

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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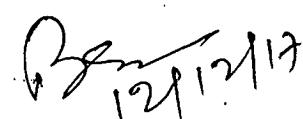
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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal :: Guwahati Bench
Guwahati

ORDER SHEET

APPLICATION NO.

486/2001

Applicant(s) S. Das

Respondent(s) C.O.I. Bons

Advocate for Applicant(s) Mu Zik Nair

Advocate for Respondent(s) Rly. Councillor

Notes of the Registry

Date

Order of the Tribunal

21.1.02

Heard Miss U.Das, learned counsel for the applicant and also Mr.S.Sengupta, learned counsel for the respondents.

Issue notice as to why the application shall not be admitted.

List on 21.2.2002 for admission.

Dy. Registrar

NS
16/01/02

Steps not yet received.

21/01/02

mb

21.2.02

Heard Mr. U.K.Nair, learned counsel for the applicant and also Mr. S.Sengupta, learned counsel for the respondents.

List on 26.3.2002 to enable the respondents to file its reply.

U.U. Shar

Member

Vice-Chairman

Service report are still awaited

20/2/02

✓
N 2
No written statement
has been filed.

26.3.02 List on 30.4.2002 to enable the
Respondents to file written statement.

By
22.3.02

I C Usha
Member

Vice-Chairman

No written statement
has been filed.

mb

30.4.02

Heard learned counsel for the
parties. Application is admitted.
Call for records. The respondents may
file ^{written} statement within four weeks from
to-day. List on 30.5.02 for orders.

By
29.4.02

30.4.02

Order dtd. Committal to
the application on

30.4.02

I C Usha
Member

Vice-Chairman

1m

No written statement
has been filed.

30.5.02

On the prayer of Mr. S.
Sengupta, learned counsel for the
respondents further four weeks time
is allowed to file written statement.

By
29.5.02

List again on 27.6.2002 for order.

Vice-Chairman

mb

27.6.02

List on 2.8.02 to enable the
respondents to file written statement.

I C Usha
Member

Vice-Chairman

1m

2.8.02

No written statement is forthcoming.
List again on 27.8.2002 to enable the
Respondents to file written statement.

By
26.8.02

I C Usha
Member

Vice-Chairman

mb

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O.A. 486/2001

Notes of the Registry	Date	Order of the Tribunal
	27.8.02	Written statement has been filed. The case is ready for hearing. List the matter for hearing on 24.9.2002. The applicant may file rejoinder, if any, within two weeks from today.
28.8.2002 W/S Submitted by the Respondent.	mb	 Member
	24.9.02	Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is not allowed in terms of the order. No order as to costs.
30.10.2002 Copy of the Judgment has been sent to the D/see. for issuing the same to the applicant as well as to the Rly. standing counsel.	mg	 Member
		 Vice-Chairman

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Notes of the Registry

Date

Order of the Tribunal

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. No. 486 2001.

DATE OF DECISION..... 24-9-2002.

Shri Sonalal Dey

APPLICANT(S)

Sri U.K.Nair

ADVOCATE FOR THE APPLICANT(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri S.Sengupta, Rly. standing counsel.

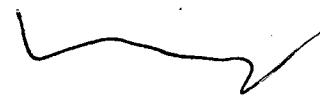
ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHIRMAN

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 486 of 2001.

Date of Order : This the 24th Day of September, 2002.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Sonalal Dey,
S/o Late Prafulla Dey, Ex. BTM Mechanist,
under Deputy Chief Mechanical Engineer,
N.F.Railway, New Bongaigaon.

...Applicant

By Advocate Sri U.K.Nair.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India, Ministry of
Railways, New Delhi.
2. The Chief General Manager,
N.F.Railway, Maligaon,Guwahati-11.
3. The General Manager (Personnel)
N.F.Railway, Maligaon,
Guwahati-11.
4. The Deputy Chief Mechanical Engineer,
N.F.Railway, New Bongaigaon.
5. The Works Manager, Railway Workshop,
N.F.Railway, New Bongaigaon. ...Respondents

By Sri S.Sengupta, Railway standing counsel.

O R D E R

CHOWDHURY J.(.V.C.)

This application under Section 19 of the
Administrative Tribunals Act 1985 has arisen and is
directed against the order passed by the respondents as
per Order No.E/M/257/1 Pt.XI dated 2.5.2001 as to the
admissibility of the compassionate allowance/pension.
The basic facts relevant for the purpose of adjudication
of the case are given hereinbelow.

The applicant was appointed as a Khalasi in the office of the Permanent Way Inspector way back in 16.12.1962. While working as BTM Mechanic in the office of the Works Manager, New Bongaigaon he was compulsorily removed from service with effect from 27.7.77. Before removing from his service a charge sheet was issued to him on 29.5.76 and the applicant submitted his explanation on 5.6.76. The authority on the basis of the charge sheet and the explanation received from the applicant removed him from service by the order dated 27.7.77. The applicant assailed the said order of removal before this Tribunal in G.C.No.9/87. By order dated 2.1.87 his application was dismissed on the ground of limitation. The applicant thereafter submitted a representation before the authority for giving him compassionate pension as per the Railway Service (Pension) Rules. When matter was not attended to despite his representation the applicant moved this Tribunal again by way of an application which was registered and numbered as O.A.47/2001. The Tribunal by its judgment and order dated 7.2.2001 directed the authority to consider his case for compassionate allowance in conformity with the law. In the order the Tribunal mentioned that the power of granting compassionate allowance is a power coupled with a duty and responsibility and accordingly directed the authorities to dispose of the said representation. By the impugned order the authority

communicated its order dated 7.2.2001. The full text of the order is reproduced below :

"In reference to your appeal dated 23.2.01 for grant of compassionate allowance/pension it is stated that your appeal along with CAT/GHY's verdict dated 7.2.01 was put up to the competent authority (CWM/NBQ) for consideration who has passed the following orders-

(1) His removal was done in the year 1977.

(2) 'P' case and service records are to be kept for five years only.

(3) CAT have themselves dismissed an application vide their order dated 02.01.1987.

(4) It was clear that he has sold two passes as seen in the notice of imposition of penalty or removal from service.

In view of such a act which has put the administration without any option but to remove Shri Dey.

Again we are of the opinion that his case does not deserve compassionate pension because of the following reasons.

(1) He has done a grave misconduct by selling two passes in the year 1977.

Therefore, in view of all these details reviewed by me. The CAT Guwahati's order dated 7.2.01 is disposed as follows.

"CAT wanted administration to consider and dispose of the representation expeditiously preferably within two months from the date of receipt of the order".

We received the order of CAT on 23.2.01 on 30.4.01 we dispose this order stating that we can not give compassionate pension to Sri Sonalal Dey because of the serious and grave nature of his misconduct in the year 1977. We also enclosing copies of the case relavant."

This is for your information that this disposes your representation dated 23.2.01 as well as CAT/GHY's order dated 7.02.01 in O.A. No. 47/2001.

Hence this application assailing the legitimacy of the order. Mr U.K.Nair, learned counsel appearing for the applicant seriously contended that the authority failed to consider his case justly and fairly and mechanically rejected his application for granting compassionate allowance.

2. The respondents submitted its written statement denying and disputing the claim of the applicant. The respondents states that the case was lawfully considered and they did not find it to be a deserving case and accordingly his claim was rejected. Mr S.Sengupta, learned Railway standing counsel also submitted that the case of the applicant was duly considered in the context of law pertaining to grant of compassionate allowance. On assessment of all the factors the authority exercised its discretion and on the facts declined to extend the compassionate allowance in view of the grave misconduct. Mr Sengupta, learned standing counsel submitted that there was no illegality calling for judicial review.

3. Before going into the merits of the application it would be appropriate to look to the relevant provisions of the Railway Services (Pension) Rules 1993. Rule 63 speaks of granting compensation pension to those class of persons who are eligible for compensation pension

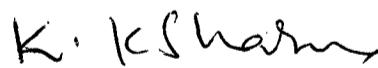
owing to the abolition of their permanent post. As per Rule 64 a Railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two thirds and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement. Rule 65 operates in those cases where a railway servant is dismissed or removed from service and as per Rule 65 such person forfeit the right of getting pension and gratuity. By creating a proviso the authority is conferred a discretion to sanction of compensation allowance not exceeding two-thirds of pension and gratuity which should have been admissible to him if he had retired on compassionate pension and if the authority finds the case is deserving special consideration. Therefore, as per the said proviso a railway servant is also entitled for compassionate pension though he is dismissed or removed from service, if the authority consideres his case that deserves special consideration. This special consideration will depend on facts and circumstances of each case. The grounds of dismissal will by itself not preclude the authority to consider his case in the light of the proviso. On the bare reading of the order of removal itself indicated that though the applicant was imposed

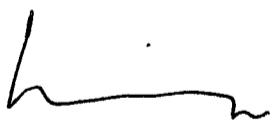
with a penalty of removal the said order was not preceeded on an enquiry as provided under the law. His application for judicial review was rejected on the ground of limitation despite the aforementioned facts the authority itself took into consideration his case for compassionate pension and by communication No.E/M/257/1-Pt.XI dated 22.8.98 sent on behalf of the Deputy Chief Mechanical Engineer addressed to General Manager(P) it was indicated that the authority at one point of time also took into consideration for reinstatement of the applicant. It also referred to a D.O.letter No.Misc dated 10.12.91 sent by the then Deputy Chief Mechanical Engineer, New Bongaigaon. It also intimated that the case file could not be located. When such a consideration was taken there must have been some reason behind such move. For some reason it did not trace out the file but then it cannot be said that there was no room for a consideration. In assessing the situation the authority address its mind to the factor that he was removed in 1977. His application was dismissed by the Tribunal and his case and service records were not available. Further he was removed on the ground that he had sold two passes as referred in the imposition of penalty of removal without holding an enquiry. While rejecting the claim of the applicant for the compassionate allowance the authority itself did not go beyond notice for imposition of penalty for removal, which apparently based on the allegations

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and explanation. The discretion referred to in Rule 65 is also coupled with it to pay compensation in the deserving cases where though removal order was passed may provide room for compassionate allowance. This power is conferred to give substantial justice to the authority if it considered the case to be deserving one on factors, ~~apart~~ from the situation ^{that} it impelled to pass removal order. In our considered opinion the authority failed to consider the relevant factors in rejecting the claim of the applicant. We accordingly set aside all the orders communicated vide memo dated 2.5.2001 and direct the authority to re-consider the matter in the light of the observation made above, as expeditiously as possible, preferably within three months from the date of receipt of copy of this order.

The application is allowed to the extent indicated. There shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

GUWAHATI

D.A. No. 486 of 2001

BETWEEN

Shri Sonalal Dey,
S/o Late Prafulla Dey, Ex. BTM Mechanist
under Deputy Chief Mechanical Engineer,
NF Railway, New-Bongaigaon.

... Applicant

AND

1. The Union of India,
represented by the Secretary to the
Government of India, Ministry of
Railways, New Delhi.
2. The Chief General Manager,
N.F. Railway, Maligaon, Guwahati-11.
3. The General Manager (Personnel) N.F.
Railway, Maligaon, Guwahati-11.
4. The Deputy Chief Mechanical Engineer,
N.F. Railway, New Bongaigaon.
5. The Works Manager, Railway Workshop,
N.F. Railway, New Bongaigaon.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

This application is directed against the letter issued under Memo No. B/M/257/1.Pt.XI disposing of the appeal preferred by the Applicant, in pursuance to the directives passed by this Hon'ble Tribunal vide order dated 7.2.2001 in OA No. 47 /2000, by which the prayer made in the appeal has been rejected.

FILED BY:
Shri Sonalal Dey, Esq.
Applicant
Juryow h/s
Krushna Nair, Advocate
Unni

2. JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and a permanent resident of Assam and as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India.

4.2 That the Applicant was initially appointed as Khalasi in the office of the permanent way Inspector, way back on 16.12.62. On 31.12.66 he was transferred and posted as BTM Mechanist in the office of the Works Manager, New Bongaigaon. While working as BTM Mechanist, the Applicant was removed from his services on 27.7.77 on the charge of having sold a Railway pass for Rs. 15/-. The Applicant also assailed the order of his removal from service before this Hon'ble Tribunal by way of OA No. 9/87, which was dismissed on the ground of limitation. Thereafter due to financial constrains the Applicant could not pursue his case at the higher forums. The Applicant thereafter prayed

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before the authorities for sanction of compassionate allowance as per the provisions of the Railway Services (Pension) Rules, 1983. The matter was processed at different levels of the N.F. Railway Administration but the same is till date lying unsettled. The Applicant who has no source of income is reduced to the status of a beggar and inspite of being in full knowledge about the pitiable condition of the Applicant, the Respondents are yet to wake up from their deep sleep and pass orders sanctioning the pension to the Applicant. The repeated pleas made by the Applicant having failed to evoke any response, he has by way of this application come under the protective hands of Your Lordships praying for redressal of his grievance.

4.3 That the Applicant was initially appointed as Khalasi on 16.12.62 and was posted as such in the office of the permanent way Inspector, New Bongaigaon. On 31.12.66 he was transferred to the Railway workshop and was appointed/engaged as BTM Mechanist. The Applicant discharged the responsibilities entrusted upon him to the best of his ability and without blemish to any quarter.

A copy of the certificate issued by the Asstt. Works Manager, N.F. Railways, New Bongaigaon and the combined seniority list of Khalasis/Mechanic, Tool Mechanic as on 1.4.78 is annexed hereto as Annexure-1 and 2 respectively.

4.4 That while working as BTM Mechanist at the Railway

workshop, New Bongaigaon a Departmental Proceeding was drawn up against the Applicant on the charge of having sold a class 2 Railway pass bearing No. E-84140 dated 28.2.75 of Shri Ram Lakhman, station porter to one Nandalal Rajbhor, Station Porter. The Applicant vide his reply dated 5.6.76 showed cause against the charge framed against him. The works manager, N.F. Railway, New Bongaigaon, on being not satisfied with the reply given by the Applicant, proceeded vide order under No. E/DAR/420 dated 27.7.77 to impose the penalty of Removal from service on the Applicant. Pursuant to receipt of the said order the Applicant preferred an appeal which was also dismissed. It is pertinent to mention here that no departmental enquiry was held and the order of removal was imposed upon the Applicant without affording him an opportunity of hearing.

Copies of the order dated 27.7.77 and the order of the appellate authority is annexed hereto as Annexure-3 and 4 respectively.

4.5 That the Applicant states that the Annexure-3 and 4 orders dated 27.7.77 and 29.12.77 were assailed by him before this Hon'ble Tribunal by way of filing OA being G.C. case No. 9/87. This Hon'ble Tribunal vide its order dated 2.1.87 passed in the said case was pleased to dismiss the application on the ground of limitation. The Applicant due to financial constrains could not pursue his case at higher forums.

Copy of the order dated 2.1.87 is annexed hereto

Notes of the Registry	Date	Order of the Tribunal
	7.2.01	<p>sions of the Railway Service Pension Rules 1993 a railway servant who is dismissed or removed from service shall forfeit his Pension & Gratuity, if the case is deserving of Special consideration discretion is concerned on the authority to sanction a compassionate allowance not exceeding two third of Pension or gratuity or both which would have been admissible to him if he had retired. The provisions is made for sanctioning such compassionate allowance, the power itself is coupled with a duty and responsibility. Since the applicant has already submitted his representation and the matter pertains to the allowance on compassionate ground. Such matter should brook no delay.</p> <p>Upon hearing Mr.Nair learned counsel for the applicant and also Mr.S.Sengupta learned Railway Standing counsel, I am of the opinion that ends of justice will be met if a direction is given upon the respondents to consider and dispose of the Representation expeditiously, preferably within two months from the date of receipt of this order by a reasoned order as per law. The applicant may also file fresh representation to the authority praying for compassionate pension.</p> <p>Application is disposed of. No costs.</p>

TRUE COPY

सचिव

Sd/ VICE CHAIRMAN

Section Officer (S)
क्षेत्रीय सचिव (स्पेशल शब्द)
Central Administrative Tribunal
High Court of Assam
Guwahati Bench, Guwahati
प्रभागीय न्यायालय, गुवाहाटी

31/12/01

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 47 of 2001

OF 199

Applicant(s) Sonalal Dey

Respondent(s) Union of India & Ors.

Advocate for Applicant(s) U.K.Nair, U.K.Goswami

Advocate for Respondent(s) Railway Advocate.

Notes of the Registry

Date

Order of the Tribunal

7.2.01

Present: Hon'ble Mr.Justice D.N. Choudhury, Vice-Chairman and Hon'ble Mr.U.K. Bhattacharya, Additional Vice-Chairman.

Heard learned counsel for the parties.

Issue pertains to granting of compassionate allowance to the person who was removed from service. The applicant was working as BTM Mechanic in New Bongaigaon. After disciplinary proceedings he was removed from service on 27.7.77. The applicant though assailed the order of removal from service he could not succeed. The applicant has now confined his case for granting compassionate allowance. The applicant has already submitted the representation before the authority for granting him compassionate allowance which was admissible to him. The last representation was submitted by the applicant on April 1998. The matter is yet to be decided by the authority. Mr.U.K.Nair learned counsel for the applicant submitted that as per provi-

contd/-



A. Herkeld
Advocate

as Annexure-5.

4.6 That pursuant to being removed from service the Applicant made repeated representations for reinstatement and/or for grant of pensionary benefits. Further the Applicant prayed for release of his contributions towards Provident Fund, GIS etc. But the same remained unpaid and the Applicant continued to suffer.

4.7 That your Applicant states that on receiving no response from the authorities of the N.F. Railway administration as regards his prayers for reinstatement in service and/or for grant of pension, he vide his letter dated 23.3.91 prayed before the President of India to interfere in the matter. The letter of the Applicant was duly acknowledged by the office of the Hon'ble President of India vide acknowledgment dated 13.5.91 with direction to the Applicant to make further correspondences with the Secretary to the Government of India, Ministry of Railways, as his grievances were duly forwarded to him. It is pertinent to mention here that inspite of the said development nothing positive materialised and the Applicant continued to suffer.

Copy of the communication dated 13.5.91 is annexed hereto as Annexure-6.

4.8 That the Applicant continued to represent before the authorities praying for redressal of his grievances, pursuant to one such representation, the G.M(P), N.F. Railways i.e the Respondent No 3 ,vide his

letter dated 26.6.98 directed the Deputy Chief Mechanical Engineer, New Bongaigaon to furnish the service particulars of the Applicant. The Deputy Chief Mechanical Engineer, in response to the said directive issued to him, vide his letter dated 28.8.98 furnished the service details of the Applicant to the Respondent No. 3) and, interalia, prayed for guidance for amicable settlement of the case. In the letter dated 28.8.98 it was specifically mentioned that inspite of the fact that the Applicant prayed for grant of admissible pensionary benefits from time to time, the same was not granted to him.

Copies of the letters dated 26.6.98 and 28.8.98 are annexed hereto as Annexures- 7 and 8 respectively.

4.9 That the Deputy Chief Mechanical Engineer, New Bongaigaon requested the G.M.(P) to send his guidance for settlement of the case of the Applicant for sanction compassionate pension. In response to the said letter dated 1.2.99 the Respondent No 3, directed the Deputy Chief Mechanical Engineer, vide his letter dated 13/19.4.99 to furnish the records of the DAR case drawn up against the Applicant. Further the Deputy Chief Mechanical Engineer was requested to certify the date of birth, date of appointment of the Applicant for taking necessary action towards grant of compassionate pension. The said correspondence clearly goes to show that the authorities have taken the decision to

sanction compassionate pension to the Applicant but are delaying the actual release of the same on some untenable grounds unmindful of the fact that the Applicant and his family are starving and are maintaining themselves practically through begging.

Copies of the letters dated 1.2.99 and 13.4.99 are annexed hereto as Annexures 9 and 10 respectively.

4.10 That the Applicant states that as his original service file was reported to have been misplaced he accordingly helped in reconstruction of the same and to the best of his knowledge the same has already been forwarded to the Headquarters of N.F. Railways at Maligaon. The Railways who are "Model Employer" ought not to have taken such long time in releasing a benefit like compassionate pension admissible to the Applicant under the Rules. From the correspondences stated above it can be inferred that the authorities of N.F. Railway administration have already taken the decision to grant the said benefit to the Applicant, but are delaying the actual release of the same on flimsy grounds.

4.11 That your Applicant states that the Railway Service (Pension) Rules 1993, lays down that a Railway servant dismissed or removed from service shall if the competent authority so desires be sanctioned a compassionate allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation.

pension. Rules 64 deals with compassionate pension.

Extracts of the relevant provisions of the railway service (pension) Rules 1993 are annexed hereto as Annexure-II Series.

4.12 That the Applicant submits that till removal from service he has put in about 16 years of service. He was removed from service without holding any regular enquiry and the Applicant for want of financial resources could not pursue his case before the Courts of law promptly. The Railway authorities basing on the representations preferred by him have already decided, as can be inferred from the correspondences made between the Respondents, to grant him compassionate pension, but have been delaying the actual release of the same on some flimsy grounds. Due to the inaction on the part of the authorities in implementing the decision taken by them for grant of the said pensionary benefit promptly, the Applicant is forced to suffer along with his family.

4.13. That your Applicant submits that he had been following up with the authorities as regards his prayer for grant of compassionate pension. He has also helped in reconstruction of his file which was stated to have been misplaced. Inspite of the above developments and also the decision taken by the authorities to sanction the compensation pension to the Applicant, the authorities are sitting over the matter forcing the Applicant to undergo great mental agony in addition to financial hardships.

4.14 That pursuant to being removed from service the Applicant has no source of income and has been maintaining himself and his family from the generous help advanced to him by his well wishers and friends. It can be said that the status of the Applicant has been reduced to that of beggar.

4.15 That your Applicant states that on receiving no response from the authorities he approached this Hon'ble Tribunal by way of an original application being OA NO. 47 /2000 praying for a redressal of his grievances. This Hon'ble Tribunal vide its order dated 7.2.2001 pursuant to hearing both the sides was pleased to remand back the matter to the authorities for taking a decision in the matter.

Copy of the order dated 7.2.2001 is annexed as Annexure-12.

4.16 That as directed by this Hon'ble Tribunal the appeal preferred by the Applicant 23.2.2001 praying for grant of compassionate allowance/pension was disposed of by the Chief Works Manager, New Bongaigaon vide order dated 2.5.2001, rejecting the prayer of the Applicant on the ground that compassionate pension cannot be granted to the Applicant in view of the serious and grave nature of his misconduct in the year 1977.

A copy of the order dated 2.5.2001 is annexed as Annexure13.

4.17 That your Applicant states that the charges leveled against him in the year 1977 and the punishment imposed on him do not commensurate each other. This Hon'ble Tribunal had dismissed the original application being Guwahati Case No. 9/1987 preferred by the Applicant only on the ground of limitation. The authorities have proceeded to dispose of the representation preferred by the Applicant on the ground that the Applicant had committed grave misconduct by selling two passes in the year 1977 and this Hon'ble Tribunal had dismissed the original application preferred by the Applicant against his order of removal.

4.18 That your applicant submits that the action on the part of the authorities in rejecting the grant of compassionate allowance to the Applicant on the ground that the charge on which the applicant was removed is grave is untenable and the same has been taken only to cover up the illegality committed in allowing the applicant to suffer without being provide for the benefits flowing to him under the Rules.

4.19 That the Charge on which the applicant was removed is not a grave one requiring continuous punishment of the applicant and the case of the applicant is a fit case wherein the authorities ought to have invoked the provisions of the Railway Services (Pension) Rules, 1993 and sanctioned to the applicant his dues available

under the Rules.

4.20. That your applicant states that the stand taken by the authorities in the impugned order is contrary to the decision arrived at to sanctioned to the applicant his dues under the said Rules and for this inaction the Applicant who is at present suffering from various ailments is forced to suffer inasmuch as he does not have the financial resources to get himself treated for the same. If the ailments suffered by him do not take his life then he would die shortly die due to starvation along with his family members.

4.21. That the applicant submits that pursuant to his removal he could not pursue his grievance before the Court of Law due to his poor financial condition and this should not be held against him and he be not denied his due benefits admissible under the Rules.

4.22. That your Applicant submits that it is a fit case wherein your lordships would be pleased to interfere in the matter and direct the Respondents to act like a model employer and to forthwith sanction compensation pension and gratuity to the Applicant and further to release the other financial benefits admissible to the Applicant like Provident fund, GIS etc.

4.23. That this application has been made bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the Applicant was deprived of his service

without following the due process of law and in clear violation of the principles of natural justice.

5.2 For that the Railway Service (Pension) Rules, 1993 clearly provides for grant of compensation pension to Railway servants situated like the Applicant. Inspite of being entitled to compensation pension and gratuity and the authorities having taken a decision to sanction the same to him the delay occasioning in the actual release of the same has the effect of depriving the Applicant from his legitimate dues.

5.3 For that from the correspondence between the authorities it is clear that a decision has been taken for grant of compassionate pension to the Applicant. The only details that was asked for vide letter dated 13.4.99 (Annexure-10) was as regards the date of birth and date of appointment of the Applicant. The Applicant has already furnished the same before the authorities. Further the Annexure-1 certificate clearly shows that the said dates are very much to the knowledge of the Respondents. As such the inordinate delay occasioning in passing orders towards grant of the said benefit to the Applicant has the effect of defeating the very purpose for which the provisions were incorporated in the said Rules for grant of compensation pension.

5.4 For that due to the inaction on the part of the Respondents in promptly sanctioning the benefits due to the Applicant, his status has been reduced to that of a beggar. Being a model employer the Respondents ought

not to have dealt with the matter invoking the question of life and death of the Applicant in such a causal manner.

5.5 For that the nature of charge framed against the Applicant and the manner in which the proceedings were conducted against him clearly entitled the Applicant to be paid the compensation pension so as to minimise the illegalities meted out to him to a certain extent.

5.6 For that the impugned action on the part of the Respondents has the effect of reducing the Applicant as a pauper and any further delay would have the effect of depriving the Applicant and his family of their lives.

5.7 For that the impugned order is not tenable and liable to be set aside and quashed .

5.8. For that the ground taken in the impugned order for rejecting the prayer for grant of the dues available under the Rules is not sustainable under the facts of the case and the law holding the field.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To set aside and quashed the letter dated 2.5.2001 (Annexure-1E).

8.2 To direct the Respondents to sanction compensation pension and gratuity to the Applicant from the date of his removal from service i.e. from 3.1.78

8.3 To direct the Respondents to pay to the Applicant the dues receivable by him like under the heads Provident Fund ,Group Insurance Scheme etc.

8.4 To direct the Respondents to pay to the Applicant any other due/dues receivable by him for the service rendered by him.

8.5 Cost of the application.

8.6 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED FOR :

Under the facts and circumstances of the case, the Applicant prays for an interim order by way of a direction to the Respondents to forthwith pay to the Applicant the dues receivable by him for the service rendered by him in the department and/or be pleased to pass such further order/orders as Your Lordships may deem fit and proper.

10. *****

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 69 78853
- ii) Date : 28.11.01
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, Shri Sonalal Dey, aged about 59 years, son of Late Prafulla Kumar Dey, resident of New Bongaigaon, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 3, 4.1, 4.2, 4.3, 4.4, 4.6 4.9, 4.10, 4.12, 4.13, 4.14, 4.17, 4.18, 4.19, 4.20, 4.21, 4.23 and 5 to 12 are true to the best of my knowledge ; those made in paragraphs 4.5, 4.7, 4.8, 4.9, 4.11, 4.15 and 4.16 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 24 th day of December 2001.

Sonalal Dey

TO WHOM IT MAY CONCERN
SERVICE AND RESIDENTIAL CERTIFICATE

Certified that Shri Sonalal Dey was originally appointed as Khalasi on 16.12.62 under the permanent way Inspector, New Bongaigaon under Divisional Engineer, Alipurduar Junction. He was transferred to Rly. Workshop under the then Works Manager, New Bongaigaon as Khalasi on 31.12.66. He was subsequently removed from Rly. service with effect from 3.1.73.

Since his appointment on 16.12.62 in the Railway, Shri Dey has been residing in the New Bongaigaon, Bongaigaon area along with his family members.



Asstt. Works Manager
N.F.Rly., New Bongaigaon
workshop.

Asstt. Works Manager,
N. F. Rly., New Bongaigaon.

Attested
Anu. Dey
Advocate

Provisional combined seniority list of Khansias/Machines, Tool Room and Wheel Shop as on 1.4.70 unit CWS/BNGN and WWS/NBQ.

Sl. No.	Name	Date of Birth	Date of App'tt:	Seniority
1.	Sri N. Reswar Das	1.7.39	1.5.67	
2.	" G. J. Bhowmick	4.12.38	1.5.67	
3.	" J. Bhattacherjee	5.2.46	1.5.67	
4.	" S. Kumar Ray	2.11.40	1.5.67	
5.	" P. R. Nath	2.1.41	1.4.65	
6.	" J. Bhattacherjee	1.1.43	1.4.65	Transferred from WWS on May/66
7.	" M. R. Das	19.1.44	1.1.65	
8.	" S. Boro	24.3.47	1.5.67	
9.	" M. Lohar	1.1.43	18.5.65	
10.	" D. N. Debsarma	15.10.48	1.5.65	
11.	" Tata Pam Roy	5.8.43	2.6.65	
12.	" R. K. Barla	25.6.46	2.6.65	
13.	" U. N. Sarker	16.7.47	20.1.66	
14.	" Ramani Kar	4.5.42	4.5.66	
15.	" P. M. Norial	1.8.46	1.8.66	
16.	" Surajit Bhowmick	1.9.47	1.8.66	
17.	" P. C. Das	1.4.48	1.2.66	
18.	" A. K. Baul	-	2.8.66	
19.	" B. C. Kalita	4.2.44	2.11.66	
20.	" Ramjee Prasad	8.1.41	16.12.62	Transferred from WWS:
21.	" Sonali Dey		30.12.66	Debt bottom seniority.
22.	" R. N. Roy	15.7.43	1.10.67	
23.	" S. K. Adhikary	1.1.42	1.10.67	
24.	" C. M. Lohar	10.4.46	1.10.67	
25.	" J. Palil	30.6.47	1.10.67	
26.	" S. Mahmud	1.12.47	1.10.67	
27.	" J. N. Talukder	-	1.10.67	
28.	" D. Bhattacherjee	15.7.44	16.12.65	Transferred from WWS: bottom seniority.
29.	" N. Banmon	28.10.43	17.5.68	
30.	" K. C. Saha	15.10.44	17.5.68	
31.	" Benode Ch. Burmon	1.1.43	20.5.68	
32.	" D. N. Das	1.1.45	20.5.68	

N.B.: The seniority of Shri A. Bhattacherjee on khalas is under examination.

18/3
18/3
18/3
18/3

18/3
18/3
18/3
18/3

Attested
Xun. bdy
Advocate

N.E. RAILWAY,

Notice of imposition of penalty of removal
dismissal from service and compulsory.

No. E/DAR/420

Date 27.7.77

To

shri Sonalal Dey

Father's name ^{son} Pratul Dey.

Designation B.T.M. Mechanist

Department Mech (SS/BSS/NBQS)

T/No. 325 Date of appointment 16.12.62

Station NBQS Scale of pay Rs. 210-290/
(Rs)

1. After careful consideration of your explanation dated 5.6.76 to the Charge sheet No. ES/420 dated 29.5.76 issued by WM/NBQS and also your explanation dated ref to the notice of imposition of the proposed penalty No. E/420 dt. 9.6.77, we hold the following charges have been proved

against you. That shri Sonalal Dey alias Shankar while functioning as B.T.M. Mechanist in the Machine shop at NBQS, NFRy. during the month of 1975 failed to maintain absolute integrity in as much as he sold class Two Pass no E-04140 dt. 20.2.75 to shri Nandal Raybhor, stn. Porter at Rs. 15/- which was detected from the possession of shri Ram Patel, Valveman under 10W/BG/NFR/NBQ of Ry. Services (Conduct) Rules, 1966, and he thereby violated the Provision of sub-rule (1) of rule 3(1)

2. You are hereby informed that in accordance with the orders passed by WM/NBQS, you are hereby compulsorily removed from service ref 13.1.77

Date 27.7.77

Signature

Designation WORKS INSPECTOR

Station NR. BIRBINGHAWA

Note:- Please see instruction on reverse.

14 RE

P.T.O.

He Sd.

Ref. No. 3/101/180.
Dt. 20-12-77.

Office of the

Worcs. Deptt.

To : Shri S. S. Dey, Ex. GRM/Advocate.

Address : 1/12, Dilkusha, Lucknow.

Sub:- Your appeal dt. 1/12/77 addressed to O.M.G.

O.M.G(P)/MLG vide his letter No. 3/74/101/180(M)1 Dt. 20-12-77 has informed this Office that O.M.G., the appellate authority in this case, has very carefully gone through the appeal submitted by you and observed as under:-

Having gone through the papers it is considered that the charge is proved against the appellant. The charge for his removal from service are confirmed.

Copy to:- F.S. Section 10x
Arranging instant for necessary action by
Dey, Ex. GRM/Advocate, payment of dues to Shri S. S. Dey.

A Handed
J. M. Dey
Advocate

17

Att'd, 1/12/77

CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH ::::: GUWAHATI
GUWAHATI CASE NO. 9 OF 1987.

Sri Sonalal Dey, ... Applicant.

Union of India & Ors. ... Respondents.

P R E S E N T.

HON'BLE JUSTICE SHRI D. PATHAK, VICE CHAIRMAN.
HON'BLE SHRI S. P. HAZARIKA, MEMBER.

For the Applicant: Mr. S. R. Bhattacharjee,
Mr. H. A. Sarker, Advocates.

For the Respondents: Mr. B. K. Sharma, City Advocate.

Date. 2-1-87. Order.

Heard Mr. S. R. Bhattacharjee, the
learned counsel for the applicant.

This application is directed against
the order of removal after holding an enquiry
by the competent authority on 27-7-77. The
applicant also preferred an appeal under the
rules governing the case. The appellate authority
dismissed his appeal on 30th December, 1977. The
petitioner also filed some representations before
the General Manager, but it has not been brought
to our notice under what provision of law such
representations have been filed. Repeated
representation do not save limitation. We find
that this application has been in the Tribunal
after an inordinate delay. In view of this
factual situation, we do not find it just and
proper to entertain this application, and
accordingly the same is dismissed.

Sd/- D. Pathak,
Vice-Chairman.

Sd/- S. P. Hazarika,
Member.

Central Administrative Tribunal
District Registrar (6/11/87)
Central Administrative Tribunal

Attentive / m/s

18

- 22 - 21

THE PRESIDENT'S SECRETARIAT
PUBLIC - 1 SECTION

Annexure-6 B

No. : PI- 20675
Dated: 13-May-91

Rashtrapati Bhavan
NEW DELH. - 110004

Dear Sir / Madam,

I write to acknowledge the receipt of your communication dated 23-Mar-91 which has been forwarded to the Secretary to the Government of India, Ministry of .. RAILWAYS (RAILWA
(Department of)
New Delhi, for appropriate action

Any further communication on the subject may please be addressed to him direct quoting the above reference number

Yours faithfully,

Fawazul Deh
for Secretary to the President.

BOOK POST

ON INDIA GOVERNMENT SERVICE



SHRI SONALAL DEY

QR. NO. N/270/B, NORTH WEST COL.

NEW BONGAIGAON

BONGAIGAON

President's Secretariat,
Rashtrapati Bhavan
New Delhi - 110001

A Husted
Anu. Mohr
Advocate

N.F.RAILWAY

Office of the
General Manager(P)
Malignon, Guwahati-11.

No.E/NFR/MISC/W(M)

Dt. 26.6.98.

To
Dy.CME/NBQS

30
3-7-98

Sub:- Shri Sonalal Dey, ex-BTM Mechanist under
Dy.CME/NBQS - his prayer for grant of
compensation pension.

The above named Shri Sonalal Dey, ex-BTM Mechanist
who was working under Dy.CME/NBQS and was removed from
service w.e.f. 27.7.77 has now applied for compensation pension
vide his application of April'98.

In view of this, you are requested to furnish
detailed history of the case to enable to arrive at
a decision in this respect.

SAC
SPO(M) 26/6/98
for General Manager(P)/MLG.

SAC

*Attested
Anu. Mohar
Advocate*

H.E.R. Railway

No. R/M/257/1-Pt.XI

Office of the
Dy. Chief Mechanical Engineer,
Howrah Engineering
Dt/-22.8.93

To

The General Manager (P),
H.E.R. Railway, Malibazar.

Sub:- Compassionate Pension in favour of
Shri Sengalal Dey, Ex-BTM Mechanist
under Dy.CME/100 Q8.

Ref:- Your L/No.RAUFR/Misc/WQ1) dt.26.6.93
20
3.7.93.

...

In response to your letter quoted above, the following informations have been made for further disposal of the case of Shri Sengalal Dey, Ex-BTM mechanist.

- 1) The party concerned removed from Rly. service w.e.f. 27.7.77
- 2) The exact date of superannuation is 31.12.93 excluding 2 years.
- 3) Though he has been removed from Rly. service he is not yet getting any admissible pensionary benefit till to date though the party applied for the same time to time.
- 4) In this reference the copy of the GM (P)/MIG's L/No. E/301/Misc (G) Pt.X dated 27.9.83 may be taken in to consideration which was conveyed to Shri Sengalal Dey (copy enclosed)
- 5) Regarding re-instatement of Shri Sengalal Dey. D.O.No. Misc dt.10.12.91 of Sri H.Roy, the then Dy.CME/100 Q8 may be taken into consideration (copy enclosed). Attempt for trace out the case file of Sri Sengalal Dey was also made, but the case is now bearing about 13 years old and the same could not be located.

Under the above circumstances you are requested to send your guidance for ~~an~~ amicable settlement of the case.

An early action is requested.

QJ
22.8.93
for Dy.CME (CME)/100 Q8

SIC

ACTED
Advocate

Ambedkar
Advocate

21

H.F. Railway

Reminder

Office of the
Dy. Chief Mech. Engineer,
New Dombigaoon.

No. E/M/257/1/ptt.XI

at/- 01.02.98

To

The General Manager (P)
H.F.Rly/Maligaon.

Sub:- Compassionate pension in favour of
Shri Sonalal Dey, Ex.BTM/Mechinist
under Dy.CME/NBQS.

Ref:- Your L/No.E/H.F.R/Misc/W(M) dt. 26.6.98
and this office letter of 30.6.98
even No.dt. 23.8.98. 3.7.98

...

Please refer to this office letter of even No.dt. 28.3.98
and arrange to send your guidance for amicable settlement
of the case of Shri Sonalal Dey, Ex.BTM/Mechinist for
compassionate pension.

In this connection all relevant papers submitted by
Shri Sonalal Dey and a copy of this office letter No.
dated 28.3.98 are also enclosed again for your further
necessary disposal please.

DA/ = 8 (Quint) +
= 9 (min)

Qb- 1.2.93
for Dy.CME (C&W)/NBQS.

N.F.RAILWAY

Office of the
General Manager(P)
Malignon, Guwahati-11.

No.E/NPR/MISC/W(M)

Dt. 13.04.99.

To
DY.CME/NBQS

19

Sub:- Compassionate allowance in favour of
Shri Sonalal Dey, Ex-BTM/Machinist
under Dy.CME/NBQ.

Ref:- Your letter No.E/M/257/1/Pt.XI dated
1.2.99.

Please arrange to send the DAR case of Shri Sonalal Dey, BTM/Machinist under Dy.CME/NBQ who was removed from service w.e.f. 27.7.77 as without the DAR case the case of compassionate allowance in favour of Shri Sonalal Dey can not be processed. Shri Dey met CPO a few days back but could not show the original documents particularly NIP (notice of imposition of penalty) and thus for want or the same the case of compassionate allowance in favour of Shri Dey could not be processed.

It is, therefore, requested to kindly send the original DAR case as also to certify his date of birth, date of appointment etc. so that necessary action can be taken to decide the issue.

An early action is requested.

15/4/99
for General Manager(P)/MLG.

S/C



रेल सेवा (पेंशन) नियम 1993
RAILWAY SERVICES (PENSION) RULES 1993 (EXTRACT)

Attested
Anup Singh
Advocate

"We consider AB to be completely and permanently incapacitated for further service of any kind (or in the department to which he belongs) in consequence of....(here state disease or cause). His incapacity does not appear to me to have been caused by irregular or intemperate habits."

Note : If the incapacity is the result of irregular or intemperate habits, the following will be substituted for the last sentence :--

"In my/our opinion his incapacity is directly has been due to accelerated or aggravated by irregular intemperate habits."

(if the incapacity does not appear to be complete and permanent, the certificate should be modified accordingly and the following addition should be made) :--

I am/We are of the opinion that.....AB is fit for further service of a less laborious character than that which he has been doing (or may, after resting for.....months be fit for further service of a less laborious character than that which he has been doing).

60. Reasons for medical opinion of incapacity or under statement of age.—If the medical authority considers a railway servant incapacitated for further service by general debility while still under the age of fifty-eight years, it shall give detailed reasons for its opinion. If the medical authority considers him to be above fifty-eight years of age, it shall state its reasons for believing the age to be understated :

Provided that in doubtful cases, a second medical opinion shall be obtained.

61. Requirement of details in the certificate.—A mere certificate that inefficiency is due to old age or natural decay from advancing years shall not be deemed to be sufficient for retiring a railway servant on invalid gratuity or pension.

62. Date of invalidation.—A railway servant, who is declared by the medical authority referred to in rule 55 to be completely and permanently incapacitated for further service shall, if he is on duty, be retired from service from the date of relief of his duties which shall be arranged without delay on receipt of a report from the medical authority or if, he

is granted leave under rule 522 of the Code on the expiry of such leave but if he is on leave at the time of receipt of the medical certificate, he shall be retired from service on the expiry of such leave or extension of leave if any granted to him under rule 522 of the said code.

63. Compensation Pension.—(1) If a railway servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him, to be at least equal to those of his own have the option--

- (a) of taking compensation pension to which he may be entitled for the service he had rendered, or
- (b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

(2)(a) Notice of at least three months shall be given to a railway servant in permanent employment before his services are dispensed with on the abolition of his permanent post.

(b) Where notice of at least three months is not given to the railway servant and he has not been provided with other employment on the date on which his services are dispensed with, the authority competent to dispense with his services, may sanction the payment of a sum not exceeding the pay and allowances for the period by which the notice actually given to him falls short of three months.

(c) No compensation pension shall be payable for the period in respect of which he received pay and allowances in lieu of notice.

(3) In case a railway servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is re-employed before the expiry of the period for which he has received pay and allowances he shall refund the pay and allowances so received for the period following his re-employment.

(4) If a railway servant who is entitled to a compensation pension accepts instead another appointment under the railways and subsequently becomes again entitled to receive a pension of any class, the amount of such pension shall not be less than what he could have claimed if he had not accepted the appointment.

N. E. RAILWAY.

Office of the
Chief Works Manager,
New Bonsaigon.

No. E/M/267/1 Pt.XI

Dated: 02.05.2001.

To:

Shri Sonalal Dey, Ex: DTM Machinist
Rly. Qr. No. N/270 B. Northwest colony.
P.O. New Bonsaigon, Dist. Bonsaigon,
Assam.

Sub:- Compassionate Allowance/Pension.

Reff:- Your appeal dated 23.2.01.

In reference to your appeal dated 23.2.01 for grant of compassionate allowance/Pension it is stated that your appeal along with CAT/CWY's verdict dated 7.2.01 was put up to the competent authority (CWM/NBQ) for consideration who has passed the following orders-

- "(1) His removal was done in the year 1977.
- (2) 'P' case and service records are to be kept for five years only.
- (3) CAT have themselves dismissed an application vide their order dated 02.01.1987.
- (4) It was clear that he has sold two passes as soon in the notice of imposition of penalty of removal from service.

In view of such a act which has put the administration without any option but to remove Shri Dey.

Again we are of the opinion that his case does not deserve compassionate pension because of the following reasons.

(1) He has done a "grave misconduct by selling two passes in the year 1977.

Therefore, in view of all these details reviewed by me. The CAT Guwahati's order dated 7.2.01 is disposed as follows.

"CAT wanted administration to consider and dispose of the representation expeditiously preferably within two months from the date of receipt of the order".

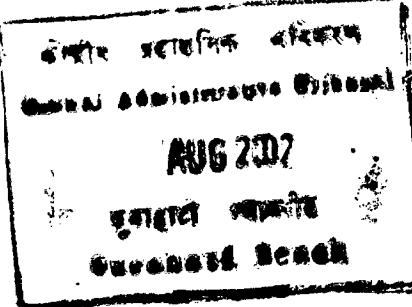
We received the order of CAT on 23.2.01 on 30.4.01 we dispose this order stating that we can not give compassionate pension to Sri Sonalal Dey because of the serious and "grave" nature of his misconduct in the year 1977. We also enclosin' copies of the case relevant."

This is for your information that this disposes your representation date 23.2.01 as well as CAT/CWY's Order dated 7.02.01 in O.A. No. 47/2001.

DA 1. NIP No E/DA2/420 dt 27.7.77. (R. Roy, APO/W/NBQ)
2. CAT/CWY's judgement dated 2-1-87. (R. Roy, APO/W/NBQ)
Copy to:- 1) CPO/MLG for CWM/NBQs
2) Law Officer/MLG for information & necessary action pl.
3) APO/LC/MLG - for information in ref. to his D.O. No. E/170/Legal Cell/APU/2001 dt. 2/5-3-01.

Altered
Am. for
polwak

for Chief Works Manager/NBQs.



V.K.
Chief Personnel Officer (A)
C. S. Rly. / Maligaon
Guwahati-10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH :

GUWAHATI.

IN THE MATTER OF :

O.A. No. 486 of 2001

Filed by
Subcombe Sangle
Railway Adm.
Guwahati
27.8.2007

Sri Sonalal Dey

... Applicant.

VS.

1. Union of India.

2. General Manager,

N.F. Railway, Maligaon.

3. The General Manager (Personnel),

N. F. Railway, Maligaon.

4. The Deputy Chief Mechanical

Engineer, N.F. Railway,

New Bongaigaon, Assam.

5. The Works Manager,

Railway Work Shop, N.F. Railway,

New Bongaigaon, Assam.

... 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 under-
stood the contents thereof.

Contd. 2

2. That, save and except those statements/averments in the application which are borne on records or are specifically admitted hereunder, all other averments/allegations in it to the contrary, are denied herewith and the applicant is put to strictest proof of all such averments.

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

4. That, the case suffers on ground of
 (a) want of a valid cause of action.
 (b) mis-representation and mis-interpretation of rules and laws.

5. That, the application is vexatious one and is hit under the provisions of Indian Limitation Act and Section 21(b) of the Central Administrative Tribunal Act, 1985.

6. That, the fact of the case, in brief is as under :
 The applicant was initially appointed as Khalasi in the Office of the Permanent Way Inspector, New Bongaigaon under Divisional Engineer, Alipurduar Junction (i.e. Engineering Department) and he was transferred to Railway Work Shop under the then Works Manager, New Bongaigaon as Khalasi on 31.12.66 with bottom seniority in the Mechanical Department of the Railway.

NO DR. Even.

Comprom.

Confining
Chief Personnel Office (A)
G. S. Rly. / Maligrao,
Guwahati-13

While he was working as EM Mechanist at New Dangai
geon Work shop of the N. F. Railway, he was entangled in a
case regarding selling of a Railway Pass and on this charge
he was removed from the Railway Service on 27.7.1977 as seen
from Annexures 1 and 3 to the 3.1.1978 Application.
The applicant preferred appeals/representations against his
removal from service but his appeals were rejected. Record
reveals that prior to this O.A. No. 486/2001 the applicant also
filed two cases before the Hon'ble Tribunal (O.A. No. 9 of 1987
and O.A. No. 47 of 2001).

The O.A. No. 9/1987 was disposed of by the Hon'ble
Tribunal (dismissed) on the point of limitation by order
dated 2.1.87 with observations, relevant portions of which,
inter-alia, are as under as revealed from the Copy of the Hon'ble
Tribunal's order dated 2.1.87 annexed as Annexure 5 to the Application
; "but it has not been brought to our notice under
what provisions of law such representations have
been filed.

Repeated representation do not save limitation.

We find that the application has been in the
Tribunal after an in-ordinate delay.

In view of this factual situation, we do not
find it just and proper to entertain this application
and accordingly the same is dismissed."

Through the O.A. No. 47 of 2001, the applicant while
assailing the order of removal from service, confined his case
praying for the grant of compassionate allowance as admissible
under Rule 65 of the Railway Service Pension Rules 1993 for
which he had been praying so long as stated by him. Though
the previous O.A. No. 9 of 1987 was dismissed on point of
limitation (and not on merit of the DAR case etc.) the

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Hon'ble Tribunal vide order dated 7.2.01 disposed of the O.A. No. 47 of 2001 with directions to the Railway Administration, the relevant portions of which, inter-alia, are as under as will reveal from the copy of the order dated 7.2.01 annexed as Annexure 12 to the Application:

"The applicant has now confined his case for granting of compassionate allowance. The applicant has already submitted the representation before the authority for granting him compassionate allowance which was admissible to him. The last representation was submitted by the applicant on April, 1998. The matter is yet to be decided by the authority.

I am of opinion that ends of Justice will be met if a direction is given upon the respondents to consider and dispose of the representation expeditiously, preferably within two months from the date of receipt of this order by a reasoned order as per law.

The applicant may also file fresh representation to the authority praying for compassionate pension

After receipt of the order of the Hon'ble Tribunal, the case was disposed of by the Railway Administration by order dated 2.5.2001, a copy of which has been annexed by the applicant as Annexure- 13 to the application. The main grounds for rejection by the Chief Works Manager, New Bongaigaon dated 2.5.2001 are as under :

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(3) Hon'ble Central Administrative Tribunal themselves dismissed an application vide their order dated 2.1.1987.

(4) It was clear that he has sold two Passes as seen in the Notice of Imposition of penalty of removal from service.

In view of such an act which has put the administration without any option but to remove Shri Dey.

Again, we are of opinion that his case does not deserve compassionate pension because of following reasons :

(i) He has done a grave misconduct by selling two passes in the year, 1977.

Thus the applicant has already been replied stating the reasons for rejection of his representation.

It is to mention herein that in the copy of the N.I.P. dated 27.7.1977 issued against the applicant it was mentioned that he sold Class Two Pass No. E-04140 dated 20.2.1975 ex-NBQ to Azengarh ^{in name} in favour of Ram Lekhan Jadav, Station Porter to Shri Handalal Rajbhor, Station Porter for Rs. 15/- only which was detected by the Railway Ticket Collector on 24.2.1975 and the said pass was recovered from the possession of another staff i.e. Shri Ram Pasi, Valveman who was working under IOW/EG/N.F. Railway/New Bongaigaon and therefore it was held that he violated the provisions of Sub-Rule 1 of Rule 3(1) of Railway Services (Conduct) Rules, 1966 and for this reason he was compulsorily removed from service.

removed from service. A copy of the Notice for Imposition of Penalty (N.I.P) has been annexed as Annexure 3 to the application.

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There is also mention that he filed representation against such N.I.P..

7. That, with regard to averments/allegations at paragraph 4.1 and 4.2 of the application, nothing are admitted except those which are borne on records or have been ^{Submitted} submitted in the foregoing paragraph No. 6 of this Written Statement or herein-after. Though he might have assailed the order of removal in his earlier O.A. No. 9/87, the said O.A. No. 9/87 was dismissed on the ground of limitation only and it appears that he did not file any appeal before Higher Courts. While explaining delays, he attributes that to be due to his precarious financial consideration and poverty.

Except the above copy of N.I.P. as referred to above, no other papers regarding holding of D & AR Enquiry or prayer for compassionate allowance and processing such case at different levels of the N. F. Railway Administration as alleged by Shri Dey are available on record to verify the correctness of his averments.

It is submitted that for his present status and deplorable condition, he is to blame himself. It is also to ~~sake~~ state herein that his application for grant of compassionate pension was already disposed of by the Railway Administration under letter No. E/M/257/1/Pt.XI dated 2.5.2001 by which he was already intimated that his request for grant of compassionate allowance/pension was not considered because of serious and grave nature of his misconduct in selling Railway Passes in 1977. A copy of the said order dated 2.5.2001 has already been annexed as Annexure- 13 to the present O.A. No. 486/2001.

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As regards his allegation that no departmental enquiry was held and the order of removal was imposed upon him without affording him any opportunity of hearing, nothing can be submitted at this stage after all these long period as no records could be located in office regarding these at this stage and nothing could be gathered from the Order Sheet of the Hon'ble Tribunal dated 4.1.87 in O.A. No. 9 of 1987, except that this O.A. No. 9/87 was dismissed on the ground of limitation only.

It is however, to state herein that the copy of the N.I.P. (i.e. Notice of imposition of penalty of removal/ dismissal from Service and Compulsory removal) dated 20.5.2002 as annexed by the applicant as Annexure-3 to the application shows that he was compulsorily removed as per Railway Rules vide 3(1) of Railway Services Conduct Rules, 1966. In the said N.I.P. it was clearly stated inter-alia as under by the Works Manager, N.F. Railway, Bongaigaon :

"After careful consideration of your explanation dated 5.6.76 to the Charge Sheet No. ES/420 dated 29.5.1976 issued by W.M./NBQ and your application dated nil to the notice of imposition of the proposed penalty No. E/420 dated 9.6.77 has held the following charges have been proved against you :

'That Shri Sonalal Dey alias Shanker while functioning as B.T.M. Mechanist in the Machine Shop at NBQs, N.F. Railway during 1975 failed to maintain absolute integrity in as much as he sold Class Two Pass No. E-04140 dtd. 20.2.75 Ex. NBQ to Azamgarh in favour of Sri Ram Lakhman Jadav, Station Porter to Shri Nandlal Rajbhor,

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Station Porter at Rs. 15/- which was detected on 24.2.1975 by Shri Salil Dutta Roy, T.C. (Ticket Collector) while on duty and recovered from the possession of Shri Ram Pasi, Valveman under IOW/ME/N.F.Rly/NBQ and he thereby violated the provisions of Sub-Rule (1) of Rule 3(1) of Railway Services (Conduct) Rules 1966.

You are hereby informed that in accordance with the Orders passed by W.M./NBQ's, you are hereby compulsorily removed from service w.e.f. 1977.

Date 27.7.77

Sd/-

Works Manager
N.F.Railway, Bongaigaon.

Thus, it appears to be a case of Compulsory retirement, *remove as - reveals from the Copy of the N.F. produced by the applicant.*
8. That, with regard to statements/allegations made at paragraph 4.6 of the application it is to submit that the applicant has been occupying the Railway Qrs. No. 270/B at North West Colony at New Bongaigaon with his family even after his removal from service and records do not show that he even complained after his removal from service for his P.F. or any outstanding dues. Rather, arrear damage rent etc. are to be recovered from him for occupation of the Railway accommodation.

9. That, with regard to averments at paragraph 4.7 of the application it is to state that nothing are accepted as correct except those which are borne on records. From annexure-6 of the application it appears that he made representation to the Hon'ble President of India also. But the decision of the Railway Administration to his prayers were already communicated to him vide

letter No. E/M/257/1 Pt.XI dated 2.5.2001 rejecting his prayers for grant of compassionate pension on the alleged ground of his serious misconduct in selling Railway Pass to another Railway staff etc. A copy of this letter dated 2.5.2001 has already been annexed as Annexure 13 to the Application.

10. That, with regard to averments at paragraphs 4.8 and 4.9 of the application it is submitted that nothing are accepted as correct except those which are borne on records.

The copy of the letter dated 26.6.98 has been annexed as Annexure- 7 to the application and the letter dated 28.8.98 has been annexed as Annexure- 8 (Page 24) at page 33 of the application. From the said annexures it is seen that letter dated 26.6.98/3.7.98 was issued by the Senior Personnel Officer/M for General Manager(P)/Maligaon calling for detailed history of the case from Deputy CME/NBQ for arriving at a decision regarding prayer of the applicant Shri Dey for grant of Compassionate Pension and that vide letter dated 28.8.98 (Annexure-8 to the application) which was issued for Dy.CME (C & W)/NBQ's office to the General Manager(P), N.F.Railway, Maligaon it was made clear inter-alia that :

- a) the applicant was removed from service on 27.7.77 and his exact date of superannuation is 31.12.98 excluding 2 years.
- b) he was not getting any pensionary benefit for which he had been applying from time to time.
- c) the case file of Shri Sonalal Dey could not be located as it is about 18 years old etc.

and that regarding his re-instatement, the D.O. letter No. Misc. dated 10.2.91 of Shri N. Roy, the then Dy.CME/NBQ may be taken into consideration. As regards the contentions about the amicable settlement or seeking guidance as contended in

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those paragraphs and in annexures 8, 9 and 10 of the application it is submitted that such guidance was sought for from the Head Quarter Office but it does not mean that the authorities decided to grant him Compensatory allowance/Compensatory Pension etc.

Further, from Annexure-10 (letter No.E/NFR/Misc/W(M) dated 13.4.99 of General Manager(P), N. F. Railway, Maligaon
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it is well apparent that without DAR case files etc. the case for the Compensational allowance in favour of Sonalal Dey could not be processed.

It is also submitted that the alleged documents i.e. Annexures 8, 9 and 10 to the application are nothing but inter-departmental correspondences regarding certain enquiries etc. and cannot be taken as administrative decisions.

As stated in foregoing paragraphs of the Written Statement, no other old case records are available/traceable now. The supply of certain documents by the applicant to the Railway Administration, however helped in getting the Railway Administration in getting some particulars regarding his Service matters etc. It is reiterated that P/case and Service records are to be kept for five years only and DAR case etc. are not available and the decision of the Railway Administration rejecting his prayer was already communicated to the applicant Shri Sonalal Dey.

It is quite incorrect that the correspondences even showed that the Administration ever took decision to grant him the benefit of Compensatory pension etc. or that his claim was rejected on flimsy grounds. It is also denied that the

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Railway authorities were sitting over the matter for which he had to undergo mental agony in addition to financial constraints.

11. That, with regard to averments at paragraphs 4.11, 4.12, 4.14, 4.15 and 4.16 of the application it is stated that the respondents admit only those statements which are borne on record.

It is to submit herein that as per Pension Rule 1993, Compassionate pension may be granted to a removed Railway employee not exceeding the two third of pension gratuity, if the authority desires, and, deem fit for such. But in the instant case the authorities did not consider it to be a fit case for grant of such pension/allowance to the applicant on above alleged ground of misconduct etc. However, for ready perusal, the relevant extracts from Rules 64 (Compulsory retirement pension) and Rule 65 (Compassionate allowance) for Railway servants dismissed or removed from service, as provided in Pension Rule 1993 are submitted  herein below :

"Rule 64. - Compulsory Retirement Pension:-

"Rule 65 - Compassionate Allowance : -

(1) A Railway servant who is dismissed or removed from service shall forfeit his pension and gratuity.

Provided that the authority competent to dismiss or remove him from service may if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two third of pension or gratuity or both which would have been admissible to him if he had retired on compassionate pension.

(2) The compassionate allowance sanctioned under the proviso to Sub-Rule (1) shall not be less than three hundred seventy five rupees per mensem."

Thus, the detailed rules for the grant of Compulsory retirement Pension and Compassionate Allowances have been laid in Rules 63, 64 and 65 of the Railway Services Pension Rules 1993. Again, in the Railways reply letter No.E/W/257/1/Pt.XI dated 2.5.2001 also to the applicant Shri Sonalal Dey it was also made clear that his case for grant of Compassionate Pension was rejected on following grounds :

- a) His removal was done in the year 1977.
- b) 'P' Case and Service records are to be kept for five years only.
- c) Hon'ble Tribunal dismissed his previous application vide their order dated 2.1.1987 (on limitation ground).
- d) His case does not deserve Compassionate Pension because of his selling ~~passes~~ ^{bailey} passes in the year 1977.

12. That, the averments/allegations made at paragraphs 4.17, 4.18, 4.19, 4.20, 4.21 and 4.22 of the application are not admitted. It is denied that the charges levelled against

him and the punishment imposed on him do not compensate with each other. All averments which are borne on records are only admitted. It is also denied that the charge for which he was removed is untenable or any illegality, as alleged, have been committed by the respondents or that his case is fit one where provisions of the Railway (Pension) Rules 1993 should be invoked or that the stand taken by the authorities in the impugned order is contrary one or that the rejection of his prayer is illegal etc. It is submitted that for the suffering or any eventualities as stated by him the applicant cannot hold the respondents to be liable for all such developments. Rather he is to mark blame himself. Besides he failed to pursue the matter diligently.

13. That, with regard to averments at paragraph 4.21 showing the cause as to why he could not pursue the case in higher courts against the decision of the Hon'ble Central Administrative Tribunal in C.A. No. 9/87, it is submitted that these are his own versions and the respondents have got no knowledge about these and hence these cannot be admitted.

14. That, with regard to averments at paragraphs 4.21 and 4.22 of the application it is submitted that it cannot be admitted that the application is bogafide one.

15. That, with regard to grounds cited and the relief sought for and the legal pleas taken at paragraphs 5 and 8 of the application it is submitted that in view of what have been stated/submitted in the foregoing paragraphs of this Written Statement, none of the grounds put forward by the applicant are sustainable under law and rules in vogue.

in view of the nature of the case and hence these are emphatically denied herewith. No other specific remarks can be furnished in absence of records.

Further, none of the relief claimed by the applicant at paragraph 8 of the application are admissible under rules, law and merit of the case and hence these are liable to be rejected. The applicant has not stated the amounts due under Provident Fund, Group Insurance etc. These are being looked into, ^{and verified,} if not already paid.

16. That, it is submitted that all actions taken in the case by the respondents are quite legal, valid and proper and have been taken after due application of mind by the competent authorities and the present case of the applicant is based on wrong premises and suffers from mis-representation of rules and laws on the subject.

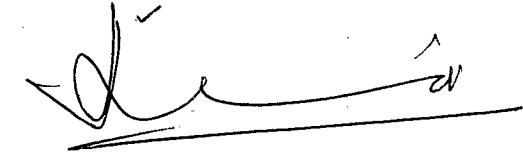
17. That, in view of whatever have been submitted herein above, the case is fit one to be dismissed.

18. That, the answering respondents crave leave of the Hon'ble Tribunal to permit them to file additional Written Statement, if found necessary, for the ends of Justice.

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VERIFICATION

I, A. K. NIGAM son of
LATE S.P. GAURHA aged about 47 years
at present serving as Chief Personnel Officer/ Admin
in N. F. Railway, do hereby solemnly affirm and declare that
whatever stated in paragraphs 1 and 3
of the Written Statement, are true to my knowledge and those
made at paragraphs 6, 8, 9, 10 and 11
are based on informations as gathered from records so far
could be made available, which I believe to be true and the
rest are my humble submissions before the Hon'ble Tribunal.



FOR AND ON BEHALF OF
UNION OF INDIA.

Chief Personnel Officer (A)
C. P. Rly. / Maligaon
Guwahati-90