

30/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 251/02  
R.A./C.P No.  
E.P./M.A No.

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SECTION OFFICER (Judl.)

FORM No. 4  
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 251 / 2002

Misc Petition No. \_\_\_\_\_

Contempt Petition No. \_\_\_\_\_

Review Application No. \_\_\_\_\_

Applicants. Sri Hans Raybhu

-Vs-

Respondant(s) L. O. I. F. O. S.

Advocate for the Applicant(s) M. Chandra  
Mr. K.K. Biswas  
S. Nath

Advocate for the Respondant(s) R. G. C.

Notes of the Registry

Date

Order of the Tribunal

7.8.02

Heard Mr. K.K. Biswas, learned  
counsel for the applicant.

The application is admitted.  
Call for the records.

List the matter on 4.9.2002  
for orders.

Member

Vice-Chairman

mb

4.9.02

List on 4.10.2002 for written  
statement on the prayer of Mr. J.L.  
Sarkar, learned Standing counsel for  
the Railway.

Member

Vice-Chairman

mb

Steps taken

Notice prepared and  
sent to D. Section for  
issuing of the same  
to the respondents  
Vide D. No. - 2179 to 2182  
Dtd - 13.8.02.

12.8.02

14.11.02

On the prayer of Mr.S.Sarma learned counsel on behalf of Mr.J.L. Sarkar learned Railway counsel further four weeks time is allowed for filing of written statement. List on 14.11.02 for orders.

Member

Vice-Chairman

1m

14/11/02 Due to court sitting at Shillong, five cases adjourned to 26/11/2002.

26.11.02

Heard Mr. K.K.Biswas, learned counsel for the applicant and also Mr. J.L.Sarkar, learned counsel for the respondents. Further four weeks time is allowed to the respondents to file written statement, if any. List on 2.1.2003 for orders.

Vice-Chairman

mb

2.1.2003 Due to vacation, five cases adjourned to 9/1/2003.

9.1.03 Present : The Hon'ble Mr Justice V.S. Aggarwal, Chairman.

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

Mr K.K.Biswas, learned counsel for the applicant is present. None present for the respondents.

Written statement has not been filed. It is directed to be filed within four weeks. List on 7.2.03 for orders.

Member

Chairman

No. written statement has been filed.

3.10.02

No. written statement has been filed.

26.11.02

No. written statement has been filed.

8.1.03

No. WTs has been filed.

6.2.03

7.2.2003

The respondents are yet to file written statement though time granted. Put up the matter for hearing on 18.3.2003. The respondents may file written statement within three weeks from today.

25.2.03

MS Submitted

Against Respondents.

Member

Vice-Chairman

mb

18/3: Division Bench did not sit today.  
The case is adjourned to 10/4/2003.

10/4: Division Bench did not sit today.  
The case is adjourned to 21/5/2003.

21.5.2003

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

The Hon'ble Mr. S.K. Hajra, Administrative Member.

Since the counsel for the applicant, Mr. K.K. Biswas is on accommodation, the case is adjourned and listed for hearing on 12.6.2003.

Member

Vice-Chairman

bb

12.6.03

Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman  
The Hon'ble Mr R.K. Upadhyaya, Admn. Member.

It has been stated that Mr K.K. Biswas learned counsel for the applicant is undergoing treatment at Chennai. Accordingly case is adjourned to 23.7.03.

Member

Vice-Chairman

pg

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23.7.2003 Present : The Hon'ble Mr. Justice  
D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. N.D. Dayal,  
Member (A).

List the matter again on 28.7.2003  
for hearing.

Member

Vice-Chairman

mb

28.7.2003. on the prayer of Mr. J.L. Sarkar,  
~~learned counsel~~  
Learned Counsel appearing  
for the Railway, the case  
is adjourned to 21/8/2003.  
M/o  
A.K. Singh

21.8.03 Present : The Hon'ble Mr Justice D.N.  
Chowdhury, Vice-Chairman.  
The Hon'ble Mr K.V. Prahaladan  
Admn. Member.

Heard Mr K.K. Biswas, learned coun-  
sel for the applicant and also Mr A.  
Chakraborty on behalf of standing  
counsel Mr J.L. Sarkar at length. Mr  
Chakraborty prayed for time on behalf  
of Mr Sarkar to take instruction.

List again on 5.9.03 for hearing.

W/S has been filed.

By  
4.9.03,

Member

Vice-Chairman

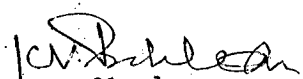


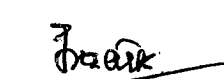



pg

5.9.03 List again on 19.9.03 to enable Mr  
J.L. Sarkar, learned Railway standing  
counsel to obtain necessary instruction.

Member

Vice-Chairman

pg

Office Note	Date	Tribunal's Order
	19.9.03	List again on 20.10.03 for hearing.  <div data-bbox="1197 526 1500 631">   Member </div>
lm	20.10.2003	Adjourned and again listed on 11.11.2003 for hearing.  <div data-bbox="1244 842 1564 973">   Vice-Chairman </div>
bb	11.11.03	ND Bench today. Adj'd to 17.11.03.  <div data-bbox="1340 1263 1436 1342">  </div>
	17.11.2003	Present: The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman The Hon'ble Shri S.K. Naik Administrative Member.  Adhourned. List the case on 19.11.2003 again for hearing.  <div data-bbox="829 1710 1053 1816">   Member </div> <div data-bbox="1276 1684 1564 1816">   Vice-Chairman </div>
bb	19.11.03	None for applicant, even though the case has been listed at serial No.3 in the regular hearing list after it was adjourned from 17.11.03. Shri J.L. Sarkar through learned proxy counsel Sri B.C. Pathak prays for <sup>an</sup> adjournment. List again on 20.11.03 for hearing.  <div data-bbox="845 2368 1037 2447">   Member </div> <div data-bbox="1292 2342 1580 2474">   Vice-Chairman </div>

14.11.03  
Case is  
Ready for  
hearing.  
la..

Office Note	Date	Tribunal's Order
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20.11.2003

Present: Hon'ble Smt Lakshmi  
Swaminathan, Vice-Chairman  
Hon'ble Shri S.K. Naik,  
Administrative Member.

• Heard both the learned counsel  
for the parties. Orders passed  
separately.

*Break*  
Member

*JS*  
Vice-Chairman

nkm

8.12.2003  
Copy of the order  
has been sent to the  
D/Sec. for issuing the  
rule to the applicant  
as well as to the Dy.  
Standing Counsel for  
the Respondents

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.251 of 2002

Date of decision: This the 20th day of November 2003

The Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman

The Hon'ble Shri S.K. Naik, Administrative Member

Shri Hans Rajbhar  
S/o Shri Sudaran Rajbhar  
Gr. No.235-B, West Gotanagar,  
Guwahati.

.....Applicant

By Advocate Shri K.K. Biswas.

- versus -

1. The Union of India, represented by the  
General Manager,  
N.F. Railway,  
Maligaon, Guwahati.
2. The Chief Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati.
3. The Chief Claims Officer,  
N.F. Railway,  
Maligaon, Guwahati.
4. The Chief Personnel Officer,  
N.F. Railway,  
Maligaon, Guwahati.

.....Respondents

By Advocate Shri J.L. Sarkar, Railway Counsel.

.....

O R D E R (ORAL)

SMT LAKSHMI SWAMINATHAN (V.C.)

This is the second round of litigation by the applicant as he had earlier filed O.A.60 of 2001 which was disposed of by Tribunal's order dated 15.3.2002.

2. We have heard Shri K.K. Biswas, learned counsel for the applicant and Shri J.L. Sarkar, learned counsel for the respondents, perused the pleadings and other relevant documents on record.

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3. In this application the applicant prays for quashing the letter issued by the respondents dated 21/26.6.2002 which has been passed in pursuance of the aforesaid order of the Tribunal dated 15.3.2002. In that order the Tribunal had held as follows:

"We have given our anxious consideration on the matter. Admittedly, the applicant worked for about thirty three months without any artificial break. As per the existing guidelines a person is entitled for conferment of temporary status after rendering three years service as temporary peon. The applicant served for about three years as temporary peon till the impugned order was passed. The operative part of the termination order also disclosed that the termination order was not a termination simplicitor, but his termination was other than a termination simplicitor. Considering all the aspects of the matter I am of the view that it is a fit case in which the Railway authority as the employer can now provide the healing touch. The applicant at any rate served for about three years as an emergency peon. The impugned order of termination on the eve of the completion of three years period undoubtedly visited with evil consequence and thereby denying the applicant from receiving a fair deal.

On overall consideration of the matter I am of the opinion that it is an appropriate case in which the Railway authority may sympathetically consider the matter afresh for accommodating in any grade IV job or in any other suitable post in terms of qualification etc. The applicant may also submit a representation narrating all the facts along with the copy of the judgment within six weeks from the date of the receipt of the order and if such representation is made, the Railway authority is directed to consider the same sympathetically expeditiously and preferably within four months from the date of receipt of the representation."

4. During the hearing learned counsel for the applicant had tried to reagitate the issues which had already been taken in the previous O.A., including the fact that principles of natural justice had not been complied with, while the respondents issued the impugned termination order dated 26.3.1997. It is relevant to note that in the aforesaid order of the Tribunal these contentions had not been dealt with, and we, as a co-ordinate Bench cannot consider or deal with the same issues. <sup>again</sup> Shri J.L. Sarkar, learned.....

learned counsel for the respondents has also submitted that the O.A. is barred by the principles of Res Judicata as the applicant has merely agitated the same issues which had already been dealt with in the Tribunal's order dated 15.3.2002. Learned counsel has further submitted that the respondents had fully complied with the directions of the Tribunal by passing appropriate orders dated 21/26.6.2002. During the hearing, the learned counsel for applicant has submitted that certain amounts due to the applicant by way of provident fund, leave salary and dues as mentioned in the termination order dated 26.3.1997 have not been paid to him so far. However, we note, as also pointed by the learned counsel for the respondents, these amounts have not been claimed in the reliefs claimed by the applicant. In the circumstances of the case, the learned counsel for the respondents has submitted that in case, any amounts as mentioned by the applicant are due to be paid to him as per the rules, the respondents will take necessary action to pay him all the amounts shortly.

5. One other ground taken by the learned counsel for applicant is that in pursuance of the order of the Tribunal dated 24.1.2001 in Babu Chakraborty Vs. General Manager, N.F. Railway and others (O.A.67 of 2001), the applicant in that case, who had been similarly terminated from service, has since been reinstated by the respondents in pursuance of the Tribunal's order. He has submitted that similar relief has not been afforded to the applicant, which, therefore, is discriminatory and against the principles of law. In this regard, we note that the applicant has not submitted a copy of the representation given by him, in pursuance of Tribunal's order.....


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order dated 15.3.2002, i.e. the representatin dated 8.4.2002 referred to in the impugned letter dated 21/26.6.2002 and it is not clear whether this ground was taken by the applicant or not. It is further relevant to note that the respondents have stated that the applicant in his representation dated 8.4.2002 has not highlighted any new point for consideration and therefore, his termination was in order as per rules.

6. In the circumstances of the case we, therefore, find no good grounds to interfere in the matter, having regard to our earlier order of the Tribunal dated 15.3.2002 in O.A.60/2001. In this view of the matter the O.A. is ~~likely~~ <sup>liable</sup> to be dismissed. However, having regard to the earlier observations of the Tribunal to the respondents to "provide the healing touch", in case, the applicant makes a self-content representation to the responents with regard to the issue of discrimination, this order shall not be a bar to the respondents looking into the matter in accordance with law, rules and instructions. Further, as mentioned above, if any amounts <sup>are</sup> due to the applicant, in accordance with the relevant rules or are outstanding with the respondents, they shall take necessary steps to make the payments as expditiously as possible and in any case within six weeks from the date of receipt of a copy of this order, with intimation to the applicant.

7. In the result, for the reasons given above the O.A. is dismissed subject to the observations made in para 6 <sup>above</sup>.

No order as to costs.

  
( S. K. NAIK )  
ADMINISTRATIVE MEMBER

  
( LAKSHMI SWAMINATHAN )  
VICE-CHAIRMAN

G U W A R A T I

O. A. NO. .... 261 ... of 2002

-VS-

## I N D E X

Filed on: 06-08-2002.

( K.K.BISWAS )

Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

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

O.A. NO.....251..... of 2002

Sri Hans Rajbhar,

Ø/O Sri Sudarsan Rajbhar,

Qr: NO: 226-B, West Gotanagar,

Guwahati-781011 .....

Applicant

-VS-

- 1) Union of India - representing by the  
General Manager, N.F.Railway, Maligaon,  
Guwahati-781 011.
- 2) The Chief Commercial Manager, N.F.Railway,  
Maligaon, Guwahati- 781011
- 3) The Chief Claims Officer, N.F.Railway,  
Maligaon, Guwahati- 781011
- 4) The Chief Personnel Officer, N.F.Railway,  
Maligaon, Guwahati-781011 .....Opposite Parties  
Respondents

DETAILS OF APPLICATION :

1. Particulars of the Orders against which the application  
is made :

1) The General Manager(P), N.F.Railway, Maligaon's  
Order communicated <sup>vide</sup> No:E/227/E-Peon(T) dt: 21/26-06-2002  
( Annexure- A )

2. Jurisdiction;

The Applicant declares that the subject matter of  
the Application is within the jurisdiction of this

contd...2.. Hon'ble

Filed by 13  
N. K. Sanyal  
06.8.2002  
Advocate  
v Hans Rajbhar

Hon'ble Tribunal.

3. Limitation:

The Applicant submits that the Application has been filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case:

4.1 That the Applicant is the citizen of India and is, therefore, entitled to the rights and privileges guaranteed to the citizens of India under the Constitution.

4.2 That your Lordship in this Hon'ble Tribunal vide the celebrated judgement/order dated 15-03-2002 in O.A.NO: 60 of 2001 were kind enough to issue direction to the N.F.Railway Administration to consider sympathetically to accommodate the Applicant, whose service as Emergency Peon attached to Chief Claims Officer was terminated arbitrarily and unlawfully on 26-03-97, in any grade IV job or in any other suitable post in terms of qualification etc. afresh. (Annexure-B)

4.3 That in the said wonderful and benign judgement/Order mentioned under para 4.2 above all the issues arising out of the unlawful termination of service of the Applicant were exhaustively highlighted and expressed the view " that it is a fit case in which the Railway authority as the employer can now

c ont'd..3.. provide..

14  
6.8.2002  
Advocate

Harsh Bhatnagar

provide the healing touch" to the Applicant who had rendered service for about three years as an Emergency Peon attached to the CCO all along and who was denied " from receiving a fair deal" at the cause of termination of service of the Applicant.

4.4 That in spite of the categorical direction of this Hon'ble Tribunal in the aforementioned judgement/ Order, the principal appandages of the N.F.Railway Administration, more particularly the General Manager himself, has applied his mind mechanically in compliance with the orders of the Tribunal and not carefully considered the whole case on its true perspective based on the facts, records and laws/Rules involved , and thus, made " mis-carriage of Justice " to the representation of the Applicant dated 08-04-2002 and caused " DEFIANCE " to the order of this Hon'ble Tribunal mentioned above.

Copy of the representation of the Applicant dated 08-04-2002 is annexed as Annexure- C.

4.5 That the Railway Authority raised the points in the impugned order mentioned above that the services of the Applicant were "unsatisfactory", "irregular", " was absconding since 09-03-97" and " his services were terminated w.e.f.26-3-97 after complying with the requirements of Rule 301(1) of IREC vol-1 "" has not highlighted any new point for further consideration. "

How ridiculous and astonishing all those pleas !

15  
V.K. Sharma  
6.8.2002  
Advocate

V. K. Sharma

If " unsatisfactory", then how the Applicant could render service to the same employer for about continuous three years ! The question of " irregular" does not arise at all as the Applicant drew full<sup>throughout</sup> pay the whole of the period of his service under CCO till his termination without any artificial break<sup>in service</sup> and the period of " absconding " from 09-03-97 till 26-03-97, that is , the date of his termination of service , was shown deliberately to victimise the applicant by showing him "absconding". Even if the Applicant was absconding for the argument's sake, then what steps were taken by his employer for knowing his whereabouts. The employer had not made any enquiry to the local home address of the Applicant, nor made any FIR in the local Police Station, nor made any Gazette Notification, nor displayed the matter of absconding in the Notice Board of the Employer's Office or any conspicuous place and the modes for such action prevailing in the Railways system in the case of absconding. The plea is absolutely afterthought, malafide, unilateral, unfair and vindictive to finish one's chunk of bread. The plea of " not highlighting any new point " as taken by the Railway authority in the impugned order mentioned above is also an another example of non-application of mind and thereby causing "miscarriage of justice" and violate the principles of Natural Justice so as to deprive the Applicant from his

contd...5.... "Just..

16  
V. K. Sharma  
6.8.2002  
Advocate

V. K. Sharma



" Just dues". It is not understood what more "new point " is required by the Railway authority on the face of such a magnificent Judgement/Order given by this Hon'ble Tribunal in the O.A. NO: 60 of 2001 mentioned above . All the points, issues and Railway's flaws & lapses were exhaustively dealt with in the said Judgement/Order. Nevertheless, the Railway authority has not complied with the directions given by the Hon'ble Tribunal and thereby caused defiance to the said Order.

4.6 That the Provident Fund contribution of the Applicant was regularly drawn from the salary of the Applicant on completion of his one year service and the deducted amount is still withheld with the Railway authority . The photocopy of the P.I. slip is attached as Annexure- D.

4.7 That the leave- salary/encashment for the leave earned by the Applicant during the tenure of his service as Emergency Peon has not also been released as yet by the Railway Authority.

4.8 That the benefit of the Pay, Scale, Fixation of Pay, arrear etc. as admissible due to the 5th & Pay Commission has not been paid to the Applicant as yet by the Railway authority.

4.9 That the Retrenchment compensation which will come 6 (six) months' salary around inclusive of leave-salary etc have not been paid by the

contd ...6...Railway...

17  
V. S. Srinivasan  
6-8-2007  
Advocate

✓ Harry R. Srinivasan

Railway authority as yet nor at the time of terminating the service of the Applicant as per Rules of the ID Act. as well as Railways own set of Rules.

4.10 That it is humbly submitted that the termination Notice itself is defective so much so that it did not comply with the requirements of Rule 301(4) and Rule 301(5) of the Indian Railway Establishment Code, Vol-1, 1985 Edition . The Rule 301(4) says " the reason justifying their action " with a view to terminating one's service " should be recorded" and the Rule 301 (5) indicates " The notice of termination of service or order of forthwith termination of service, as the case may be, under this rule should be given by an authority not lower than the appointing authority ".

Here it is mentioned that the " appointing authority " for engaging/appointing an Emergency Peon in all cases is the General Manager and without his personal approval no Emergency Peon is appointed. As such, at the time of termination of service of the Applicant the personal approval of the General Manager should have been taken and thereon the Notice issued.

Copy of the termination letter is annexed as Annexure- E.

4.11 That the section 25F (a) of the INDUSTRIAL

18  
V. S. S. S. S.  
6-8-2007  
Advocate

V. S. S. S. S.

DISPUTES ACT, 1947 also indicates that "the Workman has been given one month's notice in writing indicating the reasons for retrenchment "; but " no reasons for retrenchment" were shown in the termination Notice mentioned above.

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N. K. Jaiswal  
6.8.2007  
Advocate

✓ Heavy Repetition

4.12 That since termination of service was not simpliciter, the show cause notice should have been served to the Applicant on ground of his "absconding" before effecting his termination of service.

4.13 That no notice of absconding by the Applicant and no report of the controlling officer of the Applicant, as alleged, were produced in the Tribunal in the O.A. NOE 60 of 2001 mentioned above by the Railway authority so as to prove the veracity of their statement in regard to termination of service of the Applicant.

4.14 That the termination of service on the vague allegation of " unsatisfactory work " is not tenable and thus not enough compliance with natural justice and, hence, the order liable to be set aside. It is humbly submitted that their Lordships in Hon'ble Supreme Court observed in Nepal Singh -vs- State of UP, reported in (1984) 3 SLR 126, 130, 131, paras 8-9(SC): " Any statutory employer must take care, when terminating a career on the ground of unsuitability, to ensure that its order is founded on definable material ' objectively assessed ' and relevant to the ground of termination."

Noted  
6.8.2002  
Advocate

✓ Henry, R. D. Bhargava

4.15 That from the facts & circumstances narrated above it would be evident that the termination of service of the Applicant by the Railway Authority was in punitive nature and in imposing the punishment the concerned authority should have acted fairly objectively, and not arbitrarily.

4.16 That this Applicant humbly submits that the principle of equality in respect of the Government policy as to conditions of service is vitiated " by reason of arbitrariness, mala fides, importation of extraneous factors ."

4.17 That it is humbly submitted that in terminating the service of this Applicant the concerned Railway authorities exercised the excess use and abuse of powers with an ulterior motive of victimising the employee by way of termination as well as non-consideration of representation of the Applicant as ordered by this Hon'ble Tribunal in the aforementioned judgement.

In this connection this humble Applicant relies upon the most laudable judgement of their Lordships in the Hon'ble Supreme Court in 'Ahmedabad Urban Development Authority -vs- Manilal Gordhandas', reported in AIR 1996 SC 2804.

4.18 That as per settled principles of Labour Laws it is desirable that while dealing with an employee's case, and that too, on the direction of this Hon'ble Tribunal as mentioned above,

Harv. Red'han

on  
1

22  
N. Srinivas  
- 6.8.2002  
Advocate

4.20 That above all the Principles of "Reasonable Opportunity" and "Natural Justice" have not been observed and followed in the case of the Applicant by the N.F. Railway Administration right since the termination of service till the issuance of the impugned order mentioned under para - 1 above.

✓ Hanu Rajadhar

5. Grounds for Relief:

5.1 <sup>For that</sup> The contents of the impugned order issued by the Railway authority mentioned under Annexure-A are contrary to the directions of the Hon'ble Tribunal as mentioned in O.A. NO:60 of 2001's O R D E R passed on 15-03-2002.

5.2 For that the impugned order of the Railway Authority is " Malafides" and " bias" and not according to law & Rules of the Service-matters, and hence, liable to be quashed.

5.3 <sup>For that</sup> <sup>has not</sup> The case of the Applicant <sup>A</sup> been examined with proper application of mind and, hence, caused "miscarriage of justice".

5.4 For that the Railway authority have flouted their own set of rules in respect of "termination of service" <sup>and</sup> not examined the case de novo with <sup>A</sup> sympathetic consideration for accommodating the Applicant in any group-IV employment as ordered by the Hon'ble CAT/GHY.

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Vedant  
6.8.2002  
Advocate

5.5 For that the impugned order was perverse on the face of it.

5.6 For that the impugned order was unreasonable, arbitrary and/or mala fide

5.7 For that the impugned order or action has violated the Fundamental rights guaranteed to the Applicant under Articles 14, 16, 39A, 309 of the Constitution of India.

Vijay Kumar

5.8 For that the Respondents have not exercised their jurisdiction in terminating the service of the Applicant and discretion in the impugned order in accordance with law.

5.9 For that there had been denial of procedural safeguards and/or procedural and Administrative Fairness.

5.10 For that the cardinal Principles of Natural Justice were violated all along.

6. Details of Remedy exhausted:

The Applicant declares that the Railway authority & vide their impugned order mentioned under Annexure-A have made the remedies available exhausted, and hence, this Application before this Hon'ble Tribunal for having justice.

7. Matters not previously filed or pending with any other Court:

The Applicant most humbly submits that he filed an

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Advocate  
6.8.2012

Harish Doshi

Application before this Hon'ble Tribunal under No: 60 of 2001 against the unlawful order of termination of service of the Applicant by N.F.Railway Administration which was disposed of by your Lordship vide O R D E R dated 15-03-2002 with the direction to the Railway authority to consider the case sympathetically afresh for accommodating the Applicant in any grade IV job or in any other suitable post in terms of qualification etc. But the Railway Authority vide the impugned order did not comply with the directions of your Lordship. Hence, this Application against the impugned order as under Annexure-A is filed for justice. The Applicant most humbly submits that <sup>other</sup> no such application, writ petition or suit is pending before any Tribunal or Court in respect of the subject matter of this application.

8. Relief sought:

In the circumstances stated above the Applicant humbly prays that the Lordships of this Hon'ble Tribunal may be pleased to administer justice and issue orders -

- (i) For quashing the miscarriage of justice caused by the General Manager(P), N.F.Railway, Maligaon, in his letter No:E/227/E-Peon(T) dated 21/26-06-2002.
- (ii) For setting aside the termination order issued by the Railway authority vide letter No:E/227/1/E/Peon dt: 26-03-97 made unlawfully;



25  
Noted  
6.8.2002  
Advocate  
✓ Hary Radhwan

(iii) For re-instating the service of the Applicant in any grade IV/Group-D employment or in any other suitable post in terms of qualifications etc.

(iv) for granting all consequential benefits and back wages right from the date of termination of service, that is, from 26-03-97;

(v) Any other relief(s) as the Hon'ble Tribunal may deem fit and proper.

9. Interim Relief:

Pending finalisation of this Application Your Lordships may be pleased to pass such order as deem fit and proper.

10. Particulars of Application Fee:

Indian Postal Order No. <sup>76574775</sup> ..... dated. <sup>31.07.2002</sup> .....  
amounting to Rs 50.00 (Rupees fifty only) to be drawn in the Head Post Office, Guwahati is enclosed.

11. Details of Index

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

12. List of Annexures :

A, B, C, D, E.

contd....14...Verification...

VERIFICATION

26  
Nehru  
6.8.2002  
Advocate

I, Sri Hans Rajbhar, son of Sri Maul Rajbhar, aged about 27 years, resident of Rly Qrs. No:236-B at West Gotanagar, Guwahati-781011, do hereby solemnly affirm and verify that the contents of paragraphs 4.1 to 4.10 are the facts of the case and true to my knowledge, information and belief and that I have not suppressed any material facts and paras 4.11 to 4.20 are my humble and respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 6th days of August, 2002.

Place;Guwahati.

Date.06.08.2002

Hans Rajbhar

Signature of the Applicant

To  
The Deputy Registrar,  
Central Administrative Tribunal,  
Guwahati.

NORTHEAST FRONTIER RAILWAY:

OFFICE OF THE  
GENERAL MANAGER (P)  
MALIGAON: GUWAHATI-11.

NO: E/227/E-Peon(T)

Dated: 21-06-2002

TO

Shri Hans Rajbhor  
C/o Shri Sudarsan Rajbhor  
Gr. No. 246-B, West Gatenagar,  
Guwahati-781011.Sub:- Your representation of 8-4-2002  
for consideration re-engagement  
in any Group D post as per Hon'ble  
CAT/GHY's judgement.

Ref:- APO/LC's No. E/170/Legal Cell/NS/31/2001

GM/N.F.Rly has passed the following orders:-

" The undersigned has considered the representation of Shri Hans Rajbhor, Ex- Subs-E/Peon under CCO/MLG. in the light of the Order of Hon'ble CAT/GHY dated 15-03-2002 in OA 60 of 2001 and relevant rules/records in connection with engagement and discharge of Sub-E/Peon. The applicant was appointed as Sub-E/Peon in scale Rs. 750-940/- under CCO/MLG from Rectt/Peon (Loose) dated 27-06-94 in terms of G.M. (P)/MLG letter No. E/227/2 Rectt./Peon (Loose) dated 27-06-94 wherein the rules of engagement and discharge of Sub-E/Peon are embodied. The most basic condition in continuation of service of a Sub-E/Peon is satisfactory service to the officer under whom he is employed it is noted that Shri Rajbhor was terminated from service w.e.f. 26-03-97. The perusal of the order of Termination dated 26-03-97 and also all the records in this regard including CCO/MLG's report dated 17-03-97 reveals that Shri Hans Rajbhor Emergency Peon was absconding since 09-03-97 and that his work was most unsatisfactory and irregular. The matter was reviewed at appropriate level and it was decided not proper to keep him in service due to his irregular and unsatisfactory service and hence his services were terminated w.e.f. 26-03-97 after complying with the requirements of Rule 301(1) of IRCC Vol-1.

The applicant in his representation dated 8th April '02 has not highlighted any new point for further consideration. The termination of the applicant was in order and as per rules. Hence Shri Rajbhor whose services were unsatisfactory and irregular does not deserve to be taken back in Railway Service.

The applicant may be informed accordingly."

(Chandrajit Saikia)

Dy. Chief Personnel Officer (HQ)  
for General Manager (P) Maligaon.

Copy forwarded for information and necessary action to:-

1. CAT/GHY-This is in connection with his OA No. 60 of 01 of 15-3-02
2. APO/LC/HQ.
3. Rxxxxxx Sri J.L. Sarkar, Rly. Advocate-Tho: APO/LC.

for General Manager (P) Maligaon.

Attested

(E. K. BISWAS)

Advocate

28

Original Application No.60 of 2001.

Date of Order : This the 15th Day of March, 2002.

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

Shri Hans Rajbhar  
C/O : Sudarsan Rajbhar  
Qrs. No.246-B, West Gotanagar  
Guwahati - 781111.

... Applicant.

By Advocate Mr.R.P.Yadav.

- Versus -

1. Union of India

2. The General Manager  
N.F.Railway, Maligaon  
Guwahati-11.

3. The Chief Claims Officer  
N..F.Railway, Maligaon  
Guwahati-11.

... Respondents.

By Mr.J.L.Sarkar, Railway Advocate.

ORDER

CHOWDHURY J.(V.C.) :

By order dated 27.6.94 the applicant was appointed as Emergency Peon on pay of Rs.750/- per month in the scale of Rs.750-940/- w.e.f.27.6.94 against an existing vacancy under CCO, Maligaon. His appointment was conditional. The following conditions were mentioned in the appointment letter :

1. Your appointment will not confer upon any right to claim for further appointment in this Railway and you are liable to be discharged without any notice when your service will not be required by the administration or on the expiry of the currency of the post against which you are engaged or on medical grounds or physical incapacity or in the event of posting of approved
- Contd..2

Attested

30.7.2002  
Sd/- B. B. ...

hand.

2. You will be transferred with the Officer for whom you are engaged as substitute Emergency Peon or you will be discharged in the event of the officer for whom you are engaged expresses his unwillingness to take you on transfer along with him.

3. The appointment of emergency peon at the first instance will be for a period of three months only and will be extended further on receipt of a certificate from the Controlling Officer that the service of the emergency peon is satisfactory and he can be continued further."

His appointment was extended and continued as such till the impugned order No.51/97 was passed vide order dated 26.3.97 terminating the service of the applicant. The applicant thereafter moved different authorities ventilating his grievances. Failing to get appropriate remedy from the authorities the applicant approached this Tribunal for redressal of his grievances. There was some delay in filing the application and after due consideration the delay was condoned.

2. The Railway authority justifying the termination of the applicant submitted its written statement. According to the Railway authority, his service was terminated on the basis of the report of the Controlling Officer which indicated his service was unsatisfactory. Moreover, the applicant absconded w.e.f.9.3.97. Hence his service was terminated w.e.f.26.3.97 in terms of Rule 301(1) of IRFC Vol.I.

3. Mr.R.P.Yadav, learned counsel for the applicant strenuously argued that the impugned order of termination is unlawful, more so, when the said order

Attested

*[Signature]*  
30.7.2002  
Advocate

was passed on the ground of unsatisfactory nature of service also on the ground of alleged absconding of the applicant. 29

3. Mr. J. L. Sarkar, learned counsel for the respondents has referred to the Full Bench decision dated 12.2.99 in Shyam Sundar Vs. U.O.I. & Ors. case being O.A. No.896 of 1995 and also another decision of the said Bench of the Tribunal passed in Manoj Kumar Poddar -Vs- Ministry of Railways & Ors. case in O.A.1589 of 1988 disposed on 21.3.2001.

4. We have given our anxious consideration on the matter. Admittedly, the applicant worked for about thirty three months without any artificial break. As per the existing guidelines a person is entitled for conferment of temporary status after rendering three years service as temporary peon. The applicant served for about three years as temporary peon till the impugned order was passed. The operative part of the termination order also disclosed that the termination order was not a termination simpliciter, but his termination was other than a termination simpliciter. Considering all the aspects of the matter I am of the view that it is a fit case in which the Railway authority as the employer can now provide the healing touch. The applicant at any rate served for about three years as an emergency peon. The impugned order of termination on the eve of the completion of

Contd..4

Attended

U. K. BISWAS / 30.7-2002  
Advocate

31

three years period undoubtedly visited with evil consequence and thereby denying the applicant from receiving a fair deal.

5. On overall consideration of the matter I am of the opinion that it is an appropriate case in which the Railway authority may sympathetically consider the matter afresh for accommodating in any grade IV job or in any other suitable post in terms of qualification etc. The applicant may also submit a representation narrating all the facts along with the copy of the judgment within six weeks from the date of the receipt of the order and if such representation is made, the Railway authority is directed to consider the same and sympathetically expeditiously / preferably within four months from the date of receipt of the representation.

Subject to the observations made above, the application stands disposed of.

There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

bb

TRUE COPY

26/3/02

Section Officer (J),  
आयुक्त कार्यालय (न्यायिक शाखा)  
Central Administrative Tribunal  
केन्द्रीय प्रशासनिक अधिकरण  
Wahat Bench, Guwahati  
कागशी न्यायपीठ, गुवाहाटी

26/3/02

P/CO/SC

Min

26.3.2002

(R. P. YADAV)

Attested  
R. K. BISWAS  
20.7.2002  
ADJ/00212

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

Sub:- Court Order.

Sir,

Most humbly and respectfully, I beg to lay down the following for your kind consideration please.

1. That Sir, my services was terminated by impugned order No. 51/97 dtd. 26.3.97.
2. That Sir, I approached all concerned and on failing to get the justice, finally I was forced to take shelter in the court of Law.
3. That Sir, it is the matter of immerse that the Hon'ble Central Administrative Tribunal, Guwahati Bench has ordered to approach your honour for consideration of my case.
4. That Sir, in this connection I am to say that I am ready to join any grade class IV job or any other suitable post in the N.F. Rly.
5. That Sir, I am endorsing herewith the photo copy of the order of Hon'ble Court of Justice.

In view of the fact stated above, and in the light of the Hon'ble Court order and keeping in view my sufferings for long more than five years for no fault of mine I fervently pray to your honour kindly to consider my case sympathetically and give me appointment in the Rlys as prayed for and for this act of kindness I shall remain obliged.

Date: 8.4.2002.

DA:- Photo Copy of  
Court Order.

Yours faithfully,

(Hans Rajbhar)

C/O Sudarshan Rajbhar

Rly Qrs. No. 236/B

West Gotanagar

Guwahati - 781011.

Copy to:- CCO & CPO/MLG for information and necessary action please.

Yours faithfully,

(Hans Rajbhar)

To one copy of  
Applicant's representation  
dt: 08.04-2002 placed  
below at SN-20/1.  
Advocate  
20-7-2002



20/1

ANNEXURE - C

To  
The General Manager,  
N.E. Railway, Maligaon  
Guwahati-781011

08/14/02

Subj: Court order.

Sir

May kindly take note  
10/17/02

Most humbly and respectfully, I beg to lay down the following lines for your kind consideration please.

1. That sir, my services were terminated by Impugned order dated 14.11.97 (dtd. 14.11.97)
2. That sir, I approached all concerned and on failure to get justice, finally I was forced to take shelter in the court of law.
3. That sir, it is the matter of immense pleasure that the Hon'ble central Administrative Tribunal Guwahati Bench has ordered to approach your honour for consideration of my case.
4. That sir, in this connection I am to state that I am ready to join any grade class IV job or any other suitable post in the N.E. Railway.
5. That sir, I am enclosing herewith the photo copy of the order of the Hon'ble court of justice.

In view of the facts stated above, and in the light of the Hon'ble court order and keeping in view my sufferings for long more than five years for no fault of mine I fervently pray to your honour kindly to consider my case sympathetically and give me appointment in the Railways as prayed for and for this act of kindness I shall remain obliged.

DA: photo copy of Court order.

Yours faithfully,  
Hans Rajbhar  
(HANS RAJBHAR)  
c/o Sudeshan Rajbhar  
Rly Qn. No. 2 S/B West Goleenagar  
Guwahati-781011

Copy to: CCO & CPO/MLG for information and necessary action please.  
Copy of Court order enclosed.

Making own acknowledgment  
the April 8, 2002

Attested  
31.3.2002  
31.3.2002  
31.3.2002

# N. F. RAILWAY

STATEMENT OF VOLUNTARY/NON-CONTRIBUTORY STATE RAILWAY  
PROVIDENT INSTITUTION ACCOUNT  
FOR AND UPTO THE END OF THE YEAR 31ST MARCH 1999

21/  
ANNEXURE - D

DEPARTMENT HEADQUARTER GENERAL

AU 00

BU 237

DEPOSIT ACCOUNT OF HANS RAJBHAR

DEPOSITOR NO 01930382 N

DESIGNATION :

(FIGURES IN RUPEES)

TRANSACTION MONTH	SUBSCRIPTION			WITHDRAWAL	REFUND	BONUS		REMARKS	
	COMPULSORY	V.P.F.	TOTAL			CREDIT	WITHDRAWAL		
BALANCE ON 1-4-98	1671		1671						
APR. 98									
MAY. 98									
JUN. 98									
JUL. 98									
AUG. 98									
SEP. 98									
OCT. 98									
NOV. 98									
DEC. 98									
JAN. 99									
FEB. 99									
MAR. 99									
TOTAL								LOAN	RECOVERY
INTEREST @ 12.0%			201						

BALANCE ON

31-3-99

RS.

1872

( RUPEES ONE THOUSAND EIGHT HUNDRED SEVENTY TWO ONLY )

DATED :

99-07-02

SPECIAL ATTENTION IS INVITED TO NOTES 1 & 2 OVERLEAF.

FOR FINANCIAL  
& CHIEF ACCO

Attested

K. BISWAS 30.7.2002

H. P. Railway

ORDER No. 21/97

In terms of Rule 301(1) of H.P. Railway Establishment Code Vol- I, the services of Sh. Hina Rajbhar, Sub. Dharmachay Poon in scale Rs. 750-970/- attached to C.O. H.P. Railway/HID is hereby terminated from 26-3-97 (Ad) with one month pay in lieu of one months notice. He is also entitled to retirement compensation @ 15 days wages for each completed year of service.

Signature of the Appointing Authority or Higher Authority with Office Seal

Dated: Malignon 26-3-97

No. E/227/1/E. Poon

Copy forwarded for information and necessary action to:-

1. PA & CAO/Malignon
2. CCA/H.P.Rly/Malignon in reference to his Office Memo No. 0/CCA/H.P.Rly/96-97 dated 17-3-97
3. O2/Commercial. He may obtain acknowledgement from Sh. Hina Rajbhar, Sub. Poon in duplicate copy of this Order. One copy to be retained and one to be sent to the Office of the P.O.
4. P.O. for payment of one month's wages and one month's notice pay.
5. EA to CCA
6. PA to CCA
7. Sh. Hina Rajbhar through CCA/Malignon Sh. Rajbhar may draw the payment of one month's wages in lieu of one month's notice from CCA Office/Malignon

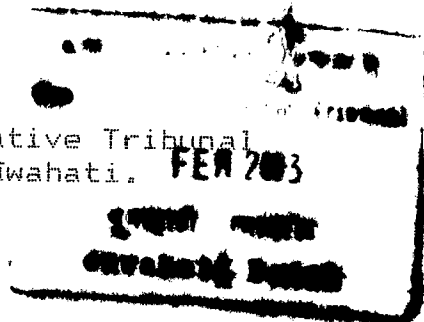
C.O.G - 15585 D/26.3.97

05/34 - 07.87.26.3.97

Signature of the Appointing Authority or Higher Authority with Office Seal

Attested  
 (E. K. BISWAS)  
 Advocate  
 30.7.2002

In The Central Administrative Tribunal  
Guwahati Bench :: Guwahati.



Chief Personnel Officer (A) 36  
L. P. Rly, / Maligaon  
Guwahati-78

O.A. NO. 251/2002

Shri Hans Rajbhor

Vs.

Union Of India & Ors.

In the matter of :

Written Statement on behalf of  
the respondents.

Filed by  
D. Chakraborty  
Advocate  
25/2/2003

The respondents in the above case most respectfully beg to state as under :

1. That the respondents have gone through the original application and have understood the contents thereof.
2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That in reply to statements in para 4.2 it is stated that as per Hon'ble Tribunal's order dated 15.3.2002, the case of the applicant was considered by the General Manager and it was decided not proper to keep the applicant in service due to his irregular and unsatisfactory service. The decision of the G.M.(P)/MLG was communicated to the applicant by Office letter No. E/227/E-Peon(T) dated 21.5.2002.

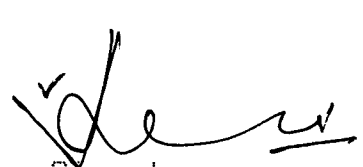
4. That in reply to statements in para 4.3 to 4.20 it is stated that the applicant was appointed as Emergency Peon attached to CCO/Maligaon by GM(F)/MLG's letter dated 27.6.1994. According to the report of his controlling officer, the service of the applicant was unsatisfactory. Moreover, the applicant was absconded w.e.f. 9.3.97. (Hence, the service of the applicant was terminated w. e. f. 26.3.97 after following the procedures mentioned under Rule 301(1) of IREC Vol. I.) The applicant was paid one month pay in lieu of notice with retrenchment compensation at the rate of 15 days pay for each completed year of service.

5. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

Verification

I, A.K. Nigam....., working as Chief Personnel Officer / Admn......, N.F.Rly, Maligaon, do hereby verify that, the statements made in the paragraphs 1 to 5 are true to my knowledge.

Guwahati

  
Signature

Chief Personnel Officer(A)  
N. F. Rly, / Maligaon  
Guwahati-11