(NG)/78/AP/1 dated 27-2-1979]

1402. *Authorities competent to forward applications.*—Applications of staff and officers below Junior Administrative Grade may be forwarded by the General Manager or by the lower authority to whom he may further delegate these powers. When, however, the lower authority decides to withhold an

application it should be done only with the approval of the General Manager or the Head of Department concerned.

Applications of officers of the Junior Administrative grade and above may be forwarded to the Railway Board for disposal.

[E(NG) 65 RC1/86 dated 16-12-1965 and E(NG)-II 73/AP/2 dated 18-5-1973].

1403. *Application for employment in a private concern.*—When a railway employee desires to apply for a post in a private concern he should first offer to resign or retire from railway service. For this purpose, any employment other than the employment under the Central Government or State Government, public sector enterprise wholly and partly owned by the Central Government or a State Government or an autonomous body wholly or substantially financed and controlled by the Central Government or a State Government will be treated as a private employment.

[E(NG) 57 RC1/56 dated 21-1-1961 and E(NG) I/84 AP/9 dated 11-4-1986]

1404. *Retention of lien on selection on the basis of the forwarded application.*—(1) If a permanent railway employee is selected on the basis of his application for posts in other Central Government Department Offices or Public Sector Undertakings whether incorporated or not which are wholly or substantially owned by the Government of India or State Government and Autonomous Bodies and Semi Government Organisations, his lien may be retained in the parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment in the new post, he should immediately on expiry of the period of 2 years either resign from railway service or revert to his parent office. An undertaking to abide by this condition may be taken from him at the

CHAPTER XXXIX

Forwarding of applications from serving railway employees
for posts outside the Railways.

3901. General:—Except what is provided in para 3909 the
procedure for forwarding applications from railway servants, who
are permanent or temporary, for posts outside the railways, is
given in the following paragraphs.

✓ 3902. Procedure:—

- (i) Technical Railway servants will be permitted to apply
not more than twice a year and the non-technical railway
servants once a year only.
- (ii) The General Managers/Heads of Departments may
withhold applications of railway servants if it is not
possible to release them in the public interest. But this
discretion should be exercised only in exceptional cases.
- (iii) The forwarding of applications will be further subject to
the following two conditions viz.,
 - (a) No application from a railway servant, technical or
non-technical whether permanent or temporary,
who has been trained at railway's expense, shall be
forwarded, unless he has rendered five years service
in a working post. This will also apply to techni-
cal and non-technical railway servants, whether
permanent or temporary, who have been sent for
training abroad for a period exceeding three months,
either at the railway's expense or under one of the
scholarships or the training schemes for which they
have been sponsored by the Railways.

This provision does not apply to temporary officers who belong to unclassified
category I, i.e. neither class I nor class II.

NOTE 2—Apprentices who have accepted training at railway's expense shall be required to apply for outside posts until specified years of service have elapsed from them in terms of their agreement after completion of their apprenticeship.

(b) The railway servant will have to sever his connection with the Railway, if selected.

NOTE. In the case of applications to private concerns, the Railway servant is not to resign or retire from railway service.

3903. The term "trained at railway's expense" applies to apprentices who are given technical training (including those who are deputed for specialised courses) and does not include those who are given non-technical training for short duration i.e. "service training" or appointed on probation.

3904. Exceptions and refund of cost of training:—Applications for admission to the competitive examinations conducted by the U. P. S. C./State Service Commissions or in response to advertisements issued by the public undertakings wholly or partly owned by the Central Government or State Governments and Government Organizations will be forwarded only when an undertaking is given by the railway servant to the effect that he will sever his connections with the railway and provided also he refunds the cost of training, if any, when leaving railway service, on selection for outside post.

3905. Railway servants trained at railway's expense who happen to be selected as a result of competitive examinations conducted by the U. P. S. C. and get appointed to higher posts in Railways, shall not be required to refund the cost of training. This will also apply to candidates, who after qualifying in the competitive examination (I. A. S./I. F. S.) etc. held by the Government, have accepted appointment in class I service on Railways and are permitted to appear in a subsequent examination for I. A. S. etc. to better their prospects and leave railway service on being selected in that examination.

3906. Applications for Defence Forces:—The railway servants may join the Defence Forces in the present emergency.

Annex 8 VII
Series

the military authorities without the railway servants having to
an undertaking that they would sever their connection with
railways in the event of their being selected for military service.
a railway servant shall not be required to refund the cost of
ing.

3907. The orders referred to in paragraph 3906 above apply
to those railway servants who are selected for commissioned
service in the Defence Forces. They do not apply to
servants selected through the normal recruitment channels
as U. P. S. C. for a post of an Engineer in the M. E. S. as well
others selected for certain categories of posts in the Defence
establishments, who will be governed by the other rules contained
in chapter.

3908. Transfers in the Public Interest :—The orders contained
in the above paragraphs do not apply in the case of railway servants
on transfer as a result of their application for appointment
being forwarded through proper channel or when it is arranged
in consultation with the Head of Department in which they
previously employed by virtue of their special qualification
or experience. The transfer in such a case will be treated as in
public interest. Temporary railway servants, if transferred, may
be allowed to carry forward leave on average pay at their credit.

3909. Authorities Competent to Forward Applications :—Applica-
tions of railway servants may be forwarded by the General Manag-
ers of departments direct to the authorities concerned.

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Indian Railway Establishment
(Convention Staff)

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No. 51

Para 3902

Substitute the following for existing clause (i) under this para :—

"(i) Railway servants in clerical as well as all other categories (technical and non-technical) may be permitted to apply for posts outside Railways without any restriction on the number of excursions in a year."

(Authority : Railway Board's letter No. L(RG)57RCL/99
dated 16th August 1967)

Para 3902

Substitute the following for the existing clause (iii) (b) of this para :—

"(b) (1) In the case of permanent Railway servants, their lien may be retained in the parent Department/Office for a period of two years. If the Railway servant concerned is not permanently absorbed within a period of two years from the date of his appointment in the new post, he should immediately, on expiry of the said period of two years, either resign from Railway service or revert to his parent office. An undertaking to abide by these conditions will have to be given by such staff at the time their applications are forwarded to other Department/Office.

(2) The concession in (1) above can also be enjoyed by temporary employees who have completed 3 years service and their administrative lien will be retained. Their reversion to the parent Department/Office would, however, be conditional upon the post held by them prior to their joining the new Department/Office/Public Sector Undertaking/Semi-Government Organization continuing to exist. An undertaking to abide by these conditions will have to be given by such staff at the time their applications are forwarded to other Department/Office.

(3) Temporary Railway servants with less than 3 years service will have to sever connection with the Railway in case of their selection for outside posts."

(Authority : Railway Board's letter No. F(RG)1163
dated 4th December 1966)

No. 54 dated 1st January 1972)

Category I. e. neither class 1 nor class 11.

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NOTE 2. Apprentices who have been selected for appointment to the Railway Service are not entitled to apply for outside posts until specified date after which they may apply for them in terms of their agreement after completion of their training.

(b) The railway servant will have to sever his connection with the Railway, if selected.

NOTE In the case of applications to private concerns, the Railway servant will have to resign or retire from railway service.

3903. The term "trained at railway's expense" applies to apprentices who are given technical training (including those who are deputed for specialised courses) and does not include those who are given non-technical training for short duration i.e. "service training" or appointed on probation.

3904. Exceptions and refund of cost of training :- Applicants for admission to the competitive examinations conducted by U. P. S. C./State Service Commissions or in response to advertisements issued by the public undertakings wholly or partly owned by the Central Government or State Governments and Government Organizations will be forwarded only when an undertaking is given by the railway servant to the effect that he will sever his connections with the railway and provided also he refunds the cost of training, if any, when leaving railway service, on selection for outside post.

3905. Railway servants trained at railway's expense who happen to be selected as a result of competitive examinations conducted by the U. P. S. C. and get appointed to higher posts in Railways, shall not be required to refund the cost of training. This will also apply to candidates, who after qualifying in the competitive examination (I. A. S./I. F. S.) etc. held by U. P. S. C. have accepted appointment in class 2 service on Railway and are permitted to appear in a subsequent examination for I. A. S. etc. to better their prospects and leave railway service on selection in that examination.

3906. Applications for Defence Forces :- The Railway servants may join the Defence Forces in the present emergency may be

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Annexure VIII Sens

to the military authorities without the railway servants having to
in an undertaking that they would sever their connection with
the railways in the event of their being selected for military service.
Such a railway servant shall not be required to refund the cost of
training.

3907. The orders referred to in paragraph 3906 above apply
only to those railway servants who are selected for commissioned
or enrolled service in the Defence Forces. They do not apply to
railway servants selected through the normal recruitment channels
such as U. P. S. C. for a post of an Engineer in the M. E. S. as well
as others selected for certain categories of posts in the Defence
Establishments, who will be governed by the other rules contained
in this chapter.

3908. **Transfers in the Public Interest** :—The orders contained
in the above paragraphs do not apply in the case of railway servants
who are transferred as a result of their application for appointment
which has been forwarded through proper channel or when it is arranged
after consultation with the Head of Department in which they
were previously employed by virtue of their special qualification
or experience. The transfer in such a case will be treated as in the
public interest. Temporary railway servants, if transferred, may
be allowed to carry forward leave on average pay at their credit.

3909. **Authorities Competent to Forward Applications** :—Applica-
tions of railway servants may be forwarded by the General Mana-
gers of the railway departments direct to the authorities concerned.

From :-
Swadhin Datta/Lecturer
Deptt. of Bengali
Hojai College,
Hojai - 782435

NO. SD/39-91/4/96.

To, NO. 24 A, C.A. Bldg. 2nd Flr. P.O. 1, Guwahati - 781005

The F.A. & C.A.O., H.F.

H.F. Railway, Maligaon,

Guwahati - 781005

Through :- The Chief Cashier (JA), H.F. Rly.

Sub J.O.A. NO. 39/91 dated 30.08.1995 of Hon'ble CAT/ Guwahati Bench.

Ref :- Chief Cashier (JA)'s letter NO. CP/EP/S. Datta dated 04.03.1996.

I have the honour to draw your kind attention to your observation regarding sub-para 11 & 111 of para II of the Hon'ble CAT, Guwahati's above order and beg to highlight the action taken by your executive regarding grant of lien to me and to join the Hojai College service. :-

A) On being selected by the College authority for appointment I prayed for six months extra ordinary leave as per para 2103 (b) of RII (1974 reprint) on 13.11.81.

B) On 30.11.81 the Chief Cashier proposed to retain my lien for two years with his department under certain terms and conditions and I agreed to abide by the conditions on the agreement letter on 20.11.81.

C) The Chief Cashier relieved me of my duties w.e.f. 01.12.81 vide his office order NO. CP/156 dtd. 01.12.81.

D) Since pay & allowances drawn statement submitted by me on 25.9.82 in the office was not received by the Chief Cashier (as stated in the defence) I could not deposit the leave salary and pension contributions regularly (for want of Bill from the Chief Cashier) as per condition 3 of the G.O. NO. CP/156 dated 01.12.81 and yet the Chief Cashier extended my lien vide his letter NO. CP/EP/S. Datta dated 14.11.83.

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ED para Pay and allowances drawn statement submitted by me on 20.07.84 was forwarded by the Chief Cashier to AAO/EH for calculation of various Railway Contributions on 12.10.84. A copy of the O.O.NO. CP/156 dated 01.12.81 was also given to AAO/EH.

F) On 13.12.84 the Chief Cashier requested the principal, Hojai College to intimate the particulars of leave granted and pay and allowances paid to me w.e.f. 03.12.81 to 02.12.84. The principal, Hojai College, forwarded the said particulars on Feb. 7, 1985.

G) In my statement dt. 13.07.84 I had shown that I accepted my College pay @ Rs 700/- p.m. with subsequent increments, but neither your Chief Cashier nor your AAO/EH termed it a violation of condition 2 of the O.O.NO. CP/156 dated 01.12.81. That condition 2 of the O.O.NO. CP/156 dated 01.12.81, and on receipt of the information from the College authority, AAO/EH calculated my Pension and leave salary contribution on 03.06.85. It may kindly be seen that my leave salary contribution was calculated having taken College pay @ Rs 700/- with subsequent increments.

H) On 06.06.85 the Chief Cashier asked me to deposit the contributions as calculated by the AAO/EH and the same was deposited by me on 12.06.85 vide OF Receipt NO. 32/12062 dated 12.06.85. I have also deposited my leave salary including the leave accrued to me during the period of lien i.e. w.e.f. 03.12.81 to 02.12.84 was paid to me. Pension and pensionary benefit were sanctioned to me and my final settlement case was also sent to your pension section.

As per your observations against sub-para ii & iii

Annex-20

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I hereby submit his claim to be considered in pursuance of para II of the Hon'ble CAT/Cauwathi's order dated 30.8.85 above quoted on the basis of the following facts: In accordance with the order on O.A.NO.39/81 all the above actions were taken within the framework of the services of which he is a member. The framework of the relevant rules, laws, the Circulars etc.

1. I, therefore, request your honour to kindly favour me with the Photo copies of the rules, laws and circulars within which framework the following actions were taken by the Railway Administration, I promise to bear the cost of photo copy is if required. In his own profession in 1.3.85 Grant and retention of lien to join a private / non-Government college w.e.f. 01.12.81 (AD) till his resignation. 2. Fixation of my Ex-cadre post pay below the minimum of the scale of that post and calculation of leave salary and acceptance of the same by taking ex-cadre post pay @ Rs 700/- p.m. with subsequent increments.

3. The fact that condition NO.2 and 3 were violated by me and for which the benefit of lien was not permissible was known to the Administration on 03.06.85 (if not earlier) yet your Administration asked me to deposit the contribution and accepted the same on 12.6.85. The applicant to seek.

4. The Railway Administration had circulated my leave salary contribution taking my college pay @ Rs 700/- with subsequent increments and credited the same to the Railway Revenue on 12.06.85 and stated the acceptance of minimum of the College pay i.e. Rs 700/- as violation of condition NO.2 of the O.O.NO. CP/158 dt.01.12.81. Para 2151 (FR-120) RII (8th reprint 1974) reads .

"A Railway servant in foreign service may not elect to withhold contributions and to forfeit the right to be counted as duty in Railway service the time spent in the service of a foreign employee. The contributions paid on his

benefit maintaining his claim to pension, or to pension and leave salary as the case may be, in accordance with the rules of the service of which he is a member.

Your Administration, after accepting pension & leave salary contribution, tried to deny my right to draw pension and leave salary, your observations in para 6 of page two reads as under:

"That data was continuing in his new profession. In the College and never expressed his intention to come back to his Government post and the plea of recalling him also

neither arose nor can it be a valid ground to recall the illegality and breach of contract by him, which already brought the contract to a nullity by own violation of

and date."

Hon'ble C.J. in para 6 of the order dtd. 30.08.95 rightly observed that

"However, the respondents cannot also take shelter

behind that circumstances as they could have noticed the failure of the applicant to make

regular deposit much earlier."

The Rax railway Administration was to recall me for my failure to make regular deposits of Railway dues as per condition 3 of the O.O. No. CR/156 dtd. 01-12-81 and not

my willingness to come back.

"The relevant facts in that respect has not been produced," observed Hon'ble C.J./Chief Justice.

I therefore, request your honour to provide me with photo copies of relevant rules, laws and circulars in support of the actions taken in my case to deprive me of the benefit of them. Your observations regarding counting of my

ex-military service towards Railway pension is really shocking & painful. Whenever any concession is granted to the ex-serviceman by the supreme commander of the Armed Forces, the Defence Ministry sends the copies of the order to all the Ministries of the Govt. of India, Ministries issue circulars to their departments hence all the rules and circulars should be available in your department.

In my letter dt. 13th Jan. 1987 I requested the Chief Cashier to settle the point i.e. obtaining rulings from the Defence.

Para-438 of MRPN 50 interalia clearly states that before passing the order for counting Military service towards Railways pension the service has to be verified from the authority concerned mentioned in para 438. So, it was the broader duty of the Railway Administration to get my service verified if they were willing to count it.

I did not seek Defence help regarding counting of ex-military service because to make an appeal to the Supreme Commander through the Defence Organisation I was to state that there exists no Railway Rule regarding counting of ex-military service. I requested your honour to issue a certificate to that effect vide my application dtd. 30.01.86 a reply to which is still awaited.

I called your observations as shocking because being the Head of the Accounts Department, it is not known to you that unless your department count my ex-military service towards Railway pension I should continue to draw my disability pension. I could not draw disability pension w.e.f. April '79 to Feb 27-83 owing to my own difficulties.

Your observations regarding exercising option Railway Board's letter NO. F(E)/III 77PNI/19 (and not

53
F(E) III7PHI/19 as stated) dt. 15.10.77 was a correction slip to rule 2314 (CSR -356) and correction slip 41 of MRPR50

Both the correction slip disclosed that it was the authority issuing the substantive appointment to obtain the option from the employee.

Railway Board vide their letter NO.F(E) III78PHI/22 dated 03.11.78 extended the date of option w.e.f. 03.11.78 to 02.05.78 and vide letter NO.F(E) III80PHI/1 dated 25.02.80 from 25.02.80 to 24.03.80 and I was in Railway service upto 30.11.81. However, CPO/Maligaon while circulating the above letter to the head of the Deptt. directed that ex-serviceman may be asked to exercised option. As I was not asked to exercised option question of "abstained" would not arise in my case.

I was appointed to do the works of the Chief Cashier office and as an ex-serviceman I did not know that in the Railway service an employee was to find out rule, laws & circulars for his welfare and state the same to the employer.

As I shall be out of Hojai w.e.f. 01.06.96 to 31.07.96 during the period of summer vacation your reply may kindly be mailed to the following address :-

Swadhin Datta,
C/O- J.S.BHMRA
BHMRA BHAVAN
GATE NO.3
Maligaon
Guwahati -781011.

Yours faithfully

Sd/-

Dated, Maligaon
the 27th May 1996.

Swadhin Datta .
Dt. 27.05.96

From :-

Swahdin Datta,
(Ex-Sr. Clerk Cash & Pay)
Shizra Bhavan, Gate No.3
Maligaon, Guwahati-781011.

NO. SD/39-91/1/97.

Dated -4th June 1997.

To,

The General Manager,
H.F. Railway, Maligaon,
Guwahati-781001.

Sir,

Sub :- O.A. NO. 39/91 of the Hon'ble CAT/Guwahati
Bench .

I have the honour to enclosed herewith the photostate
copies of the following documents for your kind perusal and
and early necessary action :-

1. Order of the Hon'ble CAT/Guwahati Bench dt. 30th August '96.
2. Review and decision of the P.A.&C.A.O. in connection with the above order communicated to me vide the Chief Cashier (JA)'s letter NO. CP/EP/8. Datta dated 04.03.96.
3. My appeal NO. SD/39-91/4/96 dtd. 27th May '96.
4. My reminder NO. SD/39-91/5/96 dtd. 26.06.96.

In this connection I have the honour to state as follows :-

A. I could not accept the charge of violation of conditions of the agreement letter dtd. 30.11.81 and the O.O. NO. CP/156 dated 01.12.81 for the following reasons .

- (1) The alleged violation of condition NO. 2 i.e. acceptance of more pay (Minimum of the College scale of pay) was known to the Railway Administration on 13.07.84 (Annexure 'D' to the written statement of the Respondents)
- (2) My lien was valid upto 02.12.84, but the Railway Administration did not me as per the condition NO. 3 of the agreement letter dt. 30.11.81 and O.O. NO. CP/156 dtd. 01.12.81.
- (3) I could not deposit the Railway dues i.e. pension contribution and leave salary contribution prior to

12.06.85. The fact was best known to the Railway Administration, but the Administration did not re-call me as per the condition of the agreement letter and the office order mentioned above, on the contrary the Railway Administration extended my lien for further period of one year v.e.f. 02.12.83 vide letter NO. CP/EP/S.Datta dated 14.11.83.

4. Copy of the office Order NO. CP/186 dt.01.12.81 along with my pay drawn statement was forwarded to AAO/EE by the Chief Cashier on 12.10.84.
5. It was known to the Railway Administration that conditions NO.2 & 3 of the EX O.O.NO. 156 were violated by me and no pensionary benefits were admissible to me yet, the Railway Administration had calculated my pensionary contribution and leave salary contribution. It may kindly be seen from the enclosure of the Annexure 'E' (page 15 of the OA) that the AAO/EE had calculated my leave salary taking my college pay as Rs 700/- with subsequent increments. I was asked to deposit the Railway dues as calculated, vide letter NO. CP/EP/S.Datta dated 04.06.85. The amount of leave salary and pension contribution was accepted by the Railway Administration on 12.06.85.

B. In view of the facts stated above it is not clear to me how could the Railway Administration treat the acceptance of more pay (Minimum of the scale of pay) as violation of the condition NO.2 of the O.O.NO. 156 dated 01.12.81 on 21st December '87 when the same Administration had calculated my leave salary contribution taking my college pay Rs 700/- with subsequent increment on 03.04.85 and accepted the amount on 12.06.85.

C. As the F.A & C.A.O. in his review and decision had stated that all the actions of the executives were exercised within the frame work of the relevant rules, laws etc. I request him to provide me with the photo copies of the relevant rules, I also promised to bear the cost of the photo copies in my appeal dt.27.05.86, but I was not favoured with the same inspite of my reminder dt.26.08.86.

I submit the above fact for your necessary early action.

Yours faithfully.
Sd/-
(Syadhin Datta)
Ex.Sr. Clerk
Cash & pay office,
N.F.Railway,
Maligaon, Guwahati.

Encls :- Sixteen sheets as above.

24.9.97

ANNEXURE - XI

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O. A. NO. 219/ 97

Shri S. Datta

.....Applicant

-VS-

Union of India & Ors.

..... Respondents

Mr. A. K. Ray, S. Sarma Advocate for the Applicant

Mr. B. K. Sharma Advocate for the Respondents

ORDER

24.9.97

Mr. A.K. Ray, learned counsel for the applicant is present. None for the Railway respondents.

Heard Mr. A.K. Ray. The applicant has submitted his last representation NO. 31/39-92/1/97 dated 4.6.97 (Annexure -U) to the General Manager, H.F. Railway, Maligaon, Guwahati. This Representation is pending disposal. Therefore, the O.A. NO. 219/97 is disposed of with a direction to the General Manager, H.F. Railway Maligaon to dispose of the representation dated 4.6.97 within 45 days from the date of receipt of this order.

Application is disposed of. No order as to cost.

Sd/- MEMBER (A)

FINANCIAL ADVISER & CHIEF
ACCOUNTS OFFICER
N.F. Railway, Maligaon,
Railway Headquarters, Guwahati-11

NO. CP/EP/S. Dutta

Dated 2nd January 1998

To,

Shri Swadhin Dutta,
Ex.Sr. Clerk under Chief Cashier/ Maligaon
Bhimra Bhawan,
Gate No. 3
Maligaon.
Guwahati -781011.

Sub :- O.A. 219/97 to Hon'ble CAT/Guwahati
order of 24-08-97 thereon.

With the order and directive given by the Hon'ble
CAT/ Guwahati Bench as mentioned above your case has
been reviewed and the result of review and decision
thereon, as approved by the General Manager, N.F.
Railway, Maligaon is endorsed to your information.

Encls : As above in
2 sheets.

84/-
FA & Chief Accounts Officer
N.F. Railway, Maligaon
for General Manager
N.F. Railway, Maligaon

N. F. Railway

Sub : Hon'ble CAT/ GHY's Order dated 24.09.1997
against O.A.NO. 219/97 on non-payment of
pension to Shri Swadhin Dutta, Ex. Sr. Clerk
under Chief Cashier, N.F. railway Maligaon.

As directed by the Hon'ble CAT/Guwahati Bench vide
their Order dated 24.09.1997 against O.A.NO.219/97 on
non-payment of pension to Shri Swadhin Dutta, Ex. Sr. Clerk
under Chief Cashier /N.F.Railway /Maligaon, the case has
been reviewed and the decision is appended below :-

1. Shri Swadhin Dutta, Ex. Sr. Clerk under Chief Cashier
joined this Railway on 01.12.1964 as junior Clerk.
2. In November 1981, he got an appointment from the
Principal, Hojai College for post of Lecturer in
Bengali.
3. Shri Dutta applied for six months' extraordinary
leave (without pay) and permission of the competent
authority to accept the appointment.
4. At that time the rule in force was as under :
"Appointments of serving Government servants made
either by promotion or by direct recruitment in competition
with open market candidates, whether on a permanent or
temporary basis will not be regarded as deputation (para 3.4
of Ministry of Finance, Department of Expenditure O.M.
No. F1(11)- E-III(9)/75 dated 07-11-1975."

Shri Dutta was appointed by the principal, Hojai
College in competition with open market candidates on
temporary basis, hence retention of lien after release from
the railway and joining to the new post was not permissible

under the provision of the rules in force as above, but inadvertently he was released from the Railway on the following terms and conditions.

- i) Your lien will be retained in this Department for a period of 2 (two) years (in exceptional case- one year more). If you are not permanently absorbed within this period from the date of your appointment in the new post, you should immediately, on expiry of the said period either resign from the Railway service or revert to this office.
- ii) Your pay will be fixed in the pay scale of new post and will be subject to the condition that your pay should not exceed 30% of your pay or Rs.100/- whichever is more (i.e. Rs.101.00) which is below the minimum of the scale viz. Rs.700/-
- iii) You will have to deposit the service contribution with this Railway regularly at the prescribed rate during the period of lien is retained in this office failing which you would be liable to be recalled for breach of the undertaking !

5. Although release of Shri Dutta on the above terms and conditions was a lapse on the part of the Railway Administration since there is no established rule to that effect, Shri Dutta was asked to deposit the Foreign Service contribution and Leave Salary Contribution which he deposited with the Chief Cashier on 12.06.1986. His leave salary bill was also passed taking into account the assumed leave earned from 02-12-1981 to 01-12-1984 the period of his service at Hojai College, which was also a lapse on the part of the Railway Administration in absence of any order/ authority in support thereof.

- 6) At the time of processing the pension case of Shri Dutta the above lapses came to light and his pension case was kept in abeyance.
- 7) Since all action of the Executives in the Government Departments are to be exercised within the frame-work of the relevant rules, laws, circulars and instructions of the Ministry of Railways, Home affairs, Finance etc. on the subject and omissions and commissions in past occasion, if any, cannot be accepted as of rules, this office could not oblige Shri Dutta by sanctioning pension in his favour as applied for as it is not covered by Manual of Railway Pension rules 1968/Railway Service (Pension) Rules 1923.
- 8) At the time of quitting Railway service on 01.12.1981 Shri Dutta rendered service only for 17 (seventy) years which is less than the minimum ~~qualification~~ qualifying service of 20 (twenty) years for sanction of pension.
- 9) As ordered by the Hon'ble CAT/Gwahati on 30.03.95 against O.A.NO. 39/91, all necessary facilities were afforded to Shri Dutta to produce any ruling /circulars etc. of the Defence Department so that his defence service of about 8 years could be counted in the Railways for ~~pension~~ sanction of pension from Railways. But nothing could be produced either by Shri Dutta or the Defence Department. On the contrary, during personal hearing before the undersigned he stated that he is a recipient of monthly invalid pension from the Defence Department of the Government of India. where an employee has been drawing an invalid pension by dint of his earlier ~~pension~~ service in the Defence Department there is no provision to compute the same period for counting as qualifying service in his subsequent appointment.
- 10) The present status of the case as under :-
i) Sanction of pension - Not permissible.
ii) Amount deposited on account: Refundable with
of FSC and LSC 'suitable interest on
'balance after deducting
Railway dues, if any.

GOVERNMENT OF ASSAM.
EDUCATION (HIGHER) DEPTT :::: DISPUR
EEEEEEEEEEEE

No.B(2)H.1110/93/Pt.II/51, Dtd.Dispur, the 3rd April/2000

From : Shri A.Sengupta, IAS.,
Secretary to the Govt. of Assam,
Education (Higher) Deptt.
To : The Financial Adviser &
Chief Accounts Officer,
North East Frontier Railway,
Maligaon, Guwahati-781011.
Ref : Your letter No.CP/EP/S.Dutta/CAT/GHY
dt.16-03.2000.

Dear Madam,

I am directed to acknowledge the receipt
your letter under Memo No.CP/EP/S.Dutta/CAT/GHY, dtd.16.3.2000
and to clarify the position as below :-

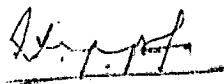
(1) The post of a Lecturer held by Shri Swadhin Dutta in Hojai
College in the District of Nagaon as reported in your letter
is not a Govt. post.

Hojai College is a non-Govt. aided College
under the Deficit G.I.A. system as prevailing in Assam, and
such Colleges are being administered by Governing Body as per
provision in Assam Aided College Management Rule, 1976.

(2) Such Deficit System of G.I.A. Colleges are given grants
annually by the Govt. to which the shortfall in the salary
requirement of the College and the Principal of the College
is the pay disbursing authority who is not Govt. functionary.

(3) In view of the above clarification the status of Shri
S.Dutta is only that of a non-Govt. employee and State Govt.
is not the appointing authority in respect of the Lecturers
of Deficit Colleges.

Yours faithfully,


Secretary to the Govt. of Assam,
Education (H) Deptt.

03.04.2000

dh.

243. **Transfer of Lien.**—Subject to the provisions of Rule 227, a competent authority may transfer to another permanent post in the same cadre a lien of a railway servant who is not performing the duties of the post to which the lien relates even if that lien has been suspended.

Government of India's decision.—In cases covered by Rule 241 (a)(2) where a Government servant is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne, Rule 242 (b) prohibits permanently the termination of his suspended lien unless and until a written request to that effect is received from him. The result is that it is possible for such a Government servant to stop his suspended lien being removed from the parent cadre indefinitely and thus cause inconvenience to the parent office. It has been decided that such a situation may be met by the appropriate executive action being taken by the controlling officer. The controlling officer may refuse his consent to such a Government servant being confirmed or retained in a permanent post outside his cadre, unless he agrees to his lien on the permanent post in his parent office being terminated.

✓ 244. **Forwarding of application to another post in railway service or outside the Railways.**—Permission to a railway servant to submit an application for a post, to appear for an examination for a post, or to transfer his services to another post in railway service or in another office or Department under the Government of India or under a State Government shall not ordinarily be refused unless the head of the office or department in which he is employed considers that the grant of permission would not be consistent with the interests of the public service.

Railway Ministry's decision.—(1) The applications from serving employees for employment elsewhere, submitted otherwise than in response to advertisements or circulars inviting applications, should not be forwarded.

(E(NG)65-RC-1/186 dated 29-1-1966.)

(2) The lien of a permanent Railway servant appointed under another Central/State Government or office may be retained on the Railway for a period of two years (three years in exceptional cases). If he is permanently absorbed within this period in the new post, he should immediately on expiry of the said period, either resign from the Railway service or revert to his parent office. Applications should be forwarded only if an undertaking to abide by these conditions is given by the staff concerned.

(E(NG)-11-69-AP. 21 dated 7-3-1975.)

(3) The applications submitted by railway servants in response to advertisements issued by UN Agencies or other International Organisations in newspapers should not be forwarded. When a Railway servant applies on his own volition for a post under a foreign Government/U.N. Agency, he should mention in his application seeking permission that on his reaching appointment under the foreign Government he will resign or retire from Railway service if the retirement is due under normal rules. On receipt of the application, the competent authority should examine and decide whether permission should at all be granted to him. If the permission is granted the railway servant may be advised to apply for the post direct. The application should not be forwarded through the Department to avoid the impression that the Government is sponsoring the individual for the post under the foreign Government.

(E(NG)-11-68 AP. 13 dated 10-10-69, MHA O.M.No. 27/53/77/EDP dated 22-3-78 and No. 78/E(O)-11/2/21 dated 6-6-1978.)

CHAPTER--XXIV

RAILWAY PENSION RULES--SERVICE QUALIFYING FOR ORDINARY PENSIONS

SECTION I--CONDITIONS OF QUALIFYING SERVICE

241. (G. S. R. 358)--Beginning of Service.--(a) Except for compensation gratuity, an officer's service does not qualify till he has completed the under-noted years of age--

(i) Class IV officers who held a lien or a suspended lien on a permanent pensionable post on 17th April, 1950 and were in service on 1st September, 1960. ... 16 years.

(ii) All other ... 18 years.

(b) In other cases, unless it be otherwise provided by special rule or contract, the service of every officer begins when he takes charge of the office to which he is first appointed.

2402. Deleted.

2403. (C. S. R. 361)--Conditions of Qualification.--The service of an officer does not qualify for pension unless it conforms to the following three conditions--

First.--The service must be under Government.

Second.--The employment must be substantive and permanent.

Third.--The service must be paid by Government.

These three conditions are fully explained in Rules 2405 etc.

2404. (C. S. R. 361-A)--The President may, however, in the case of service paid from General Revenues, even though either or both of conditions (1) and (2) are not fulfilled--

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension.

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, allow service rendered by an officer to count for pension.

Subject to such conditions as he may think fit to impose, the President may delegate his powers under this Rule to Heads of Departments.

First Condition

2405. (C. S. R. 362)--Service under Government.--The service of an officer does not qualify unless he is appointed and his duties and pay are regulated by Government, or under conditions determined by Government.

Second Condition

2406. (C. S. R. 368)--General Principles.--Service does not qualify unless the officer holds a substantive office on a permanent establishment :

Provided that in 1st November, 1959, ment on the date of Government of India or another post, shall

(i) periods fishments ;

(ii) periods

(iii) period:

2407. (C. S. R. nuous, but are limite establishment. Servi which the establishme as service the period apply to) an officer w charged, after compl on the first day on w

2408. (C. S. R. nent appointment ca created experimental

Note.--The prov service on or after th

2409. (C. S. R. ting in an office whi not draw any part of tertainment in his ser

Note.--The prov service on or after th

2410. (C. S. R. does not qualify exce under practical-traini

2411. (C. S. R. office and draws sub probation for a subst pending probation an

2412. (C. S. R. a permanent establish that when the tempor ment, counts his de

2413. (C. S. R. of the second conditio authorize any relaxati cular, must not be und apply to an officer on

Indian Rly. Act code Vol I (Refer reprint/ (1974 Edn) 1A

2431

RULES OR RECKONING SERVICE

2431. (C. S. R. 416)—Periods of suspension.—Time passed under suspension pending enquiry into conduct counts in full where, on conclusion of the enquiry, the Railway servant has been fully exonerated or the suspension is held to have been wholly unjustified; in other cases, the period of suspension does not count unless the authority competent to pass orders under Rule 2044 (FR 54) expressly declares at the time that it shall count and then it shall count only to such extent as the competent authority may declare.

2432. (C. S. R. 417).—Deleted.

2433. (C. S. R. 418)—Resignations and Dismissals.—(a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the Rules on transfer, shall be covered by grant of leave of any kind due to the Railway Servant on the date of relief or by formal condonation under Rule 2437 (C. S. R. 422) to the extent to which the period is not covered by leave due to the Railway servant.

Note.—The provisions of clause (b) above take effect from 1st April, 1957.

2434. (C. S. R. 419).—(a) An officer who is dismissed, removed or compulsorily retired from public service, but is reinstated on appeal or revision, is entitled to count his past service.

(b) The period of break in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement or the period of suspension (if any) shall not count unless regularized as duty or leave by a specific order of the authority which passed the order of reinstatement.

2435. (C. S. R. 420)—Interruptions.—An interruption in the service of an officer entails forfeiture of his past service, except in the following cases—

(a) Authorized leave of absence.

(b) Unauthorized absence in continuation of authorized leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.

(c) Suspension immediately followed by reinstatement, which need not be to the same office.

(d) Abolition of office or loss of appointment owing to reduction of establishment.

(e) Transfer to non-qualifying service in an establishment under Governmental control. The transfer must be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception.

(f) Transfer to service on the Household establishment of the President.

ANNEXURE - XVII Series

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI Bench.

Original Application No. 61 of 1998.

Date of Order: This the 19th Day of January 2000.

The Hon'ble Shri G.L.Sanglyine, Administrative Member.

Shri Swadhin Dutta,
Son of late Nani Gopal Dutta,
Resident of Shilara Bhawan,
Gate No.3, Maligaon,
Guwahati-11.

Applicant

By Advocate Shri A.K.Roy,

- Versus -

1. Union of India
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati-11.
2. The General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. Financial Advisor & Chief Accounts Officer,
N.F.Railway, Maligaon, Guwahati-11.
4. Chief Cashier,
N.F.Railway, Maligaon,
Guwahati-11.

Respondents.

By Advocate Shri S.S. Gupta, Railway counsel.

O R D E R

G.L.SANGLYINE, ADMIN. MEMBER,

After retirement from the Defence service the applicant served as a Junior Clerk in the office of the Chief Cashier, N.F.Railway with effect from 1.12.1964. While in service in the Railway he applied for the post of Lecturer in Hojai College and he was offered appointment as Lecturer in the College in the scale of pay of Rs.700-1600/- as per the norms of the University Grants Commission. He applied for extra ordinary leave without pay for a period of 6 months with effect from 1.12.1981 with permission to accept the appointment during the leave period as per existing rules. However, instead of giving extra ordinary leave the Chief Cashier, N.F.Railway released the applicant to join the

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66
College by letter dated 30.11.1981 by laying down certain terms and conditions as mentioned therein. He was released by order dated 1.12.1981 on the stipulated terms and conditions. His lien was extended for a further period of one year by letter dated 14.11.1983 with effect from 2.12.1983 or the date of absorption in the College, whichever is earlier on the terms earlier stipulated. The applicant was ultimately permanently absorbed in the College with effect from 2.12.1984 and the applicant offered his resignation on 6.2.1985 with effect from 2.12.1984. His resignation was accepted by order dated 24.6.1985 issued by the Chief Cashier, N.F. Railway, Maligaon. The applicant was not paid pension and gratuity. The respondents informed the applicant that since he did not render 20 years of qualifying service before joining the College, i.e. on 2.12.1981, his case for pension cannot be considered. The applicant submitted several representations and the Railway authorities informed him that since he violated the conditions laid down in the office Order dated 1.12.1981, it was deemed that the applicant had resigned from service on 2.12.1981. Therefore, he was not entitled to pensionary benefits. The applicant submitted Original Application No. 39 of 1991. This O.A. was disposed of on 30.8.1995. In para 6 of that order it was recorded that the question that arose was as to whether the respondents could deny the benefit of the lien to the applicant on the ground of violation of the conditions of the order dated 1.12.1981. The Tribunal came to the conclusion that the matter needed scrutiny by the respondents. Therefore in para 11 of the order directions were issued as follows:

- "(1) The FA : Chief Accounts Officer, N.F. Railway, Guwahati, Respondent No.2 is hereby directed to re-examine the claim of the applicant for pension and DCRG in the light of the circumstances discussed above in this order."

68 172

(ii) The respondent No.2 will decide in accordance with the relevant rules as to whether violation of the conditions of the letter dated 1.12.81 could be a ground to deny the benefit of the lien as the order itself provided only that on failure to abide by the conditions the applicant could be re-called.

(iii) In the even of the respondent No.2 coming to the conclusion that the denial of benefit of the lien was not permissible he shall consider extending the benefit of pension to the applicant taking into calculation the period of three years of service for which period the lien would be available."

In compliance with the directions the respondents issued an order dated 4.3.1986 rejecting the claim of the applicant as below :-

"..... My observation against the relevant sub-paras of para 11 of the above said order are put herein below in seriatim, sub-parawise -

1. The request of the applicant for grant of pension and P.O.R.G in the light of the circumstances narrated in the order has been thoroughly gone through and no rules and procedures could be found out which would warrant reversal of the previous action of the Railways administration on the subject;

ii) &

iii) As all actions of the executives in the Government Department are to be exercised within the framework of the relevant rules, laws, the circulars and instructions of the Railway Board (Ministry of Railways), Ministry of Home Affairs, Ministry of Finance etc., on the subject and the employer and employee relations are based on the set rules and mutual contract and there is little scope of declaring any violation of the said contractual stipulations as legal one. These points have also been elaborately discussed in paragraphs 3 & 4 of the Hon'ble Tribunal's aforesaid order.

As Shri Dutta was serving in the non-Government Organisation, the onus to deposit his required contribution etc. to the Railways for service in other organisation for retention of his lien on the Railways was on him, if he desired to keep his lien on the Railways. Shri Dutta was continuing in his new profession in the College and never expressed his intention to come back to his Government post and the plea of recalling him also neither arose nor can it be a valid ground to

173 68 rectify the illegality and breach of contract by him which already brought the contract to a nullity by own volition of Shri. Dutta."

Thereafter the applicant submitted further representations with reference to the order dated 4.3.1996. Since there was no reply he submitted C.A.No.219/97. The O.A was disposed of with the direction to the General Manager, N.F.Railway to dispose of the representations of the applicant. Consequently upon the directions the Annexure-Y order was issued. In that order the Railway authority had taken the plea that according to O.M.No.F1(11)-E-III(B)/75 dated 7-11-1975 appointment of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation. Hence retention of lien after release from the Railway and joining to the new post was not permissible under the provision of the rules in force as above, but inadvertently he was released from the Railway on the terms and conditions laid down in the order dated 1.12.1981. The respondents admitted that the release of the applicant on the terms and conditions set out in the order dated 1.12.1981 was a lapse on the part of the Railway administration. But since the release on those terms and conditions was not in accordance with the relevant rules, laws, circulars and instructions of the Government on the subject, the applicant cannot be granted pensionary benefit under the Railway Pension Rule. The respondents further maintained that the applicant did not complete 20 years of qualifying service in the Railway. The applicant has therefore submitted the present Original Application. In this application he has prayed for quashing and setting aside the Annexure-R order dated 4.3.1986 and Annexure-Y order communicated by

contd.. 5

letter dated 2.1.1998 and to direct the respondents to count his service in the Railway upto 2.12.1984 and to pay him the pensionary benefits including gratuity.

2. The application has been keenly contested by both sides. I have heard learned counsel. The contents of the office order No.CP/1-3 dated 1.12.1981 are re-produced below for convenience :

Having been selected for appointment as lecturer in Bengali at Hojai College vide Principal and Secy's letter No. C/G-6/7374 dated 4.11.81, Shri Swadhin Dutta, Sr. Clerk drawing pay at Rs.428.00 plus Rs.35/- special pay P.M. in scale Rs.330-560/- is relieved from this office w.e.f. 01.12.81 (AN) on the following terms and condition :-

1. His lien will be retained in this office for a period of two years (in exceptional case upto 3 years). If he is not permanently absorbed within the above period from the date of his appointment in the new post he should immediately on expiry of the said period either resign from the Railway service or revert to his parent office.
2. His pay in the Ex-cadre post will be fixed in the pay scale of that post subject to the condition that his pay in the new post should not exceed 30% of his pay or Rs.100/- whichever is more.
3. He will have to deposite the leave salary and pension contribution with this Railway regularly at the prescribed rate during the period of his lien is retained in this office, failing which he will be recalled for breach of the undertaking.

Sd/-
Chief Cashier,
N.F.Railway, Maligaon."

The case of the respondents in short is that the applicant was wrongly granted retention of lien in the Railway service for the period from 2.12.1981 to 1.12.1984 he served in Hojai College, which was not a Government educational institution. He cannot therefore be granted pension by the Railway as his qualifying service with the Railway was less than 20 years

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as on date of his release to join service in the College.
Erroneous actions of the officers of the Railway taken
contrary to laws, rules, circulars, instructions etc. issued
by the competent authority, which resulted in favour of the
applicant cannot give him right to receive pensionary benefit.
The applicant on the other hand supported the action of the
Chief Cashier as reflected in the aforesaid order dated
1.12.1981 and the order extending retention of lien dated
14.11.1983 and submitted that the actions were according to
rules, policies and instructions of the Government. The fact
that resignation of the applicant was accepted with effect
from 2.12.1984 would further support that the service of
the applicant in the Railway was upto 2.12.1984. In fact such
resignation was only a technical resignation. In fact, as
per law, resignation cannot be accepted with retrospective
effect and his service in the Railway should have been counted
upto 24.6.1985, the date of issue of the order accepting
resignation of the applicant. It was also submitted that
there was nothing wrong in the action of the Chief Cashier.
The Hojai College is ^{an} aided College under deficit system of
Grant-in-Aid. The post against which the applicant was
appointed was a Government sanctioned permanent post and
salary was paid by the Government from the Government revenue.
Scale of pay was fixed according to the norms prescribed
by the University Grants Commission. Selection for regulari-
sation was conducted by the State Selection Board constituted
by the State of Assam and regularisation was made by the
Governor of Assam through the Director of Public Instructions,
Assam who controls the whole matter of appointment, removal,
termination, promotion, service conditions, salary etc. and
the Governing Body of the College has nothing to say in

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regard to the post. As the post is a Government sanctioned permanent post and is under the State Government, deputation to the post could be made and after due consideration of the status of the College and the post the F.A & C.A.O. N.F. Railway forwarded the application of the applicant for the post and granted the lien. After permanent absorption in the post of Lecturer the applicant had tendered technical resignation as per rule. When the applicant was permanently absorbed in the College in such circumstances the date of acceptance of resignation will be treated as the date of retirement and there is no question of the period of service of the applicant with the Railway fall^{-ing} short of the qualifying service of 20 years. At any rate, even if it is assumed that the applicant was wrongly granted the lien, it was not the fault of the applicant and therefore by applying the principle of equity and conscien^{-ce}/pensionary benefit cannot be denied by excluding the period of 3 years from the calculation of 20 years qualifying service.

3. The applicant is a Master Degree holder and after having served the Railway for about 17 years he applied on 3.10.1981 for a post of Lecturer in Bengali in Hojai College with a no objection certificate issued by the F.A. & C.A.O. N.F. Railway, Maligaon. He was selected for appointment to the post subject to the approval by the Director of Public Instruction, Assam as a temporary Lecturer against a Government sanctioned permanent vacancy. The selection was subject to regularisation of his service by the State Selection Board and the Director of Public Instruction, Assam as provided in the Assam Aided College Employees Rules, 1960 and it is further governed by the Gauhati University and the Government of Assam Rules as in force from time to time. The Director of Public Instruction, Assam approved the appointment subject to selection by the State Selection Board. Subsequently the Selection Board approved his appointment. On being appointed the applicant prayed

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that he may be granted 6 months extra ordinary leave without pay with effect from 1.12.1981 with the permission to accept appointment during leave in accordance with para 2108(b) of RII. He further stated that notice for resignation or voluntary retirement as required will be submitted by him in due course. The respondents however, released him from Railway service to join the new appointment on the conditions as stipulated in the order dated 1.12.1981 re-produced hereinabove. Probably while issuing the order dated 1.12.1981 the provisions of Code No.244 of the Indian Railway Establishment Code (Vol.I) were kept in mind. The Code No.244 is re-produced herein below :

"244. Forwarding of application to another post in railway service or outside the Railways:-permission to a railway servant to submit an application for a post, to appear for an examination for a post, or to transfer his services to another post in railway service or in another office or Department under the Government of India or under a State Government shall not ordinarily be refused unless the head of the office or department in which he is employed considers that the grant of permission would not be consistent with the interests of the public service.

Railway Ministry's decision-(1) The applications from serving employees for employment elsewhere, submitted otherwise than in response to advertisements or circulars inviting applications, should not be forwarded.

(E(NG)65-RC-1/136 dated 29.1.1966)

(2) The lien of a permanent Railway servant appointed under another Central/State Government or office may be retained on the Railway for a period of two years (three years in exceptional cases). If he is permanently absorbed within this period in the new post, he should immediately on expiry of the said period, either resign from the Railway service or revert to his parent office. Applications should be forwarded only if an undertaking to abide by these conditions is given by the staff concerned.

(E(NG)-11-69-AP.21 dated 7.3.1975.)

(3) The applications submitted by railway servants in response to advertisement issued by UN Agencies or other International Organizations in newspapers should not be forwarded. When a Railway servant applies on his own volition for a post under a foreign Government/

U.N. Agency, he should mention in his application seeking permission that on his securing appointment under the foreign Government he will resign or retire from Railway service, if the retirement is due under normal rules. On receipt of the application, the competent authority should examine, and decide whether permission should at all be granted to him. If the permission is granted the railway servant may be advised to apply for the post direct. The application should not be forwarded through the Department to avoid the impression that the Government is sponsoring the individual for the post under the foreign Government.

(E.N. 11-68 AP.13 dated 10-10-69, MHA O.M. No. 27/53/77/EDP dated 22-3-78 and No. 78E(O)-II/2/21 dated 6-6-1978.)"

In 1986 onwards when the matter of granting pensionary benefit to the applicant was considered a view was taken without considering the provisions of this code. The respondents were twice directed by this Tribunal to look into the claim of the applicant for pensionary benefits and gratuity. However, it appears that the core of the matter was not addressed to by them, namely, whether in the facts of the case the post of Lecturer to which the applicant was appointed as a post under the State Government or Assam. In the order dated 2.1.1998 the respondents rejected the claim of the applicant to count the period of 3 years as then by taking support of the O.M. No. F1(11)-E/III(B)/75 dated 7.11.1975 issued by the Ministry of Finance, Department of Expenditure, which according to them reads : "Appointment or serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation." Nothing has been shown whether this O.M. has superseded or overruled the Indian Railway Establishment Code No. 244 and the decisions of the Railway Ministry thereunder mentioned above, IREM 3902 and other Railway circulars. In fact, it is seen from the

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note of the Chief Cashier dated 31.7.1986 and those of the superior officers onwards dealing with the pension matter of the applicant submitted before this Tribunal that there was no application of mind to the nature of the post. This was not reflected in the letter dated 14.5.1986 of the D.P.I. Assam also. In those notes there was no mention of the office memorandum dated 7.11.1975. Thus it is clear that the order dated 2.1.1998 is without reference to the facts on records. In fact, it appears that the respondents took different stands at different time. For example in Annexure-3 to the written statement dated 21.12.1987 it appears that the applicant lost the period of 3 years as he had violated certain terms and conditions. In Annexure-12 to the written statement dated 3.5.1988 it was stated thus :-

"On joining the Hojai College as Lecturer granting lien to Shri S.Dutta was however not regular as the Hojai College was not a Govt. college which has been received subsequently, by the competent authority and his lien to this Railway was disallowed and his release from this office w.e.f. 1.12.81 was treated as his resignation from service from that date (i.e.1.12.81)."

Further, while in the order dated 2.1.1998 reliance was placed on the O.M. dated 7.11.1975, the learned counsel for the respondents relied on the Master Circulars of the Railway in support of the contentions of the respondents. In the light of the above I dispose of this application with a direction to the respondents to consider afresh the claim of the applicant for pensionary benefits. While considering the matter they will have to specifically determine whether the said post of lecturer was a post under the State Government of Assam. For this purpose enquiry may be made from the Government of Assam. They shall also take into consideration among others the provisions of Indian Railway Establishment Code (Vol.I) No.244, with Railway Ministry decisions thereunder. Indian Railway Establishment Code (Vol.II) No.2433, Indian Establishment Manual para 3902, Office

Memorandum No.F1(11)-E-III(B)/75 dated 7.11.1975 and any other rules relevant to the matter of retaining lien. It is specifically directed that the respondent No.3, Financial Adviser & Chief Accounts Officer, N.F.Railway, Maligaon, Guwahati shall personally hear the applicant before issuing the fresh order. He shall also take into consideration the facts on records. The order shall be communicated to the applicant within 3 months from the date of their receipt of this order.

Since the matter is to be re-considered by the respondents the other issue whether on equity and conscience the applicant can get relief is not considered at present. If the applicant is still aggrieved with the order of the respondents, he may approach the appropriate authorities including this Tribunal for redressal of his grievances.

Application is disposed of. No order as to costs.

Sd/MEMBER (Adm)

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GOVERNMENT OF ASSAM
EDUCATION (HIGHER) DEPTT :::: DISPUR

No.B(2)H.1110/93/Pt.II/51, Dtd.Dispur, the 3rd April/2000

From : Shri A.Sengupta, IAS.,
Secretary to the Govt. of Assam,
Education (Higher) Deptt.

To : The Financial Adviser &
Chief Accounts Officer,
North East Frontier Railway,
Maligaon, Guwahati-781011.

Ref : Your letter No.CP/EP/S.Dutta/CAT/GHY
dt.16-03.2000.

Dear Madam,

I am directed to acknowledge the receipt
your letter under Memo No.CP/EP/S.Dutta/CAT/GHY, dtd.16.3.2000
and to clarify the position as below :-

(1) The post of a Lecturer held by Shri Swadhin Dutta in Hojai
College in the District of Nagaon as reported in your letter
is not a Govt. post.

Hojai College is a non-Govt. aided College
under the Deficit G.I.A. system as prevailing in Assam, and
such Colleges are being administered by Governing Body as per
provision in Assam Aided College Management Rule, 1976.

(2) Such Deficit System of G.I.A. Colleges are given grants
annually by the Govt. to which the shortfall in the salary
requirement of the College and the Principal of the College
is the pay disbursing authority who is not Govt. functionary.

(3) In view of the above clarification the status of Shri
S.Dutta is only that of a non-Govt. employee and State Govt.
is not the appointing authority in respect of the Lecturers
of Deficit Colleges.

Yours faithfully,

[Signature]
Secretary to the Govt. of Assam,
Education (H) Deptt.
03.04.2000
dh.

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H.F.Railway.

Office of the
Dy. Chief Accounts Officer (C&P),
H.F.Railway Maligaon.

NO. CP/EP/S. Datta (CAT/GW).

Dated: 11-7-2000.

To
Sri Swamin Dutta
Ex-Sr. Clerk
Cash & Pay Office,
Maligaon

Bhimra Bhowan,
Gate No. 3, Maligaon,
Guwahati-781011.

Sub:- O.A. No. 61/98 before Hon'ble
CAT/Guwahati- Sri Swamin Dutta
Vs UOI and others.

Ref:- Hon'ble CAT Guwahati's order
dated 19.1.2000 in O.A. No. 61/98.

....

Enclosed please find herewith the
checking order dated 11-7-2000 issued by FA & C&P
Accounts Officer, H.F.Railway/Maligaon, Guwahati-11 in
compliance to Hon'ble CAT/Guwahati's Bench order dated
19.1.2000 in O.A. No. 61/98.

Please acknowledge receipt.

At. As above in
16 sheets.

[Signature] 11/7/2000
Dy. Chief Accounts Officer (C&P),
H.F.Railway/Maligaon.

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S P E A K I N G O R D E R

Reg:- Compliance of the Order and directions of the Hon'ble Central Administrative Tribunal, Guwahati Bench dated 19.1.2000 in O.A.NO.61 of 1995 (Shri Swamin Dutta - VS - Union of India and others).

On going through the aforesaid Order of Hon'ble CAT/Guwahati Bench, it is seen that the above original application was filed by Shri Swamin Dutta, an Ex-Senior Clerk under the Chief Cashier, N.F. Railway, Maligaon, before Hon'ble CAT/Guwahati Bench seeking the following reliefs:-

- (i) To direct the respondents to count the applicant's service in the Railway upto 2.12.84 i.e., the date with effect from which his resignation had been accepted, counting the lion period as in Railway Service ;
- (ii) To quash and set aside the Order/Decisions dated 4.3.96 and 2.1.98 of the the respondents ;
- (iii) To direct the respondents to pay the pensionary benefits including DCRG for his service in Railway ;

AND

Hon'ble Tribunal vide the aforesaid order dated 19.1.2000 with interalia the following directions :

- (i) the Respondents are to consider afresh the claim of the applicant for pensionary benefits.
- (ii) while considering the matter they will have to specifically determine whether the said post of Lecturer was a post under the State Government of Assam and for this purpose enquiry should be made from the Government of Assam.
- (iii) the respondents shall also take into consideration among others :-
 - (a) the provisions of Rule 244 - of Indian Railway Establishment Code Volume -I with Railway Ministry's decisions thereunder ;

Contd. ...2...

- (b) Rule 1433 of the Indian Railway Establishment Code Volume - II ;
- (c) Para 3902 of the Indian Railway Establishment Manual ;
- (d) the Office Memorandum NO.F-1(ID)-E-III(B)/75 dated 7.11.1975 and any other's rules relevant to the matter of retaining lien ;
- (iv) The Respondent NO.3 i.e. Financial Adviser and Chief Accounts Officer, N.F. Railway, Maligaon, Guwahati should personally hear the applicant before issuing the fresh order, besides taking into consideration the facts on records.

In obedience to the aforesaid orders of the Hon'ble Tribunal, I have delved into the records and facts of the case thoroughly and have given due consideration to each of the points as raised by the applicant vis-a-vis the provisions of the Rules in the Indian Railway Establishment Codes/Manuals and, the Office Memorandum as directed in the aforesaid orders dated 19.1.2000 by the Hon'ble Tribunal and have also made necessary enquiries, as directed, from the Government of Assam, to ascertain whether the said post of Lecturer in Hojai College was a post under the State Government of Assam. I have also granted a personal hearing to Shri Swachin Dutta (the applicant) and gave him all opportunities to represent his case.

On going through the service records of the applicant it appears that the applicant - Shri Dutta while in service on the Railways applied for the post of a Lecturer in the Hojai College, Newgong, Assam in response to the Hojai College Authority's open advertisement for filling up the post of a Lecturer and after being selected by the Authorities and receiving the appointment letter issued by the Principal and Secretary, Hojai College (under letter NO.

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HC/G-6/7374 dated 4.11.1981) for the post of Lecturer in that College, he applied for grant of 6(six) months "Leave without pay" vide his application dated 13.11.1981 to FA & CAO/N.F. Railway, to enable him to join the post of Lecturer in that College, mentioning further that he would resign or retire voluntarily from Railway Service in due course. Instead, the Chief Cashier, N.F. Railway, under whom Shri Dutta was posted, released him with certain terms and conditions - like, retention of lien for 2 years at the initial stage, subject to extension by one year more, deposit of Leave Salary and pension contribution, fixation of pay as of an EX. Cadre post, etc. vide letter NO. CP/EP/S. Dutta dated 30.11.81 and 7.8.82, and Office Order NO. CP/156 dated 1.12.81, which were not permissible under extant rules and laws on the subject and which are, as per rules, applicable in case of deputation of Ely. Servant to another post under the Central Govt. or State Govt. or other Govt. undertakings or Govt. Autonomous Bodies; ignoring the fact that, Hojai College does not come within the category of the above Institutions/Organisations. Records further reveal that Shri Dutta rendered only 17 years of qualifying service on the Railways w.e.f. 1.12.1964 (the date of his appointment on the Railways) to 1.12.1981, prior to his leaving the Railway Job for joining the post of Lecturer in the Hojai College, and that, after expiry of 2 years period of service in the College he further applied for 1 year's extension of the so called lien period w.e.f. 2.12.83 to 1.12.84 and thereafter, submitted his resignation from Railway Service w.e.f. 2.12.84 under his letter dated 6.2.85 without returning back to Ely Service, following his regular absorption as Lecturer in Hojai College. Shri Dutta now wants to derive the benefits of Pension and DCRG on the Railways, on the Authority of Chief Cashier's letters/Office Order referred to above claiming that, the so called lien period w.e.f. 2.12.81 to 1.12.84 i.e. 3 years should be added to his earlier qualifying service of 17 years on the Railways (w.e.f. 1.12.64 to 1.12.81) thereby to make a total qualifying

service period of 20 years, which is the minimum prescribed qualifying period of service to be rendered by a Railway Employee to be entitled for grant of pension and DCRG on the Railways as per provisions of the Manual of Railway Pension Rules/Railway Service (Pension) Rules, etc. Since such a request of Shri Dutta is unacceptable under the prescribed rules and laws of the Railways, his claim was rejected by the Railway Authority including the Ministry of Railways (Railway Board) and Shri Dutta was duly communicated about those decisions. Being aggrieved by the aforesaid rejection orders, Shri Dutta also filed O.A.Nos.39/91 and 219/97 before Hon'ble CAT/Guwahati Bench against the rejection Order/decision of the Railway Authority. While the O.A.NO.39/91 was disposed of by the Hon'ble Tribunal by their Order dated 30.8.95 with directions to FA & CAO, N.F.Railway, Maligaon, Guwahati (Respondent No.2 in the said O.A.) to re-examine the claim of the applicant for Pension, DCRG etc. the O.A.NO.219/97 was disposed of by the Hon'ble Tribunal vide Order dated 24.9.97 with direction to the General Manager, N.F.Railway to dispose of the representation of the applicant.

In compliance to the Hon'ble Tribunal's aforesaid orders, detailed Orders/Decisions of the FA & CAO, N.F.Railway and General Manager, N.F.Railway were already communicated to the Applicant (Shri Swachin Dutta) rejecting his claim with reasons thereto, in both the cases. Shri Dutta again filed the present O.A.NO.61/98 before Hon'ble CAT/Guwahati and the Hon'ble Tribunal has now disposed of this application vide order dated 19.1.2000 with certain specific directions as mentioned herein-before.

While examining the case afresh in compliance to the Hon'ble Tribunal's Order dated 19.1.2000 in the present O.A.NO.61/98, I find no fresh point/reason which may call for, either, to revise or modify these decisions of the FA & CAO and G.M. which were already communicated to

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him earlier and as such for the sake of brevity and avoiding repetition, I herein ^{abstain} from repeating/discussing these decisions of the FA & CAO and General Manager ; and/or to the causes/reasons put in these Orders, since the viability of those orders/decisions still subsists. As such, endeavour has been made to have been specifically indicated/directed in the Hon'ble Tribunal's Order dated 19.1.2000 in the present O.A.NO.61/98 and to find out feasibility of giving any relief as claimed by Shri Dutta in the said O.A.NO.61/98 within the ambit of the guide-lines/directions laid by the Hon'ble Tribunal with due regard to the set rules, procedures, Laws and Orders of the Ministry of Railways (Railway Board), etc on this subject. As per direction of the Hon'ble Tribunal, reference was also made to the Govt. of Assam for their clarification on the points raised by Hon'ble Tribunal.

In reference to the queries made by the Railways, the Govt. of Assam have categorically clarified the following under their letter NO.B(2) H.1110/93/Pt. II/51 dated 3.4.2000.

- (i) that, the post of Lecturer held by Shri Swadesh Dutta in Hojai College in the District of Nagaon, Assam is not a Govt. post.
- (ii) that, Hojai College is a non-Government aided College under the Deficit G.I.A. (Grant -in -Aid) system as prevailing in Assam, and such Colleges are being Administered by Governing Body as per provision in Assam Aided College Management Rules, 1976.
- (iii) that, such Deficit system of G.I.A. (Grants -in -Aid) Colleges are given grants annually by the Government to meet the shortfall in the salary requirement of the College ; and the Principal of

the College is the pay Disbursing Authority who is not a Government functionary ;

- (iv) that, the status of Shri S. Dutta is only that, of a non-Govt. Employee, and State Government is not the Appointing Authority in respect of Lecturer of Deficit Colleges.

In response to question put to Shri Swadhin Dutta (The Applicant) during the personal hearing before the PA & CAO/Maligaon (Respondent No.3) on 28.3.2000, Shri Dutta clarified the following :

1. that, his basis for sustenance of his claim for counting w.e.f. 2.12.81 to 1.12.84 towards grant of pension, etc. on the Railways, was the Chief Cashier/N.F. Railway's letter NO. CP/EP/S. Dutta dated 30.11.81, wherein certain terms and conditions for granting him lien were stated and another letter issued by the Chief Cashier (vide NO. CP/EP/S. Dutta dated 7.8.82) asking Shri Dutta to deposit the Leave Salary and Pension contribution (Foreign Service Contribution). No other rules/authority could be cited by Shri Dutta in support of his claim.
2. In response to queries made as regards background and viability etc. of the Chief Cashier's letters/orders etc. Shri Dutta clarified that while he agrees with the contention that the orders should have been issued by the Chief Cashier with the approval of the Head of Department under the extant rules and provisions ; he expressed that he is not in a position to say anything as to how such orders were issued by the lower official. In this connection the full text of Question No.2 and reply to same by Shri Dutta is extracted herein below for ready reference.

"Question No.2:- A Railway Employee is governed by the extant rules in Establishment matters.

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Even, if an employee is ignorant about the extant rules and various provisions, he is governed by the statutory Rules and provisions for that Organisation and any power exercised by any Authority should be within those statutory provisions. Any order to be valid has to be issued in conformity with the statutory provisions. Any other order by any un-authorized person not competent to issue, and not in conformity with the statutory rules has no relevance and effectiveness. In your case, the extant provisions have not been properly followed. How do you react to this ?"

Reply: " I agree with your contention that it should have been done with the approval of Head of Department under the extant rules and provisions. How it has been done by the lower officer, I am not in position to say anything."

3. In response to other queries in the personal hearing Shri Nutta further clarified as under:-

- (a) Hojai College is not a Government College in real terms but it receives financial support under deficit scheme.
- (b) His appointment letter was issued by the Principal and Secretary, Hojai College being Government Aided Institution.
- (c) He has no idea as to how he was given permission for retention of leave, etc by the Chief Cashier while his original application was addressed to FA & CAO for grant of 6 months L.W.P. only to start with for joining the College.

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- (3) He did not revert back to the Railway Cadet after he was released from the Army for joining the Lecturer's post in Hojai College w.e.f. 2.12.81 on expiry of the of the terms of the so called lien period, since he was absorbed in Hojai College permanently.

On going through the various Rules and provisions in the Indian Railway Establishment Manuals, Indian Railway Establishment Codes, Office Memorandum etc. and Railway Board's extant Instructions/Orders on the subject besides those mentioned in the Hon'ble Tribunal's Order dated 19.01.2000, it is quite apparent that those rules/orders/instructions are very much specific and do not support the claim of Shri Dutta even to the least as will be revealed from following observations:-

- 1). Rules 244 of Indian Railway Establishment Code Vol. I relates to forwarding of application of a Railway Servant to another post in Railway Service or in another Office or Department under the Government of India or under a State Government.

In the instant case, the application for appointment in a private College (i.e. Hojai College) submitted in response to an open advertisement from the College Authority cannot be said to be an application for posts under the State Government in terms of classification given by the Government in terms of the classification given by the Government of Assam vide their letter NO. B(2) H 1110/93/Pt. II/51 dated 3.4.2000, and as such, question of granting lien, depositing leave salary and Pension contribution (Foreign Service Contribution) etc. does not arise under extant rules/laws. Further, Hojai College is managed by a Governing Body and not by Government functionaries and his appointment letter was also not issued by the Government of Assam. Moreover, no such letters dated 30.11.81 and 7.8.82

and Office Order NO. CP/156 dated 1.12.81 could have been issued by the Chief Cashier, N.F. Railway had he applied his mind by going through the contents of the application/prayer dated 13.11.81 of the applicant (Shri Dutta) and followed the extant rules and procedures etc, on the subject before issuing such erroneous letters/orders. I also do not find any document as to believe that while issuing the letters/orders for grant of lien etc. to Shri Dutta, the lower Authorities had in their mind about the provisions of Rule 244 of Indian Railway Establishment Code - Vol. I. Moreover, in the present case, no benefit of lien can be extended when the applicant never prayed for grant of lien before his release to join the Lecturer's post in Hojai College, and grant of such lien/deputation etc. suo-motu without valid provision/authority is not permissible and quite against rules/laws, and found to be un-authorised acts. The Assam Aided College Management Rules, 1976 also does not support the cause of the applicant. The distinction between Government College and Government Aided College is quite apparent.

The Ministry of Railway's decision as incorporated under Rule 244 of Indian Railway Establishment Code (Vol. I) inter-alia clearly provides that question of retention of lien would arise only in case of a permanent Railway Servant appointed under another Central/State Government Office/Depts etc.

(ii) Rule 3902 IRM.

Rule 3902 of IRM (1968 Edn) lays down the procedure for forwarding of applications from serving Railway Employees for posts outside the Railways and in its sub-para (b) and Note thereunder which relate to an application for a post in a private concern, it is clearly laid down as under:-

(b) "Railway servants who have to serve in connection with the Railway, if selected."

Note :- In case of applications to private concerns, the Railway Servant must first offer to resign or retire from Railway Service".

(iii) Rules 1401 & 1404 of IRM:-

Rules 1401 and 1404 of IRM (Indian Railway Establishment Manual) clearly specify as to where and in which cases lien can be allowed to be retained in former Government post and the main criteria being Public interest aspect and also the status/nature of the other Establishment where the permanent Railway Employee seeks his employment i.e. whether that Establishment is Central/State Government Department/Office or Public Sector undertaking owned wholly by Government (State or Union Government) or an Autonomous or a Semi - Government Organisation, etc. In the instant case, no public interest is involved since Shri Dutta had joined the Hojai College at his own interest and against the Open Advertisement for the post from the College Authority, and the Hojai College is not a Government College/Institution. As such the provisions of the Rule 1401 and 1404 also do not support the claim of Shri Dutta as no question of lien or deputation or transfer of service of Shri Dutta from Government post to a private College under deficit grant system arises as per the provision of the rules.

Besides Rule 3902 of Indian Railway Establishment Manual, there is also clear provision under para 1403 of Indian Railways Establishment Manual for dealing with the application for employment in a private concern.

Rule 1403 of IRM Volume - I reads as under:-

"Para 1403 - Application for employment in a private concern :

When a Railway Employee desires to apply for a post in a private concern he should first offer to

resign or retire from Railway Service. For this purpose any Employee other than the employee under the Central Government or State Government, Public Sector Enterprise wholly or partly owned by the Central Government or a State Government, or an Autonomous body wholly or substantially financed and controlled by the Central Government or a State Government, will be treated as a private employment. Rules 1404 and 1405 of the Establishment Manual also stipulate that the Employee has to submit technical resignation if permanently absorbed in the new post or does not revert back to the parent Cadre on expiry of such lien period. As the case of the applicant (Shri Dutta) clearly falls within the purview of Rule 1403 which relates to a private employment, no question of technical resignation arises since the employee should first resign or retire from Railway Service before joining a post in a private concern.

As per Rule 1403 of IRM Volume - I the applicant (Shri Dutta) is deemed to have submitted resignation w.e.f (with effect from) 2.12.1981, i.e. the date on which he was released from the Railways for appointment to a private College. Further, it is also not a case of absorption in another Government Department.

Since, Shri Dutta was well aware that Hojai College is a private Institution, it was incumbent on him to first resign from the Railway Service prior to joining the private College in terms of strict provisions under Rule 1403 of IRM. Instead, Shri Dutta acquiesced to a lower and unauthorised official's erroneous, unwarranted and uncalled for letters/ order etc. granting him ineligible and undue benefits of lien/deputation, etc. for service in a non-Government private Institution of which he (Shri Dutta) himself was fully aware and in all probability with the intention of deriving extra and undue benefits at a later stage. Hence, he cannot claim/ derive any undue benefits out of the Chief Cashier's erroneous/ unauthorised letter NO. CP/EP/S. Dutta dated 30.11.81 granting

Annex — 44 214
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11th Sub-Motu and O.O.NO.CP/156 dated 1.12.81 and the letter dated 7.8.82 issued in connection with deposit of the Foreign Service Contribution, etc. since these letters/Office Order were not issued in consonance with statutory rules and with the approval of Competent Authority, i.e. FA & CAO/N.F.Railway.

(v) Rule 2403 - RII:-

According to Rule 2403 of Indian Railway Establishment Code Vol.II (1974 Edn) the Service of an Officer does not qualify for Pension Rules unless it conforms to the following 3 conditions ;

- First - The Service must be under Government.
- Second - The Employment must be substantive.
- Third - The service must be paid by the Government.

Further, para 2405 of Indian Railway Establishment Code Vol.II(1974 Edn) further provides that, the service of an Officer does not qualify unless he is appointed and his duties and pay are regulated by Government or under conditions determined by Government. It is quite apparent that the applicant (Shri Swamin Dutta) during these 3 years' period of service in that Private College drew his pay from the private source i.e. Kojai College which were provided from own fund of the College and partly from Aids/Grants from Assam Government based on deficit finance scheme etc. and not in the form of salary from General Revenues of the Government of India or State Government of Assam. On this ground also these 3 years service in a private College cannot be computed as qualifying service for the purpose of granting pension, DCRG, etc on the Railways, more so when extant Government rules/Laws do not permit for granting such benefits to him and he also never reverted back to his parent Cadre in the Railways, presumably with the intention to derive the benefit of the so called terms and conditions given in the Chief Cashiers letters/orders mentioned here in before. Further, from own

Annex — 45-14
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statement of Shri Dutta, it is quite evident that in the Hojai College, the service of the applicant (Shri Dutta) was purely on contributory system and not a pensionable one.

(v) On the point as to whether the O.M.NO.F-1(II)-P/III(B)/75 dated 7.11.75 regarding deputation has superseded or over-ruled the Indian Railway Code/Provision of Rule 244 of Indian Ry. Estt. Code Vol. I, 3902 of IRM, and other Railway circulars, it is apparent that there is no question of over-ruling any of the provisions of the Codes or Manuals or circulars.

(vi) The Principle/rules regarding grant of leave/ deputation, depositing Foreign Service Contribution, etc applicable to Railway employees, and the provisions of Pensionary benefits, etc have been clearly and elaborately laid down in the various provisions of the Indian Railway Establishment Codes, Indian Railway Establishment Manuals, Railway Boards' Circulars, Manual of Railway Pension Rules, Railway Services (Pension) Rules, etc and none of these Rules/Provisions supports the claim of Shri Dutta. The Pensionary benefits are granted to a Railway Employees on superannuation, death or quitting Railway Service after rendering minimum period of qualifying and satisfactory service on the Railways (which is 20 years period in the instant case), on reasons, whatsoever, and are admissible only in accordance with the provisions under Manual of ^{Railway} Pension Rules 1968, Railway Services (Pension) Rules 1993, etc and not on hypothetical basis or on the plea of some letters/Office Order issued by some unauthorised officials quite in contravention to statutory rules.

(vii) The Rule 311 of the Manual of Railway Pension Rule, 1960 also clearly lays down inter alia that no Pensionary benefit or compassionate grant and/or allowance -s may be granted to a Railway Servant who resigned from

service. His resignation with effect from 2.12.84 was also not preceded by his rejoining the Railway Cadre rendering 20 years of qualifying service on the Railways.

The Rule of estoppel ought not to prevail against a plain and mandatory provision of law. Moreover, to be eligible for Pension, etc one's case must fall within the purview of the Manual of Railway Pension Rules, 1950 and Railway (Services) Pension Rules 1993, etc. It is also a cardinal Rule of law that all act or acts of any executive, high or low, that are inconsistent with the extant statutes are, to the extent of inconsistency, is invalid and ineffective, and on this ground also the letter of the Chief Cashier issued vide NO.CP/EP/S. Dutta dated 30.11.81 and O.O.NO.CP/156 dated 1.12.81 and letter NO.CP/EP/S. Dutta dated 7.8.82 granting lien/deputation benefit, etc, to Shri Dutta (the Applicant) are invalid, ineffective and inoperative, since, the same were issued in contravention to the prescribed rules/orders on the subject.

The Government is run by set rules and laws, and no deviation to it is permissible by any authority whatsoever and no official can flout the extant mandatory rules/laws at his whims etc and any act of any official in contravention to set rules cannot confer any right for any sort of benefits to the claimant who is also aware of such lapses/default/irregularity and who apparently acquiesces in the matter. Shri Dutta also did not question the matter when he received some letters/orders not in consistent with his prayer and set rules as well.

Since, the unique benefits of granting lien/deputation etc. to the applicant was extended in contravention to the statutory rules framed by the President of India and procedures laid down thereunder, the Union of India is not bound by any authorised or illegal action of any of its officials. Besides no estoppel operates against the statutes.

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I also find that the amount deposited by him as Foreign Service Contribution was refunded by the Railway Administration to Shri Dutta under Cheque NO.C 988873 dt. 9.8.88 after due adjustment of over payment on account of leave salary paid to him earlier. The contention of sufferings/harrassment as indicated by Shri Dutta in course of personal hearing, are also not tenable in as much as the claim of Shri Dutta (the Applicant) for payment of Pensionary benefits etc. are not covered by any of the provisions of the Manuals, Rules & Orders.

I also made all sincere efforts to find out feasibility of granting any relief to Shri Dutta within the ambit of the extant rules/orders/provision etc. After thorough examination of the case with a sympathetic view and deeply going through the facts of the case with due application of mind, I find no scope for granting any relief as prayed for by the applicant and to accede to his claim for grant of Pensionary benefits, etc as otherwise, the same would involve violation of the relevant Railway Rules and extant orders of the Government of India on the subject leaving aside the question of lapses on the part of the staff. I am, therefore, constrained to regretfully reject the claims of the applicant.

The present status of the case is therefore, as under:-

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|--|---|
| 1) Sanction of Pension & DCRG : | Not admissible. |
| 2) Claim regarding grant of :
lien/deputation concerning
Foreign Service Contributi-
on in the letters/orders iss-
ued by Chief Cashier under
Nos.CP/EP/S. Dutta dated
30.11.81 and Office Order
NO.CP/156 dt.1.12.81 and | Lacks legal validity and
enforceability since issued
unauthorisedly and in contra-
vention to extant rules,
Orders & provisions
subject and as such ineffect-
ive to the extent of inconsis-
tency to extant rules and |

Letter NO. CP/EP/S. Dutta

Orders of the Government.

Dated 7.8.82.

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The certified copy of Hon'ble Tribunal's Order dated 19.1.2000 in the O.A.NO.61/98 was received through Railway standing Counsel on 23.2.2000. Hon'ble Tribunal has also very kindly granted further time for 1½ month w.e.f. 8.6.2000 for disposal of the case.

Chief Cashier(JA) now DY.CAO(Cash & Pay), N.F.Railway may please arrange to communicate the above observations/decision to the applicant Shri Swamin Dutta immediately as directed by the Hon'ble Tribunal.

DY.C.A.O.(Cash & Pay)
N.F.Railway : Maligaon.

laiko
PA & Chief Accounts Officer

N.F.Railway : Maligaon.

Date 11/7/2000.

O/c

Company

1117/2000
Dy. Secy. to Govt.

CHAPTER - XXIV

RAILWAY PENSION RULES—SERVICE QUALIFYING FOR
ORDINARY PENSIONS

SECTION I—CONDITIONS OF QUALIFYING SERVICE

2401. (G. S. R. 358)—Beginning of Service.—(a) Except for compensation gratuity, an officer's service does not qualify till he has completed the under-
noted years of age—

(i) Class IV officers who held a lien or a suspended lien on a permanent pensionable post on 17th April, 1950 and were in service on 1st September, 1960. 16 years.

(ii) All other 18 years.

(b) In other cases, unless it be otherwise provided by special rule or contract, the service of every officer begins when he takes charge of the office to which he is first appointed.

2402. Deleted.

2403. (C. S. R. 361)—Conditions of Qualification.—The service of an officer does not qualify for pension unless it conforms to the following three conditions—

First.—The service must be under Government.

Second.—The employment must be substantive and permanent.

Third.—The service must be paid by Government.

These three conditions are fully explained in Rules 2405 etc.

2404. (C. S. R. 361-A)—The President may, however, in the case of service paid from General Revenues, even though either or both of conditions (1) and (2) are not fulfilled—

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension.

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, allow service rendered by an officer to count for pension.

Subject to such conditions as he may think fit to impose, the President may delegate his powers under this Rule to Heads of Departments.

First Condition

2405. (C. S. R. 362)—Service under Government.—The service of an officer does not qualify unless he is appointed and his duties and pay are regulated by Government, or under conditions determined by Government.

Second Condition

2406. (C. S. R. 368)—General Principles.—Service does not qualify unless the officer holds a substantive office on a permanent establishment :

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2431. (C. S. R. 416)—Periods of suspension.—Time passed under suspension pending enquiry into conduct counts in full where, on conclusion of the enquiry, the Railway servant has been fully exonerated or the suspension is held to have been wholly unjustified; in other cases, the period of suspension does not count unless the authority competent to pass orders under Rule 2044 (FR 54) expressly declares at the time that it shall count and then it shall count only to such extent as the competent authority may declare.

2432. (C. S. R. 417).—Deleted.

2433. (C. S. R. 418)—Resignations and Dismissals.—(a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer shall be covered by grant of leave of absence due to the Railway Servant on the date of relief or by formal condonation under Rule 2437 (C. S. R. 422) to the extent to which the period is not covered by leave due to the Railway servant.

Note.—The provisions of clause (b) above take effect from 1st April, 1957.

2434. (C. S. R. 419).—(a) An officer who is dismissed, removed or compulsorily retired from public service, but is reinstated on appeal or revision, is entitled to count his past service.

(b) The period of break in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement or the period of suspension (if any) shall not count unless regularized as duty leave by a specific order of the authority which passed the order of reinstatement.

2435. (C. S. R. 420)—Interruptions.—An interruption in the service of an officer entails forfeiture of his past service, except in the following cases—

(a) Authorized leave of absence.

(b) Unauthorized absence in continuation of authorized leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.

(c) Suspension immediately followed by reinstatement, which need not be to the same office.

(d) Abolition of office or loss of appointment owing to reduction of establishment.

(e) Transfer to non-qualifying service in an establishment under Government control. The transfer must be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception.

(f) Transfer to service on the Household establishment of the President.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 61 of 1998.

Date of Order : This the 19th Day of January 2000.

The Hon'ble Shri G.L.Sanglyine, Administrative Member.

Shri Swadhin Dutta,
Son of late Nani Gopal Dutta,
Resident of Bhiara Bagan,
Gate No.3, Maligaon,
Guwahati-11.

... Applicant.

By Advocate Shri A.K.Roy,

- Versus -

1. Union of India
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati-11.
2. The General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. Financial Advisor & Chief Accounts Officer,
N.F.Railway, Maligaon, Guwahati-11.
4. Chief Cashier,
N.F.Railway, Maligaon,
Guwahati-11.

... Respondents.

By Advocate Shri S.S. Gupta, Railway counsel.

O R D E R

G.L.SANGLYINE, ADMIN. MEMBER.

After retirement from the Defence service the applicant served as a Junior Clerk in the office of the Chief Cashier, N.F.Railway with effect from 1.12.1964. While in service in the Railway he applied for the post of Lecturer in Hojai College and he was offered appointment as Lecturer in the College in the scale of pay of Rs.700-1600/- as per the norms of the University Grants Commission. He applied for extra ordinary leave without pay for a period of 6 months with effect from 1.12.1981 with permission to accept the appointment during the leave period as per existing rules. However, instead of giving extra ordinary leave the Chief Cashier, N.F.Railway released the applicant to join the

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College by letter dated 30.11.1981 by laying down certain terms and conditions as mentioned therein. He was released by order dated 1.12.1981 on the stipulated terms and conditions. His lien was extended for a further period of one year by letter dated 14.11.1983 with effect from 2.12.1983 or the date of absorption in the College, whichever is earlier on the terms earlier stipulated. The applicant was ultimately permanently absorbed in the College with effect from 2.12.1984 and the applicant offered his resignation on 6.2.1985 with effect from 2.12.1984. His resignation was accepted by order dated 24.6.1985 issued by the Chief Cashier, N.F. Railway, Maligaon. The applicant was not paid pension and gratuity. The respondents informed the applicant that since he did not render 20 years of qualifying service before joining the College, i.e. on 2.12.1981, his case for pension cannot be considered. The applicant submitted several representations and the Railway authorities informed him that since he violated the conditions laid down in the office Order dated 1.12.1981, it was deemed that the applicant had resigned from service on 2.12.1981. Therefore, he was not entitled to pensionary benefits. The applicant submitted Original Application No. 39 of 1991. This O.A. was disposed of on 30.8.1995. In para 6 of that order it was recorded that the question that arose was as to whether the respondents could deny the benefit of the lien to the applicant on the ground of violation of the conditions of the order dated 1.12.1981. The Tribunal came to the conclusion that the matter needed scrutiny by the respondents. Therefore in para 11 of the order directions were issued as follows:

- "(1) The FA & Chief Accounts Officer, N.F. Railway, Guwahati, Respondent No.2 is hereby directed to re-examine the claim of the applicant for pension and DCRG in the light of the circumstances discussed above in this order.

(ii) The respondent No.2 will decide in accordance with the relevant rules as to whether violation of the conditions of the letter dated 1.12.81 could be a ground to deny the benefit of the lien as the order itself provided only that on failure to abide by the conditions the applicant could be re-called.

(iii) In the even of the respondent No.2 coming to the conclusion that the denial of benefit of the lien was not permissible he shall consider extending the benefit of pension to the applicant taking into calculation the period of three years of service for which period the lien would be available."

In compliance with the directions the respondents issued an order dated 4.3.1996 rejecting the claim of the applicant as below :-

"..... My observation against the relevant sub-paras of para 11 of the above said order are put herein below in seriatim, sub-parawise -

i. The request of the applicant for grant of pension and P.C.R.G in the light of the circumstances narrated in the order has been thoroughly gone through and no rules and procedures could be found out which would warrant reversal of the previous action of the Railways administration on the subject;

ii) &

iii) As all actions of the executives in the Government Department are to be exercised within the framework of the relevant rules, laws, the circulars and instructions of the Railway Board (Ministry of Railways), Ministry of Home Affairs, Ministry of Finance etc, on the subject and the employer and employee relations are based on the set rules and mutual contract and there is little scope of declaring any violation of the said contractual stipulations as legal one. These points have also been elaborately discussed in paragraphs 3 & 4 of the Hon'ble Tribunal's aforesaid order.

As Shri Dutta was serving in the non-Government Organisation, the onus to deposit his required contributor etc. to the Railways for service in other organisation for retention of his lien on the Railways was on him, if he desired to keep his lien on the Railways. Shri Dutta was continuing in his new profession in the College and never expressed his intention to come back to his Government post and the plea of recalling him also neither arose nor can it be a valid ground to

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rectify the illegality and breach of contract by him which already brought the contract to a nullity by own volition of Shri Dutta."

Thereafter the applicant submitted further representations with reference to the order dated 4.3.1996. Since there was no reply he submitted C.A.No.219/97. The O.A was disposed of with the direction to the General Manager, N.F.Railway to dispose of the representations of the applicant. Consequent upon the directions the Annexure-Y order was issued. In that order the Railway authority had taken the plea that according to O.M.No.F1(11)-E-III(B)/75 dated 7-11-1975 appointment of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation. Hence retention of lien after release from the Railway and joining to the new post was not permissible under the provision of the rules in force as above, but inadvertently he was released from the Railway on the terms and conditions laid down in the order dated 1.12.1981. The respondents admitted that the release of the applicant on the terms and conditions set out in the order dated 1.12.1981 was a lapse on the part of the Railway administration. But since the release on those terms and conditions was not in accordance with the relevant rules, laws, circulars and instructions of the Government on the subject, the applicant cannot be granted pensionary benefit under the Railway Pension Rule. The respondents further maintained that the applicant did not complete 20 years of qualifying service in the Railway. The applicant has therefore submitted the present Original Application. In this application he has prayed for quashing and setting aside the Annexure-R order dated 4.3.1986 and Annexure-Y order communicated by

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letter dated 2.1.1998 and to direct the respondents to count his service in the Railway upto 2.12.1984 and to pay him the pensionary benefits including gratuity.

2. The application has been keenly contested by both sides. I have heard learned counsel. The contents of the office order No.CP/103 dated 1.12.1981 are re-produced below for convenience :

Having been selected for appointment as lecturer in Bengali at Hojai College vide Principal and Secy's letter No.CC/G-6/7374 dated 4.11.81, Shri Swadhin Dutta, Sr.Clerk drawing pay at Rs.428.00 plus Rs.35/- special pay P.M. in scale Rs.330-560/- is relieved from this office w.e.f. 01.12.81 (AN) on the following terms and condition :-

1. His lien will be retained in this office for a period of two years (in exceptional case upto 3 years). If he is not permanently absorbed within the above period from the date of his appointment in the new post he should immediately on expiry of the said period either resign from the Railway service or revert to his parent office.
2. His pay in the Ex-cadre post will be fixed in the pay scale of that post subject to the condition that his pay in the new post should not exceed 30% of his pay or Rs.100/- whichever is more.
3. He will have to deposite the leave salary and pension contribution with this Railway regularly at the prescribed rate during the period of his lien is retained in this office, failing which he will be recalled for breach of the undertaking.

Sd/-
Chief Cashier,
N.F.Railway, Maligaon."

The case of the respondents in short is that the applicant was wrongly granted retention of lien in the Railway service for the period from 2.12.1981 to 1.12.1984 he served in Hojai College, which was not a Government educational institution. He cannot therefore be granted pension by the Railway as his qualifying service with the Railway was less than 20 years

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as on date of his release to join service in the College. Erroneous actions of the officers of the Railway taken contrary to laws, rules, circulars, instructions etc. issued by the competent authority, which resulted in favour of the applicant cannot give him right to receive pensionary benefit. The applicant on the other hand supported the action of the Chief Cashier as reflected in the aforesaid order dated 1.12.1981 and the order extending retention of lien dated 14.11.1983 and submitted that the actions were according to rules, policies and instructions of the Government. The fact that resignation of the applicant was accepted with effect from 2.12.1984 would further support that the service of the applicant in the Railway was upto 2.12.1984. In fact such resignation was only a technical resignation. In fact, as per law, resignation cannot be accepted with retrospective effect and his service in the Railway should have been counted upto 24.6.1985, the date of issue of the order accepting resignation of the applicant. It was also submitted that there was nothing wrong in the action of the Chief Cashier. The Hojai College is ^{an} aided College under deficit system of Grant-in-Aid. The post against which the applicant was appointed was a Government sanctioned permanent post and salary was paid by the Government from the Government revenue. Scale of pay was fixed according to the norms prescribed by the University Grants Commission. Selection for regularisation was conducted by the State Selection Board constituted by the State of Assam and regularisation was made by the Governor of Assam through the Director of Public Instructions, Assam who controls the whole matter of appointment, removal, termination, promotion, service conditions, salary etc. and the Governing Body of the College has nothing to say in

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regard to the post. As the post is a Government sanctioned permanent post and is under the State Government, deputation to the post could be made and after due consideration of the status of the College and the post the F.A & C.A.O. N.F. Railway forwarded the application of the applicant for the post and granted the lien. After permanent absorption in the post of Lecturer the applicant had tendered technical resignation as per rule. When the applicant was permanently absorbed in the College in such circumstances the date of acceptance of resignation will be treated as the date of retirement and there is no question of the period of service of the applicant with the Railway falling ^{-ing} short of the qualifying service of 20 years. At any rate, even if it is assumed that the applicant was wrongly granted the lien, it was not the fault of the applicant and therefore by applying the principle of equity and conscientious ^{-ce} pensionary benefit cannot be denied by excluding the period of 3 years from the calculation of 20 years qualifying service.

3. The applicant is a Master Degree holder and after having served the Railway for about 17 years he applied on 3.10.1981 for a post of Lecturer in Bengali in Hojai College with a no objection certificate issued by the F.A. & C.A.O. N.F. Railway, Maligaon. He was selected for appointment to the post subject to the approval by the Director of Public Instruction, Assam as a temporary Lecturer against a Government sanctioned permanent vacancy. The selection was subject to regularisation of his service by the State Selection Board and the Director of Public Instruction, Assam as provided in the Assam Aided College Employees Rules, 1960 and it is further governed by the Gauhati University and the Government of Assam Rules as in force from time to time. The Director of Public Instruction, Assam approved the appointment subject to selection by the State Selection Board. Subsequently the Selection Board approved his appointment. On being appointed the applicant prayed

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208 that he may be granted 6 months extra ordinary leave without pay with effect from 1.12.1981 with the permission to accept appointment during leave in accordance with para 2108(b) of RII. He further stated that notice for resignation or voluntary retirement as required will be submitted by him in due course. The respondents however, released him from Railway service to join the new appointment on the conditions as stipulated in the order dated 1.12.1981 re-produced hereinabove. Probably while issuing the order dated 1.12.1981 the provisions of Code No.244 of the Indian Railway Establishment Code (Vol.I) were kept in mind. The Code No.244 is re-produced herein below :

"244. Forwarding of application to another post in railway service or outside the Railways:-permission to a railway servant to submit an application for a post, to appear for an examination for a post, or to transfer his services to another post in railway service or in another office or Department under the Government of India or under a State Government shall not ordinarily be refused unless the head of the office or department in which he is employed considers that the grant of permission would not be consistent with the interests of the public service.

Railway Ministry's decision-(1) The applications from serving employees for employment elsewhere, submitted otherwise than in response to advertisements or circulars inviting applications, should not be forwarded.

(E(NG)65-RC-1/136 dated 29.1.1966)

(2) The lien of a permanent Railway servant appointed under another Central/State Government or office may be retained on the Railway for a period of two years (three years in exceptional cases). If he is permanently absorbed within this period in the new post, he should immediately on expiry of the said period, either resign from the Railway service or revert to his parent office. Applications should be forwarded only if an undertaking to abide by these conditions is given by the staff concerned.

(E(NG)-11-69-AP.21 dated 7.3.1975.)

(3) The applications submitted by railway servants in response to advertisement issued by UN Agencies or other International Organisations in newspapers should not be forwarded. When a Railway servant applies on his own volition for a post under a foreign Government/

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U.N. Agency, he should mention in his application seeking permission that on his securing appointment under the foreign Government he will resign or retire from Railway service if the retirement is due under normal rules. On receipt of the application, the competent authority should examine, and decide whether permission should at all be granted to him. If the permission is granted the railway servant may be advised to apply for the post direct. The application should not be forwarded through the Department to avoid the impression that the Government is sponsoring the individual for the post under the foreign Government.

(E(NC)-11-68 AP.13 dated 10-10-69, MHA O.M.No.27/53/77/EDP dated 22-3-78 and No.78E(O)-II/2/21 dated 6-6-1978.)"

In 1986 onwards when the matter of granting pensionary benefit to the applicant was considered a view was taken without considering the provisions of this code. The respondents were twice directed by this Tribunal to look into the claim of the applicant for pensionary benefits and gratuity. However, it appears that the core of the matter was not addressed to by them, namely, whether in the facts of the case the post of Lecturer to which the applicant was appointed as a post under the State Government of Assam. In the order dated 2.1.1998 the respondents rejected the claim of the applicant to count the period of 3 years as lien by taking support of the O.M.No.F1(11)-E/III(B)/75 dated 7.11.1975 issued by the Ministry of Finance, Department of Expenditure, which according to them reads : "Appointment of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis will not be regarded as deputation." Nothing has been shown whether this O.M. has superseded or overruled the Indian Railway Establishment Code No.244 and the decisions of the Railway Ministry thereunder mentioned above, IREM 3902 and other Railway circulars. In fact, it is seen from the

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note of the Chief Cashier dated 31.7.1986 and those of the superior officers onwards dealing with the pension matter of the applicant submitted before this Tribunal that there was no application of mind to the nature of the post. This was not reflected in the letter dated 14.5.1986 of the D.P.I., Assam also. In those notes there was no mention of the office memorandum dated 7.11.1975. Thus it is clear that the order dated 2.1.1998 is without reference to the facts on records. In fact, it appears that the respondents took different stands at different time. For example in Annexure-3 to the written statement dated 21.12.1987 it appears that the applicant lost the period of 3 years as he had violated certain terms and conditions. In Annexure-12 to the written statement dated 3.5.1988 it was stated thus :-

"On joining the Hojai College as Lecturer granting lien to Shri S.Dutta was however not regular as the Hojai College was not a Govt. college which has been received subsequently, by the competent authority and his lien to this Railway was disallowed and his release from this office w.e.f. 1.12.81 was treated as his resignation from service from that date (i.e.1.12.81)."

Further, while in the order dated 2.1.1998 reliance was placed on the O.M. dated 7.11.1975, the learned counsel for the respondents relied on the Master Circulars of the Railway in support of the contentions of the respondents. In the light of the above I dispose of this application with a direction to the respondents to consider afresh the claim of the applicant for pensionary benefits. While considering the matter they will have to specifically determine whether the said post of lecturer was a post under the State Government of Assam. For this purpose enquiry may be made from the Government of Assam. They shall also take into consideration among others the provisions of Indian Railway Establishment Code (Vol.I) No.244, with Railway Ministry decisions thereunder. Indian Railway Establishment Code (Vol.II) No.2433, Indian Establishment Manual para 3902, Office

Memorandum No.F1(11)-E-III(B)/75 dated 7.11.1975 and any other rules relevant to the matter of retaining lien. It is specifically directed that the respondent No.3, Financial Adviser & Chief Accounts Officer, N.F.Railway, Maligaon, Guwahati shall personally hear the applicant before issuing the fresh order. He shall also take into consideration the facts on records. The order shall be communicated to the applicant within 3 months from the date of their receipt of this order.

Since the matter is to be re-considered by the respondents the other issue whether on equity and conscience the applicant can get relief is not considered at present. If the applicant is still aggrieved with the order of the respondents, he may approach the appropriate authorities including this Tribunal for redressal of his grievances.

Application is disposed of. No order as to costs.

Sd/MEMBER (Adm)

H.F. Railway.

Office of the
Dy. Chief Accounts Officer (C&P),
H.F. Railway Maligaon.

HO. CP/EP/S. Du ta (CAT/GM).

Dated 11-7-2000.

To
Sri Swamin Dutta
Exo. Sr. Clerk
Cash & Pay Office,
Maligaon

Shri B. B. Bhowan,
Gate No. 3, Maligaon,
Guwahati-781011.

Sub:- O.A. No. 61/98 before Hon'ble
CAT/Guwahati- Sri Swamin Dutta
Vs UOI and others.


Ref:- Hon'ble CAT Guwahati's order
dated 19.1.2000 in O.A. No. 61/98.

....

Enclosed please find herewith the
breaking order dated 11-7-2000 issued by Dy. Chief
Accounts Officer, H.F. Railway/Maligaon, Guwahati-11 in
compliance to Hon'ble CAT/Guwahati's Bench order dated
19.1.2000 in O.A. No. 61/98.

Please acknowledge receipt.

2. As above in
16 sheets.

 11/7/2000
Dy. Chief Accounts Officer (C&P),
H.F. Railway/Maligaon.

AC

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S P E A K I N G O R D E R

Reg:- Compliance of the Order and directions of the Hon'ble Central Administrative Tribunal, Guwahati Bench dated 19.1.2000 in O.A.NO.61 of 1995 (Shri Swadhin Dutta - VS - Union of India and others).

On going through the aforesaid Order of Hon'ble CAT/Guwahati Bench, it is seen that the above original application was filed by Shri Swadhin Dutta, an Ex-Senior Clerk under the Chief Cashier, N.F. Railway, Maligaon, before Hon'ble CAT/Guwahati Bench seeking the following reliefs:-

- (i) To direct the respondents to count the applicant's service in the Railway upto 2.12.84 i.e., the date with effect from which his resignation had been accepted, counting the lien period as in Railway Service ;
- (ii) To quash and set aside the Order/Decisions dated 4.3.96 and 2.1.98 of the the respondents ;
- (iii) To direct the respondents to pay the pensionary benefits including DCRG for his service in Railway ;

AND

Hon'ble Tribunal vide the aforesaid order dated 19.1.2000 with interalia the following directions :

- (i) the Respondents are to consider afresh the claim of the applicant for pensionary benefits.
- (ii) while considering the matter they will have to specifically determine whether the said post of Lecturer was a post under the State Government of Assam and for this purpose enquiry should be made from the Government of Assam.
- (iii) the respondents shall also take into consideration among others :-
 - (a) the provisions of Rule 244 - of Indian Railway Establishment Code Volume - I with Railway Ministry's decisions thereunder ;

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- (b) Rule 2433 of the Indian Railway Establishment Code Volume - II ;
 - (c) Para 3902 of the Indian Railway Establishment Manual ;
 - (d) the Office Memorandum NO.F -1(II) -E -III(B)/75 dated 7.11.1975 and any others rules relevant to the matter of retaining lien ;
 - (iv) The Respondent NO.3 i.e. Financial Advisor and Chief Accounts Officer, N.F.Railway, Maligaon, Guwahati should personally hear the applicant before issuing the fresh order, besides taking into consideration the facts on records.

In obedience to the aforesaid orders of the Hon'ble Tribunal, I have delved into the records and facts of the case thoroughly and have given due consideration to each of the points as raised by the applicant vis -a -vis the provisions of the Rules in the Indian Railway Establishment Codes/Manuals and, the Office Memorandum as directed in the aforesaid orders dated 19.1.2000 by the Hon'ble Tribunal and have also made necessary enquiries, as directed, from the Government of Assam, to ascertain whether the said post of Lecturer in Hojai College was a post under the State Government of Assam. I have also granted a personal hearing to Shri Swachin Dutta (the applicant) and gave him all opportunities to represent his case.

On going through the service records of the applicant, it is found that the applicant - Shri Dutta while in service on the Railways applied for the post of a Lecturer in the Hojai College, Newgong, Assam in response to the Hojai College Authority's open advertisement for filling up the post of a Lecturer and after being selected by the Authorities and receiving the appointment letter issued by the Principal and Secretary, Hojai College (under letter NO.

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HC/G-6/7374 dated 4.11.1981) for the post of Lecturer in that College, he applied for grant of 6(six) months "Leave without pay" vide his application dated 13.11.1981 to FA & CAO/N.F. Railway, to enable him to join the post of Lecturer in that College, mentioning further that he would resign or retire voluntarily from Railway Service in due course. Instead, the Chief Cashier, N.F. Railway, under whom Shri Dutta was posted, released him with certain terms and conditions - like, retention of lien for 2 years at the initial stage, subject to extension by one year more, deposit of Leave Salary and pension contribution, fixation of pay as of an Ex. Cadre post, etc. vide letter NO. CP/EP/S. Dutta dated 30.11.81 and 7.8.82, and Office Order NO. CP/156 dated 1.12.81, which were not permissible under extant rules and laws on the subject and which are, as per rules, applicable in case of deputation of Ely. Servant to another post under the Central Govt. or State Govt. or other Govt. undertakings or Govt. Autonomous Bodies ; ignoring the fact that, Hojai College does not come within the category of the above Institutions/Organisations. Records further reveal that Shri Dutta rendered only 17 years of qualifying service on the Railways w.e.f. 1.12.1964 (the date of his appointment on the Railways) to 1.12.1981, prior to his leaving the Railway Job for joining the post of Lecturer in the Hojai College, and that, after expiry of 2 years period of service in the College he further applied for 1 year's extension of the so called lien period w.e.f. 2.12.83 to 1.12.84 and thereafter, submitted his resignation from Railway Service w.e.f. 2.12.84 under his letter dated 6.2.85 without returning back to Ely Service, following his regular absorption as Lecturer in Hojai College. Shri Dutta now wants to derive the benefits of Pension and DCRG on the Railways, on the Authority of Chief Cashier's letters/Office Order referred to above claiming that, the so called lien period w.e.f. 2.12.81 to 1.12.84 i.e. 3 years should be added to his earlier qualifying service of 17 years on the Railways (w.e.f. 1.12.64 to 1.12.81) thereby to make a total qualifying

service period of 20 years, which is the minimum prescribed qualifying period of service to be rendered by a Railway Employee to be entitled for grant of pension and DCRG on the Railways as per provisions of the Manual of Railway Pension Rules/Railway Service (Pension) Rules, etc. Since such a request of Shri Dutta is unacceptable under the prescribed rules and laws of the Railways, his claim was rejected by the Railway Authority including the Ministry of Railways (Railway Board) and Shri Dutta was duly communicated about those decisions. Being aggrieved by the aforesaid rejection orders, Shri Dutta also filed O.A.Nos.39/91 and 219/97 before Hon'ble CAT/Guwahati Bench against the rejection Order/decision of the Railway Authority. While the O.A.NO.39/91 was disposed of by the Hon'ble Tribunal by their Order dated 30.8.95 with directions to FA & CAO, N.F.Railway, Maligaon, Guwahati (Respondent No.2 in the said O.A.) to re-examine the claim of the applicant for Pension, DCRG etc. the O.A.NO.219/97 was disposed of by the Hon'ble Tribunal vide Order dated 24.9.97 with direction to the General Manager, N.F.Railway to dispose of the representation of the applicant.

In compliance to the Hon'ble Tribunal's aforesaid orders, detailed Orders/Decisions of the FA & CAO, N.F.Railway and General Manager, N.F.Railway were already communicated to the Applicant (Shri Swamin Dutta) rejecting his claim with reasons thereto, in both the cases. Shri Dutta again filed the present O.A.NO.61/98 before Hon'ble CAT/Guwahati and the Hon'ble Tribunal has now disposed of this application vide order dated 19.1.2000 with certain specific directions as mentioned herein-before.

While examining the case afresh in compliance to the Hon'ble Tribunal's Order dated 19.1.2000 in the present O.A.NO.61/98, I find no fresh point/reason which may call for, either, to revise or modify these decisions of the FA & CAO and G.M. which were already communicated to

him earlier and as such for the sake of brevity and avoiding repetition, I herein ^{abstain} from repeating/discussing these decisions of the FA & CAO and General Manager ; and/or to the causes/reasons put in these Orders, since the viability of these orders/decisions still subsists. As such, endeavour has been made to have been specifically indicated/directed in the Hon'ble Tribunal's Order dated 19.1.2000 in the present O.A.NO.61/98 and to find out feasibility of giving any relief as claimed by Shri Dutta in the said O.A.NO.61/98 within the ambit of the guide-lines/directions laid by the Hon'ble Tribunal with due regard to the set rules, procedures, Laws and Orders of the Ministry of Railways (Railway Board), etc on this subject. As per direction of the Hon'ble Tribunal, reference was also made to the Govt. of Assam for their clarification on the points raised by Hon'ble Tribunal.

In reference to the queries made by the Railways, the Govt. of Assam have categorically clarified the following under their letter NO.B(2) H.1110/93/Pt.II/51 dated 3.4.2000.

- (i) that, the post of Lecturer held by Shri Swachin Dutta in Hojai College in the District of Nagaon, Assam is not a Govt. post.
- (ii) that, Hojai College is a non-Government aided College under the Deficit G.I.A. (Grants -in -Aid) system as prevailing in Assam, and such Colleges are being Administered by Governing Body as per provision in Assam Aided College Management Rules, 1976.
- (iii) that, such Deficit system of G.I.A. (Grants -in -Aid) Colleges are given grants annually by the Government to meet the shortfall in the salary requirement of the College ; and the Principal of

the College is the pay disbursing Authority who is not a Government functionary ;

- (iv) that, the status of Shri S. Dutta is only that, of a non-Govt. Employee, and State Government is not the Appointing Authority in respect of Lecturer of Deficit Colleges.

In response to question put to Shri Swadhin Dutta (The Applicant) during the personal hearing before the PA & CAO/Maligaon (Respondent No.3) on 28.3.2000, Shri Dutta clarified the following :

1. that, his basis for sustenance of his claim for counting w.e.f. 2.12.81 to 1.12.84 towards grant of pension, etc. on the Railways, was the Chief Cashier/N.F. Railway's letter NO. CP/EP/S. Dutta dated 30.11.81, wherein certain terms and conditions for granting him lien were stated and another letter issued by the Chief Cashier (vide NO. CP/EP/S. Dutta dated 7.8.82) asking Shri Dutta to deposit the Leave Salary and Pension contribution (Foreign Service Contribution). No other rules/authority could be cited by Shri Dutta in support of his claim.
2. In response to queries made as regards background and viability etc. of the Chief Cashier's letters/Orders etc. Shri Dutta clarified that while he agrees with the contention that the orders should have been issued by the Chief Cashier with the approval of the Head of Department under the extant rules and provisions ; he expressed that he is not in a position to say anything as to how such orders were issued by the lower official. In this connection the full text of Question No.2 and reply to same by Shri Dutta is extracted herein below for ready reference.

Question No.2:- A Railway Employee is governed by the extant rules in Establishment matters.

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Even, if an employee is ignorant about the extant rules and various provisions, he is governed by the statutory Rules and provisions for that Organisation and any power exercised by any Authority should be within those statutory provisions. Any order to be valid has to be issued in conformity with the statutory provisions. Any other order by any un-authorized person not competent to issue, and not in conformity with the statutory rules has no relevance and effectiveness.

In your case, the extant provisions have not been properly followed. How do you react to this ?"

Reply:

" I agree with your contention that it should have been done with the approval of Head of Department under the extant rules and provisions. How it has been done by the lower Officer, I am not in position to say anything."

3. In response to other queries in the personal hearing Shri. Dutta further clarified as under:-

- (a) Hojai College is not a Government College in real terms but it receives financial support under deficit scheme.
- (b) His appointment letter was issued by the Principal and Secretary, Hojai College being Government Aided Institution.
- (c) He has no idea as to how he was given permission for retention of leave, etc by the Chief Cashier while his original application was addressed to FA & CAO for grant of 6 months L.W.P. only to start with for joining the College.

(3) He did not revert back to the Railway Cadre after he was released from the Rly for joining the Lecturer's post in Hojai College w.e.f. 2.12.81 on expiry of the of the terms of the so called lien period, since he was absorbed in Hojai College permanently.

On going through the various Rules and provisions in the Indian Railway Establishment Manuals, Indian Railway Establishment Codes, Office Memorandum etc. and Railway Board's extant Instructions/Orders on the subject besides those mentioned in the Hon'ble Tribunal's Order dated 19.01.2000, it is quite apparent that those rules/orders/instructions are very much specific and do not support the claim of Shri Dutta even to the least as will be revealed from following observations:-

1). Rules 244 of Indian Railway Establishment Code Vol. I relates to forwarding of application of a Railway Servant to another post in Railway Service or in another Office or Department under the Government of India or under a State Government.

In the instant case, the application for appointment in a private College (i.e. Hojai College) submitted in response to an open advertisement from the College Authority cannot be said to be an application for posts under the State Government in terms of ~~classification given by the Government in terms of~~ the clarification given by the Government of Assam vide their letter NO.B(2) H 1110/93/Pt. II/51 dated 3.4.2000, and as such, question of granting lien, depositing leave salary and Pension contribution (Foreign Service Contribution) etc. does not arise under extant rules/laws. Further, Hojai College is managed by a Governing Body and not by Government functionaries and his appointment letter was also not issued by the Government of Assam. Moreover, no such letters dated 30.11.81 and 7.8.82

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and Office Order NO. CP/156 dated 1.12.81 could have been issued by the Chief Cashier, M.F. Railway had he applied his mind by going through the contents of the application/prayer dated 13.11.81 of the applicant (Shri Dutta) and followed the extant rules and procedures etc, on the subject before issuing such erroneous letters/orders. I also do not find any document as to believe that while issuing the letters/orders for grant of lien etc. to Shri Dutta, the lower Authorities had in their mind about the provisions of Rule 244 of Indian Railway Establishment Code - Vol. I. Moreover, in the present case, no benefit of lien can be extended when the applicant never prayed for grant of lien before his release to join the Lecturer's post in Hojai College, and grant of such lien/deputation etc. suo-motu without valid provision/authority is not permissible and quite against rules/laws, and found to be un-authorised acts. The Assam Aided College Management Rules, 1976 also does not support the cause of the applicant. The distinction between Government College and Government Aided College is quite apparent.

The Ministry of Railway's decision as incorporated under Rule 244 of Indian Railway Establishment Code (Vol. I) inter-alia clearly provides that question of retention of lien would arise only in case of a permanent Railway Servant appointed under another Central/State Government Office/Deptt. etc.

(11) Rule 3902 IRM.

Rule 3902 of IRM (1968Edn) lays down the procedure for forwarding of applications from serving Railway Employees for posts outside the Railways and in its sub-para (b) and Note thereunder which relate to an application for a post in a private concern, it is clearly laid down as under:-

(b) Railway Servant who have to be in connection with the Railway, if selected.

Note :- In case of applications to private concerns, the Railway Servant must first offer to resign or retire from Railway Service".

(iii) Rule 1401 & 1404 of IRM:-

Rules 1401 and 1404 of IRM (Indian Railway Establishment Manual) clearly specify as to where and in which cases lien can be allowed to be retained in former Government post and the main criteria being Public Interest aspect and also the status/nature of the other Establishment where the permanent Railway Employee seeks his employment i.e. whether that Establishment is Central/State Government Department/Office or Public Sector undertaking owned wholly by Government (Statutory Union Government) or an Autonomous or a Semi - Government Organisation, etc. In the instant case, no public interest is involved since Shri Dutta had joined the Hojai College at his own interest and against the Open Advertisement for the post from the College Authority, and the Hojai College is not a Government College/Institution. As such the provisions of the Rule 1401 and 1404 also do not support the claim of Shri Dutta as no question of lien or deputation or transfer of service of Shri Dutta from Government post to a private College under deficit grant system arises as per the provision of the rules.

Besides Rule 3902 of Indian Railway Establishment Manual, there is also clear provision under para 1403 of Indian Railways Establishment Manual for dealing with the application for employment in a private concern.

Rule 1403 of IRM Volume - I reads as under:-

"Para 1403 - Application for employment in a private concern :

When a Railway Employee desires to apply for a post in a private concern he should first offer to

Contd....11....

resign or retire from Railway Service. For this purpose any Employee other than the employee in the Central Government or State Government, Public Sector Enterprise wholly or partly owned by the Central Government or a State Government, or an Autonomous body wholly or substantially financed and controlled by the Central Government or a State Government, will be treated as a private employment. Rules 1404 and 1405 of the Establishment Manual also stipulate that the Employee has to submit technical resignation if permanently absorbed in the new post or does not revert back to the parent Cadre on expiry of such lien period. As the case of the applicant (Shri Dutta) clearly falls within the purview of Rule 1403 which relates to a private employment, no question of technical resignation arises since the employee should first resign or retire from Railway Service before joining a post in a private concern.

As per Rule 1403 of IRM Volume - I the applicant (Shri Dutta) is deemed to have submitted resignation w.e.f. (with effect from) 2.12.1981, i.e. the date on which he was released from the Railways for appointment to a private College. Further, it is also not a case of absorption in another Government Department.

Since, Shri Dutta was well aware that Hojai College is a private Institution, it was incumbent on him to first resign from the Railway Service prior to joining the private College in terms of strict provisions under Rule 1403 of IRM. Instead, Shri Dutta acquiesced to a lower and unauthorised official's erroneous, unwarranted and uncalled for letters/ order etc. granting him ineligible and undue benefits of lien/deputation, etc. for service in a non-Government private Institution of which he (Shri Dutta) himself was fully aware and in all probability with the intention of deriving extra and undue benefits at a later stage. Hence, he cannot claim/ derive any undue benefits out of the Chief Cashier's erroneous/ unauthorised letter NO. CP/EP/S. Dutta dated 30.11.81 granting

lien Sue-Motu and O.O.NO.CP/156 dated 1.12.81 and the letter dated 7.8.82 issued in connection with deposit of the Foreign Service Contribution, etc. since these letters/ Office Order were not issued in consonance with statutory rules and with the approval of Competent Authority, i.e. PA & CAO/N.F.Railway.

(v) Rule 2403 - RII:-

According to Rule 2403 of Indian Railway Establishment Code Vol.II (1974 Edn) the Service of an Officer does not qualify for Pension Rules unless it conforms to the following 3 conditions ;

- First - The Service must be under Government,
- Second - The Employment must be substantive.
- Third - The service must be paid by the Government.

Further, para 2405 of Indian Railway Establishment Code Vol.II(1974 Edn) further provides that, the service of an Officer does not qualify unless he is appointed and his duties and pay are regulated by Government or under conditions determined by Government. It is quite apparent that the applicant (Shri Swamin Dutta) during these 3 years' period of service in that Private College drew his pay from the private source i.e. Kojai College which were provided from own fund of the College and partly from Aid/Grants from Assam Government based on deficit finance scheme etc. and not in the form of salary from General Revenues of the Government of India or State Government of Assam. On this ground also these 3 years service in a private College cannot be computed as qualifying service for the purpose of granting pension, DCRG, etc on the Railways, more so when extant Government rules/Laws do not permit for granting such benefits to him and he also never reverted back to his parent Cadre in the Railways, presumably with the intention to derive the benefit of the so called terms and conditions given in the Chief Cashiers letters/orders mentioned here in before. Further, from own

statement of Shri Dutta, it is quite evident that in the Hojai College, the service of the applicant (Shri Dutta) was purely on contributory system and not a pensionable one.

(v) On the point as to whether the O.M.NO.F-1(II)-F/III(B)/75 dated 7.11.75 regarding deputation has superseded or over-ruled the Indian Railway Code/Provision of Rule 244 of Indian Rly. Estt. Code Vol. I, 3902 of IRM, and other Railway circulars, it is apparent that there is no question of over-ruling any of the provisions of the Codes or Manuals or circulars.

(vi) The Principle/rules regarding grant of leave/deputation, depositing Foreign Service Contribution, etc application of Pensionary benefits, etc have been clearly and elaborately laid down in the various provisions of the Indian Railway Establishment Codes, Indian Railway Establishment Manuals, Railway Boards' Circulars, Manual of Railway Pension Rules, Railway Services (Pension) Rules, etc and none of these Rules/Provisions supports the claim of Shri Dutta. The Pensionary benefits are granted to a Railway Employees on superannuation, death or quitting Railway Service after rendering minimum period of qualifying and satisfactory service on the Railways (which is 20 years period in the instant case), on reasons, whatsoever, and are admissible only in accordance with the provisions under Manual of ^{Railway} Pension Rules 1968, Railway Services (Pension) Rules 1993, etc and not on hypothetical basis or on the plea of some letters/Office Order issued by some unauthorised officials quite in contravention to statutory rules.

(vii) The Rule 311 of the Manual of Railway Pension Rule, 1950 also clearly lays down inter alia that no Pensionary benefit or compassionate grant and/or allowance -s may be granted to a Railway Servant who resigned from

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service. His resignation with effect from 2.12.84 was also not preceded by his rejoining the Railway Cadre rendering 20 years of qualifying service on the Railways.

The Rule of estoppel ought not to prevail against a plain and mandatory provision of law. Moreover, to be eligible for Pension, etc one's case must fall within the purview of the Manual of Railway Pension Rules, 1950 and Railway (Services) Pension Rules 1993, etc. It is also a cardinal Rule of law that all act or acts of any executive, high or low, that are inconsistent with the extant statutes are, to the extent of inconsistency, is invalid and ineffective, and on this ground also the letter of the Chief Cashier issued vide NO.CP/EP/S.Dutta dated 30.11.81 and O.O.NO.CP/156 dated 1.12.81 and letter NO.CP/EP/S.Dutta dated 7.8.82 granting lien/deputation benefit, etc, to Shri Dutta (the Applicant) are invalid, ineffective and inoperative, since, the same were issued in contravention to the prescribed rules/orders on the subject.

The Government is run by set rules and laws, and no deviation to it is permissible by any authority whatsoever and no official can flout the extant mandatory rules/laws at his whims etc and any act of any official in contravention to set rules cannot confer any right for any sort of benefits to the claimant who is also aware of such lapses/default/irregularity and who apparently acquiesces in the matter. Shri Dutta also did not question the matter when he received some letters/orders not in consistent with his prayer and set rules as well.

Since, the undue benefits of granting lien/deputation etc. to the applicant was extended in contravention to the statutory rules framed by the President of India and procedures laid down thereunder, the Union of India is not bound by any authorised or illegal action of any of its officials. Besides no estoppel operates against the statutes.

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I also find that the amount deposited by him as Foreign Service Contribution was refunded by the Railway Administration to Shri Dutta under Cheque NO.C 988873 dt. 9.8.88 after due adjustment of over payment on account of leave salary paid to him earlier. The contention of sufferings/harrassment as indicated by Shri Dutta in course of personal hearing, are also not tenable in as much as the claim of Shri Dutta (the Applicant) for payment of Pensionary benefits etc. are not covered by any of the provisions of the Manuals, Rules & Orders.

I also made all sincere efforts to find out feasibility of granting any relief to Shri Dutta within the ambit of the extant rules/orders/provision etc. After thorough examination of the case with a sympathetic view and deeply going through the facts of the case with due application of mind, I find no scope for granting any relief as prayed for by the applicant and to accede to his claim for grant of Pensionary benefits, etc as otherwise, the same would involve violation of the relevant Railway Rules and extant orders of the Government of India on the subject leaving aside the question of lapses on the part of the staff. I am, therefore, constrained to regretfully reject the claims of the applicant.

The present status of the case is therefore, as under:-

- | | |
|---------------------------------|--------------------------------|
| 1) Sanction of Pension & DCRG : | Not admissible. |
| 2) Claim regarding grant of : | Lacks legal validity and |
| lien/deputation concerning | enforceability since issued |
| Foreign Service Contributi- | unauthorisedly and in contra- |
| on in the letters/orders iss- | vention to extant rules, |
| ued by Chief Cashier under | Orders & provisions |
| Nos.CP/EP/S. Dutta dated | subject and as such ineffect- |
| 30.11.81 and Office Order | ive to the extent of inconsis- |
| NO.CP/156 dt.1.12.81 and | tency to extant rules and |

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Letter NO. CP/EP/S. Dutta

Orders of the Government.

Dated 7.8.82.

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The certified copy of Hon'ble Tribunal's Order dated 19.1.2000 in the O.A.NO.61/98 was received through Railway standing Counsel on 23.2.2000. Hon'ble Tribunal has also very kindly granted further time for 1½ month w.e.f. 8.6.2000 for disposal of the case.

Chief Cashier(JA) now DY.CAO(Cash & Pay),

N.F.Railway may please arrange to communicate the above observations/decision to the applicant Shri Swamin Dutta immediately as directed by the Hon'ble Tribunal.

DY.C.A.O.(Cash & Pay)

N.F.Railway : Maligaon.

Kaiko
PA & Chief Accounts Officer

N.F.Railway : Maligaon.

Date 11/7/2000.

O/c
Comptroller
Shri 111712000
Dy. Secy