

30/100

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

✓ (DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

blaha  
4/12/17

( SEE RULE - 4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

ORDER SHEET

Original Application No : 402 / 2002  
Misc. Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant(s): Sri Subhaneswar Karita

- Vs. -

Respondent(s): Lot 2018

Advocate for the Applicant(s): Dr M. Pathan, D. Saikia


Advocate for the Respondent(s): J. Das  
Rly Counsel. B.K. Sharma

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. Contempt Petition is filed / not filed C.F. for Rs. 50/- as per vide LPO/B No 69...790233. Date 28/11/2002</p> <p>bb</p> <p>Dr. Registrar.</p> <p>NO steps</p> <p>23/11/02</p> <p>Slips &amp; Eeason amount for Rs 5/-</p> <p>23/11/03</p> <p>Notice prepared and sent to D/S for wing the respondent No 1 to 6 by Regd. A/D.</p> <p>29/11/03</p> <p>D/No 163 &amp; 168</p> <p>29/11/03</p>	<p>24.12.2002</p> <p>24.1.2003</p>	<p>No steps taken. List the matter on 24.1.2003.</p> <p>Member</p> <p>present : The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.</p> <p>Heard Dr (Mrs.) M.Pathak, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why this application shall not be admitted. Returnable by four weeks. List on 28.2.2003 for filing reply and admission.</p> <p>Vice-Chairman</p>

28.2.2003

Heard Dr. Mrs. M. Pathak, learned counsel for the applicant. The application is admitted, ~~for~~ called for the records.

List the case for order on 4.4.2003.

  
Vice-Chairman

bb

4.4.2003

Miss U. Das, learned counsel appearing on behalf of the respondents prayed for time for filing written statement. Prayer is allowed. List on 9.5.2003 for written statement.

  
Vice-Chairman

mb

9.5.2003

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

List the case on 6.6.2003.

  
Vice-Chairman

bb

6.6.2003

No written statement so far filed by the respondents. Further four weeks time is allowed to the respondents to file written statement. List again on 11.7.2003 for written statement.

  
Vice-Chairman

mb

11.7.2003

The respondents are yet to file written statement though time granted. Further four weeks time is allowed to the respondents to file written statement as a last chance. List again on 12.8.2003 for orders.


  
Vice-Chairman

mb


✓  
Sent vide D/No. 163  
to 168 dtd. 29/1/03.

by  
3/5/03.


① Service report are  
still awaited.

  
3.4.03.


No. written statement  
has been filed.

  
8.5.03.


No. W/s has been  
filed.

  
5.6.03.

No. W/s has been  
filed.

  
16.7.03.

No. written statement  
has been filed.

  
11.8.03.

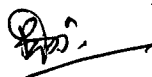
12.8.2003

No written statement so far filed by the respondents. Miss U. Das, learned counsel appearing on behalf of the respondents prays for time for filing written statement. Further ten days time is allowed to the respondents to file written statement. No further time shall be granted on that day. Put up on 22.8.2003 for fixing the date of hearing.

  
Vice-Chairman

mb

20.8.03  
W/S submitted  
by the Respondent Nos.  
1 to 6.



22.8.03

The written statement already filed. Pleadings are complete. The case may be posted for hearing on 29.8.03. Endeavour shall be made to dispose of the application on that day.

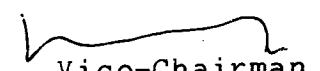
List on 29.8.03 for hearing.

  
Vice-Chairman

pg

29.8.2003

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

  
Vice-Chairman

Received  
Nkm  
03/9/03

15.9.2003

Copy of the Judgment has been sent to the office for issuing the same to the applicant as well as to the Rty. Standing Counsel.  
148

nkm

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./RXX.No. 1111 402 of 2002

DATE OF DECISION 29.8.2003

Shri Bhubaneswar Kalita

.....APPLICANT(S).

Dr (Mrs) M. Pathak, Mr D. Baruah and  
Mr J. Das

.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

The Union of India and others

.....RESPONDENT(S)

Mr B.K.Sharma, Railway Counsel and

Mr S.Sarma, Advocate.....ADVOCATE FOR THE  
RESPONDENT(S).

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

THE HON'BLE

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

Judgment delivered by Hon'ble ~~Member~~ Vice-Chairman

V

b

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.402 of 2002

Date of decision: This the 29th day of August 2003

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

Shri Bhubaneswar Kalita  
Resident of village- Lechakona,  
P.O.- Kendukona, District- Kamrup, Assam,  
Presently working as Gateman  
N.F. Railway. ....Applicant  
By Advocates Dr (Mrs) M. Pathak,  
Mr D. Baruah and Mr J. Das.

- versus -

1. The Union of India, represented by  
The Secretary,  
Government of India,  
Ministry of Railways,  
New Delhi.
2. The General Manager,  
N.F. Railway,  
Maligaon, Guwahati.
3. The Divisional Railway Manager (P)  
Lumding, Assam.
4. The Chief Engineer,  
N.F. Railway,  
Maligaon, Guwahati.
5. The Asstt. Engineer,  
N.F. Railway,  
Guwahati.
6. The Chief Permanent Way Inspector  
N.F. Railway, Guwahati. ....Respondents  
By Advocates Mr B.K. Sharma, Railway Counsel  
and Mr S. Sarma.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The applicant was initially appointed as temporary Gangman by order dated 29.7.1982. The applicant was subsequently posted as Gateman at 'C' Class manned level crossing. An accident took place on 6.10.1985 resulting

in the death of some persons. The authority at that time primarily held the applicant responsible and accordingly dismissed him from service. The dismissal was finally set aside by this Bench by order dated 27.3.1987 in G.C. No.218 of 1986. Finally, the applicant was reinstated in service on 12.6.1987. According to Dr (Mrs) M. Pathak, learned counsel for the applicant, the applicant after reinstatement was working as Gangman under the respondents and he was allowed to join service on 12.6.1987. The grievance of the applicant was that though the applicant was reinstated the respondent authority failed to regularise the period of his suspension on reinstatement and similarly faltered in the fixation of his pay in reference to the Fourth and Fifth Central Pay Commission Report. Hence this application assailing the inaction of the respondents in not regularising the period of suspension and revising the pay of the applicant as per the recommendations of the Pay Commission as well as the increments that accrued to the applicant for the period from 6.10.1985 to 11.6.1987.

2. The respondents in the written statement in clear terms stated that the issue raised in this application was duly examined and accordingly an order bearing No.E/132/3-LM(E) dated 23.12.2002 was passed by the Divisional Railway Manager (P), Lumding regularising the period of suspension from 6.10.1985 to 28.10.1985 and dismissal period with effect from 29.10.1985 to 11.6.1987 as on duty. The necessary fixation of pay in accordance with the Fourth and Fifth Pay Commission Report was done by the Divisional Railway Manager (P), Lumding vide order dated 30.4.2003 with copy to all concerned including the applicant.....

applicant. The learned counsel for the applicant stated that none of the communications mentioned above reached the applicant.

3. There is no dispute as to the admissibility of the claim of the applicant. The respondent authority in the written statement itself admitted the admissibility of the claim and also asserted that necessary instructions were issued for regularisation of service of the applicant. From the materials it also appears that by communication dated 23.12.2002 the Divisional Railway Manager (P), Lumding informed the ADEN, Guwahati that the authority decided that the period of suspension from 6.10.1985 to 28.10.1985 and the period of dismissal from 29.10.1985 to 11.6.1987 was to be regularised as on duty as per extant rule and his pay was to be fixed in RP/86 and RP/97. The authority concerned was accordingly directed to take necessary action to regularise the above period under intimation to the office. Subsequently, by office order No.E/132/3-LM(E) dated 30.4.2003 the concerned authority passed the following order:

"Shri Bhubaneswar Kalita, Sr. Trackman in scale Rs.200-250/- appointed wef. 4-12-79 who was subsequently dismissed from service wef. 29/10/85 vide DRM/LMG's L/No.E/PLG/Cor/ LM/Pt-I Dt.24-10-85 in connection with accident of Cachar Express and the period from 6-10-85 to 28-10-85 has been regularised as suspension.

Therefore, in pursuance of CAT/GHY and DRM(P)/LMG's L/NO.E/D&A/Cor/Pt.III dtd.10/6/87 he has been reinstated in the service and resumed duty wef. 12/6/87 in scale Rs.775-1025/-.

The period of dismissal from service wef. 29/10/85 to 11/6/87 and the suspension wef. 6/10/85 to 28/10/85 has been regularised as duty vide DRM(P)/LMG's L/No.E/132/3-LM(E) dtd.23-12-2002. Consequent on Hon'ble CAT/GHY's order dtd. 27-3-87 on GCNo.2/8/86 and GM(P)/Maligaon's letter No.E/468E/15 Pt.IV (E) Loose (i) dtd. 21-5-2001.



"As such his pay in scale Rs.210-270/- is fixed in terms of 4th and 5th CPC which is as under:-

<u>Pay already fixed</u>		<u>Pay now fixed</u>	
1-8-85	Rs.260- (210-270)	1-8-85	Rs.260- (210-270)
19-6-87	Rs.775- (775-1025/-)	1-1-86	Rs.965- (800-1150)
1-6-88	787-	1-8-86	980-
1-6-89	799	1-8-87	995-
1-6-90	811	1-8-88	1010-
1-6-91	823-	1-8-89	1030-
1-6-92	835-	1-8-90	1050-
1-6-93	847-	1-8-91	1070-
1-6-94	859-	1-8-92	1090-
1-6-95	871-	1-8-93	1110-
1-1-96	2730- (2610-3540)	1-8-94	1130-
1-6-96	2790-	1-8-95	1150-
1-6-97	2850-	1-1-96	3580 (2650-4000)
1-6-98	2910-	1-8-96	3650-
1-6-99	2970-	1-8-97	3720-
1-6-2000	3030-	1-8-98	3790-
19-3-2001	3105 (2650-4000)	1-8-99	3860-
1-3-2002	3170	1-8-2000	3930-
		1-8-2001	4000/- (Max.)"

4. From the above it is seen that the authority took a conscious decision for regularisation of his suspension period. The authority also decided that the period of dismissal from service with effect from 29.10.1985 to 11.6.1987 and the period of suspension with effect from 6.10.1985 to 28.10.1985 was to be regularised as on duty. Accordingly the applicant's pay in the scale of Rs.210-270/- was fixed in terms of Fourth and Fifth Central Pay Commission Report as mentioned therein.

5. In view of the above it apparently clear that the authority decided to take necessary action for giving the consequential benefits. The decision was taken as far back as 30.4.2003. In the circumstances no order, as such

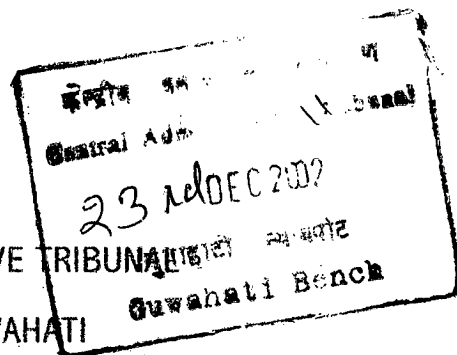
is.....

is necessary from the Tribunal. The respondents are directed to complete all the necessary exercises as early as possible, preferably within three months from the date of receipt of the order, if not already accomplished and disburse the monetary benefit those found admissible to the applicant within the said period.

The application accordingly stands disposed of.  
There shall, however, be no order as to costs.



( D. N. CHOWDHURY )  
VICE-CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

ORIGINAL APPLICATION NO. 402 OF 2002

SHRI BHUBANESWAR KALITA .... APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS..... RESPONDENTS

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Filed by :

Dilip Baruah  
Advocate

23-12-2002

Filed by the  
Applicant:  
Through:  
Dilip Baruah  
Advocate / 2  
23-12-2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

( AN APPLICATION UNDER SECTION 19 OF THE CENTRAL ADMINISTRATIVE  
TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 402 OF 2002

BETWEEN

Shri Bhubaneswar Kalita

Son of late Bhakti Ram Kalita

Permanent resident of village-

Lechakona, P.O. Kendukona

District-Kamrup (Assam) and

Presently working at Gateman in

Gate No. at in N.F. Railways.

... Applicant.

-AND-

1. The Union of India  
represented by the Secretary, Govt. of India  
Ministry of Railways, Rail Bhawan, New Delhi-1.
2. The General Manager, N.F. Railway,  
Maligaon, Guwahati-11.

শ্রী ভুবনেশ্বর কলিতা

3. The Divisional Railway Manager(P)  
Lumding, Dist. Nagaon (Assam)
4. The Chief Engineer, N.F. Railway  
Maligaon, Guwahati-11.
5. The Asstt. Engineer, N.F. Railway,  
Guwahati.
6. The Chief Permanent Way Inspector  
N.F. Railway, Guwahati.

... Respondents.

1. DETAILS OF THE APPLICATION

1.1 PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS  
MADE :

- (a) This application is made against the order of wrong fixation of pay allegedly in terms of the letter No.E/2-1.601 dt.11.6.87 issued by the Asstt. Engineer, Guwahati and communicated vide letter No.E /2(1)-356 dt.12.6.87 issued by the Chief Permanent Way Inspector, Guwahati and thereby giving rise to a continuous cause of action day diem.
- (b) For series representations demanding proper fixation of pay and allowances and also the payment of arrears, annual increments and

শ্রীভূষণেশ্বর কলিতা

4.2. That the applicant joined in service of the respondents prior to 1.10.71. Considering the length of services of the applicant, the respondents decided to regularize the services of the applicant along with other similarly situated persons with effect from 4.12.79. The name of the applicant appeared at serial No.75 in the list given therein. This was done vide their Office Order No.E/1/1(Lm-Engg) dt.15.12.80 issued by the Divisional Railway Manager, Lumding. In pursuance to the said order, the Asstt. Engineer, N.F.Rly., Guwahati issued the appointment letter vide No. E/5(Apptt.)-535 dt. 29.7.82 and the applicant was regularly appointed as Gangman in the pay scale of Rs.200-250/- per month with other allowances as per rules from time to time w.e.f. 4.12.79 where he joined in duty immediately.

A copies of the said order dt.15.12.80 and 29.7.82 are annexed as ANNEXURE-1 and 2 respectively.

4.3 That there occurred a train accident on 6.10.85 at Panikhaiti Railway Level crossing and the applicant was dismissed from service with immediate effect without holding any enquiry or affording him any chance of hearing. This was done vide order No.E/D&A/CON/LM.Pt.I dt.24.10.85. By that order, however, the respondent permitted to prefer an appeal to them. The applicant preferred an appeal, which was also rejected by the Appellate authority on 14.2.86, which was communicated vide order No.CE/ss/15/201UP/NNGE-PM I dt.17.2.86 upheld the order of dismissal.

other consequential benefits, and even after submission of all the required documents to the respondents as demanded vide their letter No.E/132/3-LM(E) dt.15.6.2001 and the lawyer's notice dt.1.3.2002 as the respondents are maintaining silence ever thereafter.

## 2. JURISDICTION OF THE TRIBUNAL :

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

## 3. LIMITATION :

The applicant further declares that the subject matter of the instant application is within the period of limitation as prescribed under section 21 of the Central Administrative Tribunal Act, 1985 and also it being a continuing cause of Action.

## 4. FACTS OF THE CASE :

The facts of the case, in brief are given below :

- 4.1 The the applicant is a citizen of India and a permanent resident of village- Lechakona, P.O. Kendukona in the District of Kamrup(Assam) and as such he is entitled to all the right, privileges and the protection as guaranteed by the Constitution of India and the law framed there-under.

শ্রী ব্রজেন শ্রী কলিতা

The copies of the said order dt. 24.10.85 and 17.2.86 are annexed as ANNEXURE-3 and 4 respectively.

- 4.4 That having no other alternative, the applicant approached to this Hon'ble Tribunal through an application under section 19 of the CAT, Act, 1985 and thereby challenged the legality and the validity of the order of dismissal of the applicant from service without holding any enquiry. The said application was registered as GC No.218/86. After hearing both the sides, this Hon'ble Tribunal was pleased to allow the application in favour of the applicant. The Hon'ble held the order of dismissal as illegal and set aside the same and also held the applicant to be in continuous service of the respondents. The said judgment and order was passed on 27.3.87 and the same attained its finality as the same was not challenged in any higher court. No further departmental enquiry was also held.

The copy of the said judgment and order dt.27.3.87 is annexed as ANNEXURE-5.

- 4.5 That after the judgment and order of the Hon'ble Tribunal, the applicant was allowed to join in service from 12.6.87. In the meantime, the respondents implemented the recommendations of the 4<sup>th</sup> Pay Commission. Accordingly, the applicant also become eligible to get the benefits of the said pay commission recommendation and also the pay fixation in according with the recommendation and the rules framed thereof. But against all these provisions and guidelines having the force of law and also the

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judgment and order dt.27.3.87 passed in the GC No.218/86, the respondents fixed the pay of the applicant at Rs.775/- i.e. the minimum of the scale of pay Rs.775-1025/- P.M. This has been done by ignoring the number of years of his past services since 1979, the guidelines and formula given by the 4<sup>th</sup> Pay Commission and the judgment and the order passed by this Hon'ble Tribunal as stated hereinabove. The respondent No. 6 vide his impugned letter No.E/2(1)-356 dt.12.6.87 communicated the above facts to the applicant.

The copy of the said impugned letter dt.12.6.87 is annexed as ANNEXURE-6.

- 4.6 That the applicant being a grade IV low paid uneducated employee, approached the authorities time and again to demand proper fixation of his pay and the payment of arrears thereof, but the respondents did not pay any heed to his request. When nothing was done by the respondents to regularize the period of suspension/dismissal from service in terms of the aforesaid judgment and order of this Hon'ble Tribunal for the period from 6.10.85 to 27.3.87 and 28.3.87 to 11.6.87 onwards with fixation of pay, increments and payment of arrears so accrued and due, the applicant submitted a representation on 28.7.88 to the competent authority. By the said representation the applicant demanded regularization services of the applicant for the period from 6.10.85 to 11.6.87, payment of benefit and also for fixation of pay and payment of arrear as per 4<sup>th</sup> Pay Commission recommendation. The respondents did not take any step on the said representation

ਸ੍ਰੀ ਫੁਰਕਾਨ ਸ਼ਾਹ ਕਾਮਿਅਤ

although the same was duly received by the respondent No.6. on 30.7.88. The applicant again submitted another representation on 10.11.89, which was also duly received by the respondent No.6. By that representation also the applicant claimed regularization of the services of the applicant from 6.10.85 to 11.6.87, revision of pay as per 4<sup>th</sup> pay Commission with effect from 1.10.86. The applicant went on pursuing his genuine demand and continued to move from the pillars to posts.

The copies of the representations dated 28.7.88 and 10.11.89 are annexed as ANNEXURE-7 and 8 respectively.

- 4.7 That the applicant went on pursuing his matter personally and kept constant contact with the concerned officers. Ultimately, the respondents after long five (5) years took a half-hearted decision and issued the order No.E/132/3-LM(E) dt. 24.9.92 and thereby sanctioned increments for the year 1.6.88, 1.6.89, 1.6.90, 1.6.91 and 1.6.92 showing the basic pay at Rs.775/- at the minimum of the scale of Rs.775-1025/- per month as Gateman. By that order again the authority intentionally and deliberately did not consider the period of service of my client from 4.12.79 to 5.10.85 and 6.10.85 to 11.6.87 to regularize the service and also did not give actual pay revision benefit to him in violation of his fundamental as well as other legal right and the established conditions of service. By the said order dated 24.9.92, it has been clearly indicated that the authority has considered the case of the applicant as re-employment ignoring his past services. The basic of the applicant as on 1.8.85 was Rs.260/- in the scale of pay of Rs.210-270/- clearly

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indicating that he was drawing a higher basic pay at that relevant time. Therefore, the applicant's basic pay can in no case be fixed at the minimum of the revised pay scale and also the increments so granted at a lower slab. Such action of the respondents is illegal, arbitrary and a violation of the judgment and order passed by this Hon'ble Tribunal as stated above. It is needless to state here that the respondents did not challenge the order passed by the Hon'ble Tribunal dt. 27.3.87 in GC No.218/86 in any other higher court and hence, the said order has attained its finality and binding the parties thereto.

The copy of the said impugned order dated 24.9.92 is annexed as ANNEXURE-9.

- 4.8 That the applicant went on pursuing his legitimate claim with the respondents and he took up follow up actions personally. The applicant again submitted another representation on 12.4.2001, which was duly received by the respondent No.2 and 4. By the said representation the applicant again demanded payment of arrears salaries and allowances for the period 6.10.85 to 11.6.87, fixation of pay as per 4<sup>th</sup> Pay Commission recommendation considering all past services since 4.12.79, fixation of pay as per 5<sup>th</sup> Pay Commission recommendation with effect from 1.8.97 and also for payment of arrears and other consequential benefits falling due.

The respondents, however, this time responded to the demand of the applicant and the respondent No.2 issued some direction to the

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respondent No.3 vide letter No.GM(P)MLG's L/No.E/468E/5 Pt.IV(E)Loose I dt.21.5.2001. Accordingly, the respondent No.3 vide his letter No.E/132/3-LM(E) dt.15.6.2001 directed the applicant to submit all documents to him as mentioned in the said representation for finalization of his case. On receipt of the said letter from the said respondent, the applicant immediately all the relevant documents on 3.7.2001, which was duly received by the respondent No.5 on 11.7.2001. But after the receipt of the said documents as sought for, the respondents again sat upon the matter thereby giving rise to continuing cause of action by lapse of each and every year, month and day violating the accrued right of the applicant.

The copy of the representation dt.12.4.2001 with the registered postal receipts and A.D. cards, the letter dt. 15.6.2001 and the letter dt.3.7.2001 of the applicant are annexed as the ANNEXURE-10(series ), 11 and 12 respectively.

- 4.9 That having no other alternative, with a clear intention to initiate legal action against the respondents, the applicant served a legal notice on the respondent No.2,3 and 4 through his advocate on 1.3.2002. The said notice was sent through registered A/D post and the respondents duly received the same. By the said notice it brought to the notice of the said respondents that if the case of the applicant is not settled within 30(thirty) days from the date of

श्री दशरथ चमड़ा कलिया

receipt of the said notice, legal action would be initiated against the respondents with any further reference in that regard. By that notice, the applicant also demanded the following :

(a) To pay salaries and allowances with annual increments for the period from 6.10.85 to 11.6.87.

(b) To fix and revise pay as per 4<sup>th</sup> Pay Commission recommendation w.e.f. 1.10.86 by considering the past services from 4.12.79 and also to give effect of pay revision for the period 6.10.85 to 11.6.87 and thereafter and pay all such arrear becoming due.

( c ) To fix and revise pay and allowances in terms of the 5<sup>th</sup> Pay Commission recommendation w.e.f. 1.8.97 and also to all consequent benefits as arrear, all annual increments and all other service benefit including seniority since 4.12.79 to which the applicant is entitled to .

But in spite of all these efforts and repeated action, the respondents remained unmoved and verbally informed the applicant that some relevant official documents are missing from the files for which the respondents are handicapped in taking any action for settlement of the claims of the applicant. In view of the above facts and the circumstances, the applicant has the reasons to believe that unless appropriate legal action is not taken, the respondents would not take any action to settle his claims, and hence this application,

प्रतिपक्ष अर्थात् अस्वीकार

The copy of the said representation dt.1.3 2002 along with the registered postal receipts dt.30.3.2002 are annexed as ANNEXURE-13(series).

4.10 That the action and the inaction of the respondents are highly illegal , which has violated the fundamental rights of the applicants under Article 14,16 and 21 of the Constitution of India, principles of natural justice, administrative fair-play apart from the violation of the judgment and order dt.27.3.87 of this Hon'ble Tribunal. Hence, it is a fit case where this Hon'ble would be pleased to interfere in this matter. This Hon'ble Tribunal made it abundantly clear that the applicant be deemed to be in continuous service, hence there can not be any break in service or he can be re-appointed in service. But apparently the respondents have treated the service of the applicant as fresh appointment with effect from 12.6.87, which is highly illegal and against the decision of this Hon'ble Tribunal .Consequent to such wrong decision of the respondents , the applicant is made to suffer every day and every month when he is being paid less salaries and allowances and at the top of it , the applicant is made to stagnate in the same post and same grade since 4.12.79 uptill now without any promotion in his about 24 years old entire service career. In view of the above illegality perpetrated against the applicant, the respondent as a consequential affect has not grant the benefit of promotion under the Accelerated Career Progression Scheme with financial up-gradation.

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4.11 That the applicant demanded justice from the respondents, which has been denied to him.

4.12 That this application has been made bonafide and for the ends of justice.

#### 5. GROUNDS FOR RELIEF WITH LEGAL PROVISION :

5.1 For that the action and the inaction of the respondents prima facie highly illegal, arbitrary, malafide and such action is also violative of principles of service jurisprudence thereby giving rise to continuing cause of action.

5.2 For that the respondents acted illegal and fixed/revised the pay scale of the applicant without any basis or authority of law, rules or the recommendations of the 4<sup>th</sup> and the 5<sup>th</sup> Pay Commissions.

5.3 For that non-settlement of the claim of the applicant by the respondents has violated the fundamental right of the applicant guaranteed under Article 14, 16 and 21 of the Constitution of India and also the equal pay for equal work doctrine.

5.4 For that the action of the respondents amounts to violation of principles of natural justice, administrative fair-play and the principles of service jurisprudence.

5.5 For that the action of the respondents is contumacious and a clear case of deliberate dis-obedience and violation of the judgment and

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order dated 27.3.87 passed by this Hon'ble Tribunal in the GC No.218/86.

5.6 For that the applicant has a right to promotion under the ACP Scheme, which has also been denied to him as a consequential affect.

5.7 For that in any view of the matter the action of the respondents can not sustain in law and hence it is fit case where the respondents be directed to give all the service benefit in terms of the judgment and order date 27.3.87 as stated above.

#### 6. DETAILS OF REMEDIES EXHAUSTED :

That there is no other alternative and efficacious remedy available to the applicant and the applicant declares that he has exhausted all the other remedies available to him which has given him the jurisdiction of this Hon'ble Tribunal.

#### 7. MATTER NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT :

That the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, Tribunal, authority nor any such application , writ petition or suit is pending before any of them.

#### 8. RELIEF SOUGHT FOR :

শ্রী ব্রজেন চন্দ্র কলিতা



Under the facts and circumstances of the case and more particularly in terms of the judgment and order dated 27.3.87 passed in the GC No.218/86 by this Hon'ble Tribunal, the applicant most respectfully pray that Your Lordships may be pleased to admit this application, call for the records of the case, issue notice to the respondents to show cause as to why relief as sought for by the applicant should not be granted and after hearing the parties, perusing the records including the causes shown, if any, Your Lordships would further be pleased to grant or direct the respondents to grant the following relief(s) :

8.1 That the Hon'ble Tribunal may be pleased to set aside the impugned Office orders dtd.12.6.87 and 24.6.92 as in ANNEXURE-6 and 9 issued by the respondent No.6 and 4 respectively.

8.2 To pay salaries and allowances with annual increments for the period from 6.10.85 to 11.6.87.

8.3 To fix and revise pay as per 4<sup>th</sup> Pay Commission recommendation with effect from 1.10.86 by considering the past services from 4.12.79 and also to give effect of pay revision for the period from 6.10.85 to 11.6.87 and thereafter and pay all such arrear becoming due.

8.4 To fix and revise pay and allowance in terms of the 5<sup>th</sup> Pay Commission recommendation with effect from 1.8.97 and also to pay all consequential benefit as arrears, all annual increments and all other service benefit including seniority since 4.12.79 onwards

6.10.85  
11.6.87  
শ্রী হুমায়ুন কবির

to which the applicant is entitled to and to give benefit of financial up-gradation under the ACP Scheme.

8.5. To pass any other order or orders that Your Lordships may deem fit and proper.

8.6. To pay cost of the case to the applicant.

9. INTERIM ORDER PRAYED FOR :

The applicant do not have any interim prayer at this stage of the case. But the applicant craves the leave of the Hon'ble court to allow him to make such prayer if so required or such occasion arises in due course of time pending this litigation.

10. The application is filed through the Advocate.

11. PARTICULARS OF THE IPO :

IPO No.	: 66 79 0233
Date of issue	: 28-11-2001
Issued from	: G.P.O. Guwahati
Payable at	: Guwahati.

12. LIST OF ENCLOSURES :

As stated above in the application.

শ্রী হুতন শ্রী ব কলিতা

## VERIFICATION

I, Shri Bhubaneswar Kalita, son of late Bhakti Ram Kalita, aged about        years, resident of village- Lechakona, P.O. Kendukona, District- Kamrup (Assam), do hereby solemnly affirm and state that the statements made in the application in para 1 to 4.1, 4.10 to 11 and 12 are true to my knowledge and belief, those made in para 4.2 to 4.8 and 4.9 being matter of records, are true to my information derived therefrom and the rest are my humble submission and legal advice. I have not suppressed any material fact.

And I sign this verification on this 13 th day of December, 2002 at Guwahati.

শ্রী ভুবনেশ্বর কলিতা  
Deponent.

## N. F. Railway

## Office Order

The result of the screening test of working CL/CPC/SKB who had put in 6 months continuous service as on 1-10-71 held at Gauhati Centre is hereby published as under. The following CL/CPC/Sub are treated as approved for regular appointments w.e.f. 4-12-79. Their names are arranged in order of seniority. Action should be taken for their medical examination if not done, earlier verification & their character and antecedents should be initiated immediately. This has the approval of DRM.

Sd/-  
D.P.O./IMG

- |                             |                                    |
|-----------------------------|------------------------------------|
| 1. Sri Dilip Das            | 43. Shri Bil Bahadur (Bir Bahadur) |
| 2. " Motilal S/o Musafir    | 44. " Manadhar Ram                 |
| 3. " Jit Bahadur            | 45. " Dipnarayan                   |
| 4. " Monoranjan             | 46. " Jamini Das                   |
| 5. " T. Appoloswari         | 47. " Bhim Bahadur                 |
| 6. " Ratan Bahadur          | 48. " Shamsher Ali                 |
| 7. " Pandichanaya           | 49. " Benarasilal                  |
| 8. " Tejo                   | 50. " Jenda Roy                    |
| 9. " Sibnarayan             | 51. " Hefarat Ram                  |
| 10. " Rabilal               | 52. " Kuntal Lal                   |
| 11. " Harinar Mazumdar      | 53. " Kuntal Lal                   |
| 12. " Jogeswar              | 54. " Dulal Kanti                  |
| 13. " Santosh Debnath       | 55. " Dil Bahadur (Kashinath)      |
| 14. " Rajendra Roy          | 56. " Pharon                       |
| 15. " Azian Ali             | 57. " Natabar Nanda                |
| 16. " Kamakhya              | 58. " Balaswar                     |
| 17. " Krishna Deka          | 59. " Mukunda Singh                |
| 18. " Agar                  | 60. " Indra Bahadur                |
| 19. " Dhana Ali             | 61. " Baigathi                     |
| 20. " Ramkewal              | 62. " Debnarayan                   |
| 21. " Yirija Chowhan        | 63. " Mohan (Benode)               |
| 22. " Akaloo                | 64. " Ningina                      |
| 23. " Searam                | 65. " Bhabin Das                   |
| 24. " Banumali              | 66. " Natogour                     |
| 25. " Gopal Das             | 67. " Subodh Banik                 |
| 26. " Kalinayak             | 68. " Krishna Bahadur              |
| 27. " Dilip Roy             | 69. " Ram Das                      |
| 28. " Apporco               | 70. " Kusum Pasman                 |
| 29. " Nath Singh            | 71. " Rajendra (Sukna)             |
| 30. " Kameswar              | 72. " Kalamaddin                   |
| 31. " Babul Dutta           | 73. " Jatindra Tulakder            |
| 32. " Nepal Sen             | 74. " Bharat                       |
| 33. " Dayaram Kalita        | 75. " Bhubaneswar G/mg             |
| 34. " Rangoo                | 76. " Rakha Barua                  |
| 35. " Khatar Singh          | 77. " Karuna                       |
| 36. " Chandan Dey           | 78. " Madhur Koni Choudhury        |
| 37. " Abodh Nath            | 79. " Tulshi Dey                   |
| 38. " Ajit Bhatterjee       | 80. " Ramlakhon                    |
| 39. " Sukha Ranjan Acherjee | 81. " Durga Singh                  |
| 40. " Birendra Dey          | 82. " Debidin                      |
| 41. " Lal Das               | 83. " Gopal Barua                  |
| 42. " Rajkumar (Kangal)     | 84. " Hiralal Mazumder.            |

Contd..2.

Certified to be true copy  
D. N. M.  
Advocate

1. 12. = (12.) =  
12.12.1980

- |                             |                 |
|-----------------------------|-----------------|
| 85. Sri Bpin Paul           | S. Chandra      |
| 86. Sajal Mazumder          | Josadha         |
| 87. Asarfi show             | 2. Ram Peera    |
| 88. Tek Bahadur             | 3. Baclon Ram   |
| 89. Joycharan               | 4. Ramcharan    |
| 90. Prafulla Deka           | 5. Rampati Ram  |
| 91. Ajit Kr. Dey            | 6. Sawtikan     |
| 92. Dinesh Das              | 7. Birendra Das |
| 93. Biswanath(Tema)         | 8. Sri Ram      |
| 94. Ganga                   | 9. Sanmukh      |
| 95. Rameswar Pande          |                 |
| 96. Arun Das                |                 |
| 97. Prafulla Das            |                 |
| 98. Gopinath Jaha           |                 |
| 99. Motilal Rajbhar(Chokat) |                 |
| 100. Dhopai                 |                 |
| 101. Mohan(Andisha)         |                 |
| 102. Manesh Mitra           |                 |
| 103. Himangshu Das          |                 |
| 104. Jogodish(Sakhirchand)  |                 |
| 105. Ram Bahadur            |                 |
| 106. Suklal                 |                 |
| 107. Binrugi                |                 |
| 108. Guntai                 |                 |
| 109. Harimohan Raksit       |                 |
| 110. Krishna Mallick        |                 |
| 111. Akash Ali              |                 |
| 112. Satish Roy             |                 |
| 113. Haren                  |                 |
| 114. Ram No. (Chirent)      |                 |

- S.T.
1. Sri Debendok(Uma)
  2. " Kokha
  3. " Pameswar
  4. " Knagen Boro(Nunda)

No.E/1/1(Lm-Engg) dt.15-12-80  
C/to PWI/1,PWI/II,AEN/GHY

Sd/-  
DRM/P/LMG

Certified to be  
Advocate

N.F.RLY.

ANNEXURE I 2

Office of the  
Assistant Engineer,  
N.F.Rly., Gauhati.  
Dt. 27-4-82.

No.E/5 (Apptt) — 535

To  
Shri Bhulananda  
S/O. Ananta Karm  
Thro N.F.Rly.

You are hereby appointed as a temporary Assistant Engineer at Rs. \_\_\_\_\_  
P.M. in scale Rs. 200 - 250 with other allowances as laid  
down in rules from time to time w.e.f. 4.12.79 after being  
found fit in category 1st subject to:-

1. Immediate discharges without any notices of termination of service in event of return of permanent incumbent from leave or to the expiry of temporary sanction of the post in which you are appointed or to your mental or physical incapacity or to your removal or dismissal from service for misconduct.
2. If the termination of your service is due to some other causes, you will be entitled to a notice of 14 days or pay in lieu thereof.
3. You will not be eligible for any benefit except those admissible to temporary employees under the rules in force from time to time.
4. Your appointment shall have effect from the date you actually commence work.
5. You will not be entitled to any Grainshop concession of facilities. Please report to PWI/144 for duty atonce.
6. You will be liable, if so required for Military service in the Railway Engineer Union of the Territorial Army for a period of 7 years in the Territorial Army Service and 8 years in the Territorial Army reserve or for ~~more~~ such periods as may be laid down in this behalf from time to time.

Assistant Engineer,  
N.F.Rly., Gauhati.

Copy to DRM(P)/LMC for information please.  
Copy to PWI/144 for information please.  
Copy of attestation certificate  
(Annexure-II) in duplicate is  
returned for record.

DA- One in duplicate.

Assistant Engineer,  
N.F.Railway, Gauhati.

Certified

Advocate

N. F. Railway

No. E/D&A/CON/LM Pt. I

Office of the  
Divisional Rly. Manager,  
Lundin

Dated, 24-10-1985

1. Sri Bhubaneswar Kalita was working as Gateman at 'C' Class manned level crossing No.20 at K.M.22/5-6 between Narangi and Panikhati stations on GHY - LM section on 6th October/85. He was on duty from 6.00 hrs. in the morning to 18.00 hrs. in the evening. His duties were to keep gate leaves closed and locked against road traffic whenever trains are to pass over the level crossing. For this purpose he had to be vigilant, alert and keep a sharp look out for approaching trains while on duty.
2. On 6th October/85 at about 15.45 hours when train No.201 Up Cachar Express was passing over the level crossing it collided with Bus No. ASK-722 resulting in the death of 26 persons and injuries to another 31. The accident took place because Sri Bhubaneswar Kalita had not been vigilant and alert and had failed to close the gate to road traffic.
3. After carefully considering all facts of the case including the admission made by Sri B. Kalita himself in the course of inquiry into the aforesaid accident, I have come to the conclusion that Sri Bhubaneswar Kalita is guilty of serious dereliction to duties and gross misconduct and is, therefore, not a person fit to be retained in service.
4. On account of his primary responsibility for this accident, Sri Bhubaneswar Kalita has been arrested by the Police and he is in their custody, while the case is under investigation. It is not reasonably practicable except with considerable delay to hold the disciplinary inquiry to give Sri Kalita an opportunity to defend him to show cause against action to be taken against him. On the other hand, it is in the public interest not to delay the matter but to impose exemplary and immediate punishment on the staff who are guilty of gross negligence of their duties and caused such serious accidents.
5. Therefore, under powers conferred on me vide Section 14 (2) of Discipline and Appeal Rules, 1958, I dismiss Sri Bhubaneswar Kalita, Gateman under PWI/GHY from service with immediate effect. Sri Bhubaneswar Kalita can appeal against this punishment order to the Chief Engineer, Rly., Maligaon, within 45 days.

To

Sri Bhubaneswar Kalita,  
Designation- Gateman  
Department - Civil Engrs.

24.10.85  
Divisional Rly. Manager,  
N. F. Railway Headquarters  
N. F. Rly. Lundin

Certified to be a true copy

Advocate

NORTHEAST FRONTIER RAILWAY

Office of the  
Chief Engineer,  
No. CE/SS/15/201UP/NFGE-P.N.I. Maligaon, Gauhati-11, 17-2-1986.

To  
Shri Tribuneswar Talita,  
Ex. Gateman under  
DEI (!) / Landing.

Through: Proper channel.

Sub:- Appeal dated 30.11.85 preferred against  
the orders of dismissal from service  
communicated by DEI/IMG under his No.  
E/D&A/Con/IM - Pt. I dated 24.10.1985.

The Chief Engineer, N.F. Railway, Maligaon  
who is the appellate authority in this case has  
gone through your appeal dated 30.11.85 carefully  
and taking all aspects into consideration has decided  
that there is no ground to alter the orders of dis-  
missal passed on you by DEI/IMG and has upheld the  
orders of dismissing you from service.

Certified to be true Copy.

D. K. Manna  
Advocate

N. Samanta  
for Chief Engineer (P),  
NF Ry., Maligaon.



Registered with A/D

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::::::::::: GUWAHATI.

ANIL K. JHA 1-5

Phone No. 03401  
Rajgarh Road,  
Bhangagarh, Guwahati-5.Despatch No. 1738 Dated Guwahati, 29.4. /87

Original Application No. \_\_\_\_\_

Transfer Application No. G.C. 218/86

Bhubaneswar Kalita

...

Applicant

Versus

Union of India &amp; ors.

....

Respondent(s)

To

Shri Bhubaneswar Kalita  
S/o Sree Bhakti Ram Kalita  
resident of village - Lachakona,  
P.O. Kendukona, District of Kamrup (Assam).

Sir,

I am directed to forward herewith a copy of Judgment/  
Order dated 27.3.87 passed by the Bench of this Tribunal  
comprising of Hon'ble Justice Shri D. Pathak, Vice-Chairman,  
Hon'ble Shri S.P. Hazarika, Member Administrative in the above  
noted case for information and necessary action, if any.

Please acknowledge receipt.

Yours faithfully,

Enclo : As above.

DEPUTY REGISTRAR (JAL).

29.4.87

Certified to be true Copy.

D. J. Jha  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :  
GUWAHATI BENCH :

G.C.NO.218 OF 1986 :

Bhubaneswar Kalita. - - - Petitioner.

vrs.

Union of India and others. - - - Respondents.

PRESENT :

The Hon'ble Shri D. Pathak, Vice-Chairman.  
The Hon'ble Shri S.P. Hazarika, Member.

For the petitioner : Shri B. Kalita & Shri B.C. Pathak,  
Advocates.

For the respondents : Shri B.K. Sharma, Advocate.

Date of Judgment & Order : The 27<sup>th</sup> day of <sup>March</sup> ~~January~~ 1987.

JUDGMENT & ORDER :

The petitioner, Shri Bhubaneswar Kalita, who was serving as Gateman under the N.F. Railway at Lumding, has challenged the order dated 24.10.1985 passed by the Divisional Railway Manager, North East Frontier Railway, Lumding, dismissing the petitioner from service, as well as the appellate order dated 17.2.1986, passed by the Chief Engineer, North East Frontier Railway, Maligaon, dismissing the appeal of the petitioner.

2. The brief narration of the facts leading to the present petition is that on 6.10.85, the petitioner was attending his duties in the gate from 6 a.m. (for twelve hours continuously) and during his duty hours quite a number of trains had passed through the line properly from both sides and the petitioner was performing his duties by closing the gate in time after getting signal/information and at the material time also, that is, at about 3-30 p.m. on that day, the petitioner was attending his duty with vigilant and watching the 'phone and the Railway line. Surprisingly enough, at the material time the petitioner did not receive any

telephone...

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*D. Sharma*  
Advocate

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telephone ring nor had received any sound in the Railway line or other signal indicating the arrival of the train. Immediately, after seeing a train coming towards the gate, the petitioner had rushed for closing the gate, but at the said moment, he had seen a City Bus just reaching the gate and he had tried his best to stop the Bus by raising alarm. But the driver of the Bus did not respond to the alarm of the petitioner and had proceeded towards the Railway line and as a result thereof the Bus had fallen in front of the running train and was damaged causing death and injuries to some of the occupants of the Bus. That about 3 days after the day of accident the petitioner was taken to the custody by the Police on surrender and about 7 days thereafter he had been released on bail by the learned Chief Judicial Magistrate, Gauhati, and thereafter, next day, the petitioner had gone to the Office of the Permanent Way Inspector, Gauhati, to report to his duty; but he was not allowed to join. On 25.10.85 the petitioner was served with the order passed by the respondent No.3, communicated under his signature as per letter No.E/D&A/CON/LIA.Pt.I dated 24.10.1985 dismissing the petitioner from service with immediate effect in purported exercise of powers under Rule 14(ii) of the Discipline and Appeal Rules, 1968 (hereinafter referred to as "the Rules"). The petitioner has further stated that no enquiry was held before passing the said order of dismissal nor any charge-sheet or show cause notice was given to meet with any allegation. Against the aforesaid order the petitioner preferred an appeal before the respondent No.2 and by an order passed by him and communicated as per letter No.CE/SS/15/201 UP/MNGE-Pt.I dated 17.2.1986, the respondent No.2 dismissed the said appeal. It is contended by the petitioner that the impugned order of dismissal has been passed in violation of the provision of the Rules as well as the provisions of Article 311(2) of the Constitution of India inasmuch as there did not

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*D. Kumar*  
 Advocate

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arise such situation for invoking the power to dispensing with the enquiry as envisaged under rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968 (for short "Rules"). It is submitted that the impugned order was passed arbitrarily and in violation of principles of natural justice. It is also submitted that respondent No.2 had ~~also~~ disposed of the appeal without taking into consideration the points agitated by the petitioner in his appeal.

3. The written statement has been filed on behalf of the respondents. It is stated that the duty of the petitioner was to be alert, vigilant and watchful for approaching train and be prepared to clear the road traffic and close the gate before the train approaches and be prepared to protect the level crossing with detonator in case he is unable to clear the road traffic and close the gate in time. The petitioner had not been vigilant, alert and failed to close the gate for road traffic in time. The Gateman was aware that 201 Up Cachar Express was to arrive closely following 7 Up but still he did not remain in the duty bunk. The Station Master, Panikhaiti made phone call to the petitioner to inform about the approaching Cachar Express but he was not available in his duty bunk and the Station Master could not contact him over phone. It was known to the petitioner that the time was due for Cachar Express and yet he left his duty bunk and remained in his residence. He also did not make any initiative to ascertain the position of the train from the Station Master, Panikhaiti, which fact clearly proved his negligence to duty. Further, the petitioner did not come out of his residence to his duty bunk, which is nearer to the level crossing to keep a sharp look out and to take timely action either to close the gate or to protect the track. It is stated that according to his own deposition, he was engrossing in conversation with a Police constable and his own family members at his residence. It was only after he heard

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*[Signature]*  
Advocate

the sound of the C. ar Express, he rushed out to find that a road bus was also coming from north end to cross the track and there was no time to make any effort to stop the vehicle. The applicant's efforts to stop the vehicle at that moment proved futile. In paragraph 5 of the written statement, it has been stated that it is evident from his own statement that the applicant awaited till the last moment when there was no time to stop either the bus or the train. The plea of the applicant that the driver of the bus did not respond to his alarm is merely an eye wash and a poor excuse to cover up the negligence and also the fact that he was not vigilant and alert. It is admitted that the terrain in the vicinity of the L'xing is in plain country on the north side while it is high pleateau on the south side consequently the approach road from north to south has quite steep grades and the visibility was obstructed, but it is denied that nothing could be seen if it was approaching towards the level crossing from Chandrapur side. These aspects do not cover the negligence on the part of the Gateman in performing his duty. It is stated that he should have been much more alert as he was in the know of the problems of the Gate being associated with the same Gate for more than 2 years prior to the accident. The petitioner was grossly negligent towards his duties. Thus, the petitioner was directly responsible for the accident. In paragraph 6 of the written statement, it has been stated that the enquiry to ascertain the cause of the accident was conducted by the Commissioner of Railway Safety, North Eastern Circle, Gorakhpur, in accordance with the Rule 4 of the "Statutory Investigation into Railway Accident Rules 1973" issued by the Ministry of Tourism and Civil Aviation under their Notification No.RS-13-1(8)/71 dated 19.4.73, where the evidence of the applicant was recorded along with the others. The Commissioner of Railway Safety held the applicant primarily responsible for

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*D. J. M.*  
 Advocate

the accident for violation of GR 16.03(2) SR 16.3/4(i) and para 1604(b) of the Indian Railway and Works Manual (1967 Edition) extract of which are detailed below :

" G.R.16.03(2) : Gateman, where provided, shall, at all level crossings be prepared whenever such level crossings be open to road traffic, to show a stop hand signal to any approaching train.

SR 16.03/4(i) : At all level crossing, during such times as the gates or chains are open for road traffic to pass, the Gateman shall keep a sharp look out for trains and be prepared to close and lock the gates or chains against road traffic to permit safe passage of trains.

Para : 1604(b) of Indian Railways Way and Works Manual.

'Level crossing provided with gates and not protected by signals - The gates must normally be kept closed and securely fastened against road traffic and may only be opened for the passage of road traffic when it is necessary and safe to do so. Gateman, where provided, shall at all level crossings other than those controlled by gates designed to close across the line, be prepared whenever such level crossing be open to road traffic, to show a danger signal to any approaching train.' "

4. The Divisional Railway Manager, Lumding, found the applicant guilty of gross negligence of his duties and dismissed him from service under power conferred on him by Rule 14(ii) of the Rules. In the impugned order, the Divisional Railway Manager recorded the reasons in writing for not holding the disciplinary enquiry. Divisional Railway Manager's letter which is the impugned order is enclosed and marked as Annexure "A" to the petition. Further, the applicant was given an opportunity by the Divisional Railway Manager to prefer an appeal against the punishment order. The appeal preferred by the applicant was disposed of by the appellate authority upholding the dismissal order of the Divisional Railway Manager.

6 5. In paragraph 9 of the written statement, it has been stated that it is in the public interest not to delay the matter but to impose exemplary and immediate action on the staff who was guilty of gross negligence of his duties and caused such

serious.....

Certified to be true Copy.  
D. B. [Signature]  
Advocate

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serious accidents. Therefore, the competent authority under Rule 14(ii) dismissed the applicant on the basis of the inquiry report conducted by the Commissioner of Railway Safety, North Eastern Circle, Gorakhpur, according to rule 4 of the "Statutory Investigation into Railway Accident Rules, 1973", wherein the applicant was held primarily responsible for the accident. In paragraph 10 it is stated that there is no violation of relevant Railway Rules and Article 311(2) of the Constitution of India. It is stated that circumstances of the case required to dispense with the enquiry as envisaged under Rule 14(ii) of the Rules. In paragraph 13, it is stated that circumstances of the case left no room for holding any enquiry under the Railway Servants (D&A) Rules, 1968, and warranted immediate action to create an atmosphere of trust and faith on the general public. This is a very serious incident resulting in death of twenty innocent lives only because of negligence of the petitioner. After the statutory enquiry conducted by the Commissioner of Railway Safety nothing new could have come out of a Departmental Enquiry. Further the petitioner was under judicial custody and it was not known as to how long he would remain under the custody. "The need to punish the guilty expeditiously to instill confidence in the mind of the travelling public compelled with the detention of the petitioner did create conditions where an enquiry was not possible."

6. The petitioner has been dismissed from service by invoking the provision of Rule 14(ii) of the Rules. Rule 14, as a whole, reads as under :

"Notwithstanding anything contained in Rules 9 to 13 :

(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge;

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii).....

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D. M. [Signature]  
Advocate

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(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule. "

Rule 14 is almost identical with the second proviso to clause (2) of Article 311 of the Constitution of India. The second proviso to clause (2) of Article 311 reads as under :

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

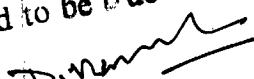
(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

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Rule 14(ii) is almost in pari materia with (b) of the second proviso to clause (2) of Article 311. Rule 14(ii) provides that the disciplinary proceedings may be dispensed with for taking action against the Government servant by way of dismissal, removal and reduction in rank, when the disciplinary authority is satisfied that such action is necessary to be taken. The disciplinary authority must record reasons in writing that it is not reasonably practicable to hold an inquiry in the manner provided.

In Article 311 there is clause (3) which gives finality to the decision taken by the authority that it is not reasonably practicable to hold enquiry. This clause (3) reads :

"(3).....

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"(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

However, there is no such provision in Rule 14 of the Rules.

7. It is the settled position of law that Article 311 of the Constitution, confers certain safeguard upon persons employed in civil capacities to the Union or the State. The safeguard is that such person cannot be dismissed or removed by an authority subordinate to that by which he is appointed. The second safeguard is that he cannot be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given an opportunity of being heard in respect of the charges. The second safeguard is not, however, available to him when he is dismissed, removed or reduced in rank in any of the three clauses mentioned in the said proviso to Article 311(2). Similarly, the Railway servant cannot be dismissed, removed or reduced in rank without holding an inquiry save and except by invoking the provisions of Rule 14(i), (ii) and (iii) of the Rules. As in the case of clause (b) of the second proviso to Article 311(2) so also Rule 14(ii) requires that the disciplinary authority is to be satisfied that it is reasonably not practicable to hold an inquiry in the case and without holding an inquiry the Railway servant may be dismissed, removed or reduced in rank. But, such satisfaction of the authority is to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules.

8. The order passed on 24.10.1985 by the Divisional Railway Manager, N.E.F. Railway, Lumding, reads :

" N.F. Railway  
No.E/D&A/CON/LM Pt.I

Office of the Divisional  
Rly. Manager, Lumding.  
Dated, 24.10.1985.

1. ....

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D. Sharma  
Advocate

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1. Shri Bhubaneswar Kalita was working as Gateman of 'C' Class-manned level crossing No.20 at K.M.22/5-6 between Narangi and Panikhati stations on GHY - LMG section on 5th October/85. He was on duty from 6.00 hrs. in the morning to 18.00 hrs. in the evening. His duties were to keep gate leaves closed and locked against road traffic whenever trains are to pass over the level crossing. For this purpose he had to be vigilant, alert and keep a sharp look out for approaching trains while on duty.

2. On 6th October/85 at about 15.45 hours when train No.201 Up Cachar Express was passing over the level crossing it collided with Bus No.ASK-722 resulting in the death of 26 persons and injuries to another 31. The accident took place because Shri Bhubaneswar Kalita had not been vigilant and alert and had failed to close the gate to road traffic.

3. After carefully considering all facts of the case including the admission made by Sri B. Kalita himself in the course of inquiry into the aforesaid accident, I have come to the conclusion that Shri Bhubaneswar Kalita is guilty of serious dereliction to duties and gross misconduct and is, therefore, not a person fit to be retained in service.

4. On account of his primary responsibility for this accident, Shri Bhubaneswar Kalita has been arrested by the Police and he is in their custody, while the case is under investigation. It is not reasonably practicable except with considerable delay to hold the disciplinary inquiry to give Sri Kalita an opportunity to defend him to show cause against action to be taken against him. On the other hand, it is in the public interest not to delay the matter but to impose exemplary and immediate punishment on the staff who are guilty of gross negligence of their duties and cause such serious accidents.

5. Therefore, under powers conferred on me vide section 14(ii) of Discipline and Appeal Rules, 1968, I dismiss Sri Bhubaneswar Kalita, Gateman under PNI/GHY from service with immediate effect. Shri Bhubaneswar Kalita can appeal against this punishment order to the Chief Engineer, N.F. Rly., Maligaon, within 45 days.

Sd/-

To  
Divisional Rly. Manager,  
Shri Bhubaneswar Kalita, N.F. Railway, Lumding.  
Designation - Gateman  
Department - Civil Engg.

Paragraph 5 of the order shows that by invoking Rule 14(ii) of the Rules, the petitioner has been dismissed from service with immediate effect. In paragraph 4 of the order gave the reasons for not holding the inquiry to the following effect :

"It is not reasonably practicable except with considerable delay to hold the disciplinary inquiry to give Shri Kalita an opportunity to defend him to show cause against action to be taken against him. On the other hand, it is in the public interest not to delay the matter but to impose exemplary and immediate punishment on the staff who are guilty of gross negligence of their duties and cause such serious accidents."

9. Now, it is <sup>for</sup> our consideration whether the reasons set forth above fulfils the requirement of law for not holding the inquiry before passing the order of dismissal. Thus, the reason to be recorded in

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*D. Kumar*  
Advocate

writing to dispense with holding of the enquiry is to be tested in the touchstone of the provision of law.

10. The counsel for both the parties have drawn our attention to a recent land-mark decision of the Constitution Bench of the Supreme Court in Union of India vrs. Tulsiram Patél and others, (1985) SCC 398, where the question that came up for consideration was the nature, scope and ambit of power of the disciplinary authority to dismiss, remove, reduce in rank or compulsorily retire a Government servant dispensing with the disciplinary proceeding under second proviso to Article 311(2) of the Constitution or other such similar service rules. In the aforesaid case, the Supreme Court had an occasion to deal with a batch of cases where the Government servants were dismissed, removed or compulsorily retired from service invoking the second proviso to clause (2) of Article 311 of the Constitution, Railway Servants (Discipline and Appeal) Rules, 1968, Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the Central Industrial Security Force Rules, 1969, without holding any inquiry. The Supreme Court has stated that the service Rules may reproduce the provisions of the second proviso authorising the disciplinary authority to dispense with the inquiry contemplated by Article 311(2) in the three cases mentioned in the second proviso thereto or any one or more of them. Such a rule, however, cannot be valid and constitutional without reference to the second proviso and cannot be read apart from it. Thus, while the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules, the source of his power to dispense with the inquiry is derived from the second proviso to Article 311(2) and not from any service rules. There is a well established distinction

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D. V. M. M.  
Advocate

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between to exercise a power and the source of such power. Neither Rule 14 of the Railways Servants Rules nor similar rule in other service rules can be looked at apart from the second proviso to Article 311(2). It has been further stated by their Lordships that the executive instructions issued by the Government of India containing the opinion of the Government of India on the scope and effect of the second proviso to Article 311(2) cannot be binding upon the Court with respect to the interpretation it should place upon that proviso. To the extent that they may liberalize the exclusionary effect of the second proviso they can only be taken as directory. Executive instructions stand on a lower footing than a statutory rule for they do not have the force of a statutory rule. If an Act or a rule cannot alter or liberalize the exclusionary effect of the second proviso, executive instructions can do so even much less. Dealing with sub-clause (b) of the second proviso to Article 311(2) and clause (3) of Article 311, the Supreme Court has observed as follows :

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"Where a government servant to whom clause (b) of second proviso or an analogous provision of the service rule has been applied and he approaches either the High Court under Article 226 or Supreme Court under Article 32, the Court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by Article 311(3) to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court. The Court will also examine the charge of malafides, if any, made in the writ petition. In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the Court will not, however, sit in judgment

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*D. V. Sharma*  
Advocate

over them like a Court of first appeal. In order to decide whether the reasons are germane to clause (b), the Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a Courtroom, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere. "

(emphasis added by us)

It is seen that the Supreme Court has laid down that the reasons recorded by the authority that it will not be reasonably practicable to hold the inquiry must be germane to come such decision. What is required by law is that it is not reasonably practicable to hold the inquiry. The emphasis as given in the exclusionary provision is that the inquiry cannot be reasonably held in the facts and circumstances of the case. Dealing with the condition precedent for the application of clause (b) of Article 311(2), their Lordships has stated "The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that 'it is not reasonably practicable to hold' the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are 'not reasonably practicable' and not 'impracticable'. " Their Lordships has further stated that for the valid application of clause (b) of the second proviso to Article 311(2) is that the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing or that the reason recorded is irrelevant, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

11. From a perusal of the aforesaid observation of the Supreme Court, it is seen that the reasons recorded for not

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Advocate

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holding the inquiry disclosed that the situation as prevailing at the time of the occurrence and thereafter it is not reasonably practicable to hold the inquiry, where there is a situation of terrorising, threatening or intimidation of the witnesses who are going to give evidence against the delinquent employee would not appear with fear of reprisal. (underlined by us). The Supreme Court has given some illustration as to under what circumstances that it is not reasonably practicable to hold the inquiry in view of the situation prevailing at that time. As the illustration is not exhaustive the main consideration is that the situation prevailing at the relevant time is such that it is not reasonably practicable to hold the inquiry and the same must be reflected in the reasons recorded by the authority.

12. In the instant case, the reasons recorded by the disciplinary authority that it is not reasonably practicable to hold the inquiry are that (a) holding of inquiry will cause the delay and (b) to impose exemplary and immediate punishment. In our opinion, these reasons are not germane to come to a decision by the disciplinary authority that it is not reasonably practicable to hold the inquiry. If delay is a reason for dispensing with the disciplinary proceedings no enquiry would be possible to hold because the reasonable delay is there in all the cases of enquiry according to the rules and procedure for holding the inquiry. To impose exemplary and immediate punishment and to dispense with the inquiry is also not found to be just. The exemplary and immediate punishment may be called for in any particular case and that will have to be after the delinquent employee is proceeded in a disciplinary proceedings. The authority is not estopped from imposing an exemplary and immediate punishment, but that can only be done after the inquiry. We do not find that the reasons recorded by the authority are in conformity of Rule 14(ii) of the Rules.

13. From the facts we have noticed that some innocent persons have.....

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D. V. Sharma  
Advocate

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have lost their lives due to the accident that occurred in the present case. The loss of innocent lives cannot be a basis to dismiss the employee without holding an inquiry. The inquiry would have brought to light under what circumstances the accident occurred and to what extent the negligence of the petitioner is attributable to such accident. It is also found from the written statement of the respondents that the Station Master of Panikhaiti gave a telephone call to the petitioner, but he was not found in his bunk. It shows that no communication could be conveyed to the petitioner about the approaching of Cachar Express train to Gauhati. If that is so, the Station Master at Panikhaiti must be alerted the driver of the train that by the telephone call the Gateman at Gauhati could not be contacted. It is not found from the record as to whether the Station Master at Panikhaiti took such action. This would have only revealed if an inquiry would be held. We have also noticed from the written statement of the respondents that the terrain near the gate in question was such that the visibility from the bunk of the approaching train from the side of Chandrapur was not possible. Therefore, the only communications that had to be established was by telephone from Panikhaiti Railway Station which in this case unfortunately did not happen. The petitioner has stated that he was all along in his duty bunk and he has stoutly denied to have any incoming telephone call from Panikhaiti Station Master.

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14. In view of the facts and circumstances and for the reasons stated above as well as hearing the learned counsel for the parties, we come to the definite conclusion that the reasons recorded by the disciplinary authority are not at all relevant and in conformity with the Rule 14(ii). Accordingly, we are of the confirmed opinion that the impugned order dismissing the petitioner without holding an inquiry is not sustainable in law.

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Disputant  
Advocate

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15. In the result, the application is allowed and the impugned order is set aside. The petitioner shall be deemed to be in continuous service. However, we may make it clear that the authority shall be at liberty to take any action in conformity with law after holding inquiry, if deemed fit.

16. The petition is allowed. No costs.

*S. K. S.*  
27/3/87  
VICE-CHAIRMAN :

Sarma :

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*[Signature]*  
Deputy Registrar (Judicial)  
Central Administrative Tribunal  
Guwahati Bench  
29.4.87

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*[Signature]*  
Deputy Registrar



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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

GUWAHATI CASE NO. 218 of 1986.

Bhubaneswar Kalita ..... Applicant.

Vs.

Union of India and Others. .... Respondents.

PRESENT :

Shri B.Kalita , ..... For the applicant.

Shri B.C.Pathak  
Advocates,

~~Shri A.R. Barua~~ ;  
Shri B K Sharma ;  
Rly. Advocate.

..... For the respondents.

CORAM

Hon'ble Justice Shri D.Pathak, Vice-Chairman.

Hon'ble Shri S.P.Hazarika, Member.

JUDGMENT ( per S. P.Hazarika ) .Dated, - -1987.

I have perused the judgment prepared by the esteemed Judicial Member. I am in agreement with the findings arrived at . I am also generally in agreement with the views expressed therein. As however there are some other reasons and the issues involved may also be approached in a different way it is felt that it would be desirable to record them separately.

2. This application under Section 19 of the Administrative Tribunals Act, 1985, filed by a Gateman of the N.F.Railway is directed against an order made by the Divisional Railway Manager, Lumding on 24-10-1985 under rule 14(ii) of the Railway Servants ( Discipline and Appeal ) Rules, 1968 ( for short- the rules ) dismissing him from service without informing him of the charges against him and without holding an enquiry. The Chief Engineer N.F.Railway to whom an appeal was preferred also summarily rejected the appeal in his order dated 17-2-1986.

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*D. Sharma*  
Advocate

3. The facts of the case are short. On 5.10.1985 when the applicant was the Gate-man on duty at the level crossing No. 20 between Narengi and Panikhati stations of the Gauhati-Lumding Section of the N.F. Railway a major train accident took place at about 3.30 P.M. A city-bus in passing through the level crossing collided with a running passenger train resulting in the death of 26 persons and injuries to many others. Being nervous the applicant fled away from the place and after about three days of the occurrence he was taken into custody by Police on surrender. About seven days thereafter he was released on bail by the Chief Judicial Magistrate, Gauhati and he immediately reported at the office of the Permanent Way Inspector for his duties but he was not allowed to join. On 26-10-1985 he was served with the impugned order of dismissal dated 24-10-1985 holding him primarily responsible for the accident for keeping the gate open.

4. The applicant attacks the order of dismissal and the appellate order with these four main contentions, viz.

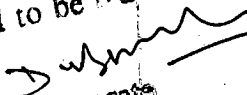
- (1) that the D.R. M. is not competent to make the impugned order.
- (2) that there was no such situation for exercising the special power under rule 14(ii) for which the impugned order has been violative of the provisions of Article 311(2) of the Constitution,
- (3) that the applicant is not at all guilty. He did everything to avert the accident for which the responsibility lies elsewhere in the Railway administration, and
- (4) that the appellate order which is not a speaking order was made without any consideration of the grounds taken.

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D. S. M. W.  
Advocate

The respondents deny all these contentions of the applicant and affirm that the D.R. M. is fully competent to make order of dismissal, that the circumstances did exist to conclude that it was not reasonably practicable to hold an enquiry and that the disciplinary authority having been fully satisfied about the guilt of the applicant had imposed the penalty which was not excessive in the circumstances.

6. Rule 14 (ii) provides that " notwithstanding anything contained in rule 9 to 13 where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit." This is actually the provision of clause (b) of the Second proviso to Article 311(2) of the Constitution. Article 311(3) of the Constitution however provides that, " if, in respect of any such person as aforesaid, a question arises as to whether it is reasonably practicable to hold such enquiry as is referred to in clause (2) the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final." But in spite of this Constitutional provision such an order has also been made appealable under rule 18(ii) like any other order of penalty. Before proceeding to scan an order made under rule 14(ii) it is therefore necessary to pause and examine the scope if any for such an order to come under the scrutiny of the appellate and other departmental authority or the judicial authority, and if so the extent to which such scrutiny may be done.

7. The entire gamut of the special procedure for imposing major penalty on a Railway Servant or for that matter on any civilian Government servant came up for consideration of the five-judge constitution bench of the Supreme Court in the celebrated judgment in Tulsiram Patel Vs. the Union of India, (1985) 3 SCC 398 : 1985 SCC (L and S) 672. Just two months after this judgment the Supreme court in the case of Satyavir Singh Vs. Union of India 1986 S.C.C. (L & S) 1 summarised the large number of issues decided by the Constitution Bench ( with one judge dissenting ) in the aforesaid case of

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Advocate

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Tulsiram Patel Vs. Union of India and serialised the conclusions numbering 114 in fifteen different parts topic wise. For the determination of the issues involved in our present case, all the governing principles have been laid down in these illustrious judgments. It may however be noted that these two judgments were made before the "appointed day" for the Administrative Tribunals Act 1985. Hereinafter, "conclusion No." shall mean the conclusion No. in the judgment in the case of Satyavir Singh Vs. Union of India.

8. On judicial review of an order made under rule 14(ii) the Supreme court has observed in conclusion No. 107 of that "the finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court and the court would consider whether clause (b) of the second proviso or an analogous service rule had been properly applied or not." Before that the Supreme court in its conclusions No. 104 and 106 on the topic of judicial review has observed :

"(104) Where a clause of the second proviso to Article 311 (2) or an analogous service rule is applied on an extraneous ground or a ground having no relation to the situation envisaged in such clause or rule, the action of the disciplinary authority in applying that clause or rule would be mala fide and, therefore, bad in law and the court in exercise of its power of judicial review would strike down both the order dispensing with the inquiry and the order of penalty following thereupon.

(106) In the case of a civil servant who has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso to Article 311(2) or an analogous service rule, the High Court under Article 226 of this Court under Article 32 will interfere on grounds well-established in law for the exercise of its power of judicial review in matters where administrative discretion is exercised."

These principles thus clarify that notwithstanding the provision of Article 311(3) the Tribunal may scrutinise whether the power under rule 14(ii) has been properly exercised or not in this case.

9. On the first contention of the applicant about the D.R.M.'s want of jurisdiction <sup>B.K. Sharma</sup> Shri A.R. Barua the learned counsel for the respondents submit that the D.R. M. being an authority superior to the appointing authority of the applicant is fully competent to make the impugned order. This fulfils the Constitutional requirement of Article 311(1) of the Constitution and the relevant provisions of the Rules. But there is still a point, In the case of Tulsiram Patel Vs. Union of India ( Supra ) the Supreme Court at paragraph 130 of the judgment has observed and has reiterated it at conclusion No. 58 , that " the reasonable practicability of holding an ~~an~~ enquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot ~~and~~ knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. " Although any higher authority in the hierarchy above the appointing authority may also be a disciplinary authority, for the purpose of adopting the special procedure of rule 14(ii) the disciplinary authority on the spot, that is, the appointing authority is ordinarily required to be the disciplinary authority. For any higher authority other considerations besides the ground of not being reasonably practicable for holding the enquiry may also come to play. This shall be presently seen below with reference to the submissions of the respondents in their counter-affidavit. In the absence of any explanation a question may arise as to why the appointing authority who is ordinarily nearest to the spot and who is supposed to be more in the know of the situation actually prevailing, was not allowed to exercise his discretion to dispense with the enquiry or to hold a full enquiry as usual. On this ground alone the impugned order may be liable to be held as bad but this aspect is being further discussed below :

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*D. Sharma*  
 Advocate

10. At this stage let the substantive portion of the impugned order be noticed. On reasons for dispensing with the enquiry the order at paragraph 4 states " On account of his primary responsibility for this accident, Shri Bhubanswar Kalita has been arrested by the Police and he is in their custody, while the case is under investigation. It is not reasonably practicable except with considerable delay to hold the disciplinary inquiry to give Shri Kalita an opportunity to defend him to show cause against action to be taken against him. On the other hand, it is in the public interest not to delay the matter but to impose exemplary and immediate punishment on the staff who are guilty of gross negligence of their duties and cause such serious accidents. " In the counter affidavit however the respondents add something more . Paragraph 13 of the counter affidavit reads as below :

" That circumstances of the case left no room for holding any enquiry under the Railway Servants (D&A) Rules, 1968 and warranted immediate action to create an atmosphere of trust and faith on the general public. This was a very serious incident resulting in death of about twenty innocent lives only because of negligence of the petitioner. After the statutory Enquiry conducted by the Commissioner of Railway Safety nothing new could have come out of a Departmental Enquiry. Further the petitioner was under judicial custody and it was not known as to how long he would remain under the custody. The need to punish the guilty expeditiously to install confidence in the mind of the travelling public coupled with the detention of the petitioner did create conditions where an Enquiry was not possible. In any case the Enquiry under the D & A Rules would have been a merely formality after the petitioner having been found primarily responsible for the accident by the enquiry conducted by the Commissioner of Railway Safety. "

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D. V. S. Advocate

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11. On the examination of the relevancy of the reasons given for dispensing with the enquiry the Supreme Court directs in conclusion No. 108 that " the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere . "

12. While observing that "the disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an enquiry or because the Department's case against the civil servant is weak and must fail," the Supreme Court states at conclusion No. 59 that ,

" (59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be -

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Advocate

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- a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or
  - b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or.
  - c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation.

In all these cases, it must be remembered that numbers coerce and terrify while an individual may not."

13. The need to avoid in the public interest the delay involved in holding a regular enquiry has been cited in the <sup>impugned</sup> order as well as by the respondents as the main reason for dispensing with the enquiry. In this regard the Supreme Court observes in conclusion No. 69 that " In certain cases, the exigencies of a situation would require that prompt action should be taken and suspending a civil servant would not serve the purpose and sometimes not taking prompt action might result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities . "

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D. V. [Signature]  
Advocate



14. Such an accident is bound to erode " the trust and faith of the general public " on the Railways but it is not the case of the respondents that a situation was created by a section of the Public or others somewhere near the place of occurrence which had rendered it not practicable to hold the disciplinary enquiry. It is clear from the counter-affidavit that the guilt of the applicant in this matter has been gathered from the report of the enquiry conducted by the Commissioner of Railway Safety, North Eastern Circle, Gorakhpur in accordance with the Rule 4 of the Statutory Investigation into Railway accident Rules 1973. A copy of this Rule was not made available to this Tribunal. A copy of this statutory enquiry report has not also been produced in the Tribunal. But the fact is that such a public enquiry with a much wider scope than the domestic disciplinary enquiry could be smoothly held. It is not contended that there was any interference from any quarter in that enquiry. It is therefore difficult to comprehend what could be the difficulties or the circumstances for which the disciplinary enquiry was held to be not reasonably practicable. The restoration of the public confidence on the Railways and the urgency of doing so may be immensely expedient or highly desirable but an expediency or desirability of the kind is unconnected with the <sup>ca</sup>practicability of the disciplinary enquiry. They are entirely irrelevant for the purpose of deciding the fitness of the circumstances to resort to the special procedure of rule 14(ii). Also the higher authorities are more influenced by the broader aspects of repairing the damage to the Railway's credibility done by such serious accidents whereas the lower levels get more concerned with the fixation of responsibility. Had the matter been left to the appointing authority to decide as the disciplinary authority it was not unlikely that it would have decided to hold the disciplinary enquiry as that would have given ~~the~~ to the fixation of responsibility a more convincing impress. But the other possibility~~m~~ may also exist to justify the taking away of the power of the disciplinary authority from the appointing authority <sup>be anxious</sup> which might <sup>to</sup> fix the responsibility at a lower level to save its own skin.

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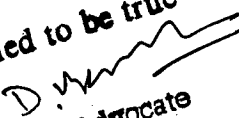
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D. S. Sharma  
Advocate

The records before the Tribunal give no indication as to what was the ground for the authority to withdraw the power of disciplinary authority from the appointing authority to a higher authority. The Tribunal would therefore be inclined to hold that the exercise of the power in this case by a higher authority cannot be convincingly said to conform to the principle as laid down by the Supreme Court at conclusion No. 58 referred to at paragraph 9 above.

15. Another reason given for exercising the special power is unavailability of the applicant for the enquiry as he was under judicial custody. This fact has been stoutly denied by the applicant. It is not known when the statutory enquiry was held but the counter affidavit confirms the presence of the applicant and his examination during that enquiry. Assuming that he was arrested and taken to judicial custody after receipt of the report of the statutory enquiry conducted by the Commissioner of Railway Safety, holding him "Primarily responsible", even then his whereabouts could not be unknown. Arrest and release are all matters of Police and Prison records which can be easily verified. But the applicant's specific averment that before the making of the impugned order of dismissal he had reported to the P.W.I. for duties has remained unrefuted. The counter affidavit and the respondents records taken together lead to an inescapable conclusion that the applicant was not unavailable for the enquiry and therefore the second ground taken for dispensing with the enquiry is untenable. Besides, clear guidelines exist as to how to conduct an enquiry when the charged official is unavailable for the enquiry. The absence of the Railway servant cannot therefore be accepted as a ground for dispensing with the enquiry.

16. The impugned order also speaks of the need of visiting the delinquent with an exemplary punishment. It is not clear whether the statement is a justification for the extreme penalty or also a justification for dispensing with the enquiry. The quantum of punishment is wholly unrelated to the practicability of holding the enquiry.

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D. V.   
Advocate

17. Thus the reasons given in the impugned order for dispensing with the enquiry, viz. (1) the need to avoid the delay involved in an enquiry and (2) the unavailability of the applicant for the enquiry or (3) the need to impose exemplary punishment, must be held to be no reasons at all and on that ground alone the impugned order will be liable to be quashed.

18. A copy of the appeal petition made to the Chief Engineer is not before the Tribunal. But whatever might be the grounds taken in the petition, the appellate order which just reads as :

" The Chief Engineer, N.F. Railway, Maligaon who is the appellate authority in this case has gone through your appeal dated 30.11.85 carefully and taking all aspects into consideration has decided that there is no ground to alter the orders of dismissal passed on you by DRM/LMG and has upheld the orders of dismissing you from service."

cannot be sustained. It is not a speaking order and such one-line order giving no reasons carries little weight in the eye of law.

19. Discussing the role of the appellate authority while dealing with an appeal against an order made under rule 14(ii) the Supreme Court has laid down the principles to be followed. These are in the conclusion Nos reproduced below :

■ (94) Sub-Clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway Servants ( Discipline and Appeal ) Rules, 1968 , inter alia provides that where an inquiry has not been held , the revising authority shall itself hold such inquiry or direct such inquiry to be held, subject to the provisions of Rule 14 of the said Rules which is analogous to the second proviso to Article 311(2). Thus, under the said Rules a Railway servant has a right to demand in revision an inquiry into the charges against him subject to a situation envisaged in Rule 14 of the said Rules not prevailing at that time.

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Advocate

(95) Although a provision similar to sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway servants ( Discipline and Appeal ) Rules, 1968 does not exist in the rules relating to appeals in the said Rules, having regard to the factors set out in Rule 22(2) of the Said Rules which are to be considered by the appellate authority in deciding an appeal, a provision similar to the said sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) should be read and imported into the provisions relating to appeals in the said Rules.

(96) Where service rules do not contain a provision similar to sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway Servants ( Discipline and Appeal ) Rules, 1968 having regard to the factors to be taken into account by the appellate authority in deciding an appeal, a provision similar to the said sub-clause (ii) of clause (c) of Rule 25(1) of the Railway Servants ( Discipline and Appeal ) Rules, 1968 , should be read and imported into the provisions relating to appeals and revision contained in such service rules. This would , however, be subject to a situation envisaged by the second proviso to Article 311 (2) not existing at the time of the hearing of the appeal or revision.

(97) Even in a case where at the time of the hearing of the appeal or revision, as the case may be, a situation envisaged by the second proviso to Article 311(2) exists, as the civil servant, if dismissed or removed, is not continuing in service and if reduced in rank , is continuing in service with the reduced rank , the hearing of the appeal or revision , as the case may be, should be postponed for a reasonable length of time to enable the situation to return to normal.

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(99) A Civil servant who has been dismissed or removed from service or reduced in rank by applying to his case one of the clauses of the second proviso of Article 311(2) or of an analogous service rule has, therefore, the right in a departmental appeal or revision to a full and complete inquiry into the allegations made against him subject to a situation envisaged in the second proviso to Article 311(2) not existing at the time of the hearing of the appeal or revision application. Even in a case where such a situation exists, he has the right to have the hearing of the appeal

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*D. V. S. M.*  
 Advocate

or revision application postponed for a reasonable length of time for the situation to be come normal.

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(101) A civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Article 311(2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal. "

While laying down the above principles the highest court has however made it clear that " In a case where a civil servant has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso or an analogous service rule to him, by reason of clause (3) of Article 311 it is not open to him to contend in appeal, revision or review that the inquiry was wrongly dispensed with."

20. In view of the above principles it was only proper for the appellate authority, instead of summarily rejecting the appeal, to order a full and complete enquiry into <sup>the</sup> allegations. It was particularly warranted in the context of the contentious facts and circumstances through which the applicant seeks to establish his complete innocence. These facts and circumstances are referred to in a paragraph below ;

21. It is also worthwhile to state at this stage what the Supreme Court has observed about the nature of the guilt and the quantum of punishment which will be ~~an~~ adequate. In conclusion No. 76 the court observes " the quantum and extent of the penalty to be imposed in cases such as the above would depend upon the gravity of the situation at a particular centre and the extent to which the acts said to be committed by particular civil servants, even though not serious in themselves,

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 D. S. M.   
 Advocate

in conjunction with acts committed by others contributed to hanging about the situation. The fact, therefore, that at a particular centre certain civil servants were dismissed from service while at some other centres they were only removed from service does not mean that the penalties were arbitrarily imposed. "

22. In the present case the <sup>consequences</sup> result of the alleged lapses of the applicant have been taken as a determinant of the penalty. But the disciplinary authority came to the conclusion that the applicant was not wholly responsible and that he was only 'primarily responsible'. There is then the question of apportionment of the responsibility. The records do not indicate if such an apportionment of the responsibility was done and if the extreme penalty was held to be necessary after such apportionment. About the result of the accident it is however noted that the impugned order puts the death toll at 26 whereas the counter-affidavit submitted long after that, puts this figure at " about twenty."

23. Reference to the fact of the applicant being available has been earlier made for examining the sustainability <sup>of the</sup> special procedure that was taken. In the interest of justice it is also necessary to refer to a few facts which shall have a bearing on establishing the guilt and its extent or the innocence of the applicant in the unfortunate accident.

24. Some of the vital allegations, against the applicant centres ~~regard~~ the location of the telephone at the level crossing. According to the applicant it is installed at his gate-residence but according to the respondents it is at the bunk of the gate. Most of the other allegations will be toothless if the applicant's contention is correct.

25. Whether the train was in time and whether the gateman was sent an information over the phone or he was not found on the phone are all matters of fact. The general topography of the place and the obstructions to the visibility

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*D. V. M.*  
Advocate

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due to the gradient of the rail track, the level of the highway and the existence of banana trees are generally admitted by the respondents. It is a common knowledge that sharp and effective rumble strips enable the stoppage of a vehicle even if it is face to face with a locomotive at the last moment and whether such rumble strips were in existence on the road on either side of the track at the level crossing and whether standing instructions were there for speed limit <sup>for the train</sup> and whistling due to the poor visibility are also matters of fact. If the approach of the train could not be communicated to the gateman but the fact was intimated to the driver of the train the accident was certain to be averted and the gateman could have been then proceeded against only for his not being at the gate if he was actually absent. We are constrained to observe that the respondents' submission in the counter affidavit about the lack of initiative of the gateman to ascertain from the Station master the time of arrival of a train, to say the least, is surprising. It is dangerous to depend on the initiative of a group D staff in such serious matters. It is also absurd to expect it when the other supervising staff fails to discharge even the normal duties of proper upkeep of the track and its visibility at appropriate places and fails to take the minimum care in situations where communications about an advancing train could not be given to a gateman for whatever reason. Much has been stated about the classification of the gate and the need to keep a gate closed ordinarily and to be opened only when a vehicle passes. The volume of traffic, as is seen from the applicant's submissions does not make it physically possible to do so and what is done is the other way to keep the gate open and close it for the trains to pass. These developments about increasing road traffic and the strain on the two <sup>each</sup> gatemen doing twelve hours continuous duties are matters for the higher authorities to notice and deal with. The Tribunal does not have anything before it to be satisfied as to how the guilt, if any, of the applicant was assessed and whether all these facts and circumstances were taken into account while coming to the view that the extreme penalty was warranted in the case. All this is however not to be taken as comments on the guilt or innocence of the applicant.

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D. V. S. M. V.  
Advocate

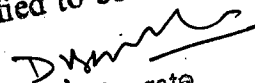
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26. In view of the discussions above the impugned order of dismissal as well as the impugned appellate order must be quashed and set aside and which accordingly is done. The applicant shall be treated as on duty with effect from the date of the impugned order of dismissal. The Tribunal would not make any observation about the manner of treating the period of absence, if any, prior to the date of the order of dismissal which is quashed. This order would not also debar the Railway Administration from taking any further action in the matter in accordance with the provisions of the rules.

Accordingly the application is allowed.


No order as to costs.

  
S.P. HAZARIKA 27/3/87

Certified to be true Copy.  
  
Advocate

RSB/

Certified to be True Copy

  
Deputy Registrar (Judicial)  
Central Administrative Tribunal  
Guwahati Le h 29/4/87



N. F. Rly

12 6 87

OFFICE ORDER

ANNEXURE 1 - 6

To Shri. B. K. Kalita  
Ex. G. K. Kalita  
N. F. Rly.

In form of Dar/Guj. 1/10-1/12(1) - 12-6-87  
No 773-1093-1. Gang no 7 in place of 8  
Subot of 20-1/10-1/12(1) on 1/10-1/12(1) - 12-6-87

you are requested to further duty accordingly.

NO. 12-6-87

copy to:-  
(a) Dar/Guj  
(b) Ph. 1/10-1/12(1)  
(c) S. K. Kalita

Chief Permanent Way Inspector  
N. F. Railway, Guwahati

for information of n/a/other places

Chief Permanent Way Inspector  
N. F. Railway, Guwahati

Certified to be true Copy.  
D. V. M.  
Advocate

Date: 28/7/88 39

To,  
The Chief Engineer,  
N.F. Railway, Guwahati  
Guwahati - 781011.

ANNEXURE : -7

( Through the P.U.I. N.F. Railway, Guwahati )

Sub: An Appeal for payment of Arrear Salary & Allowances and for fixation of pay Scale as per Judgement & order dated 27.3.87, passed in G.C No. 218/86 by the Hon'ble Central Administrative Tribunal, Guwahati Bench,

Sir,

Most humbly and respectfully I would like to lay before you the following few lines for favour of your kind and sympathetic consideration :-

- (1) That I was put under suspension since 6.10.85 to 28.10.85 as per order No.E/2-L-1461 dated 6.11.85 issued under the signature of the Assistant Engineer, N.F. Railway, Guwahati and accordingly I was paid only the subsistence allowance.
- (2) That I was dismissed from service vide your order No.E/CAN/CON/LN Pt.I dated 24.10.85 issued under the seal and signature of the Divisional Railway Manager, N.F. Railway, Luding with immediate effect.
- (3) That being dismissed from service, I preferred an appeal to you on 20.11.85 which was also dismissed by you vide your order No.E/SS/15/201 ur/ NMR -WVI dated 17.2.86.
- (4) That there being no other alternative, I filed a petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench and the said petition was registered as G.C. No. 215/86.
- (5) ~~Just after hearing the said petition the Hon'ble Tribunal was pleased to allow my petition and the Hon'ble Tribunal directed you to consider me to be in continuous service for entire period of dismissal and also set aside the order of dismissal.~~
- The copies of the said Judgement and Order dated 27.3.87 had already been served on you.
- (6) That as directed by the said Hon'ble Tribunal I was allowed to join my regular duties with effect from 12.6.87 and working as such.
- (7) That as per order No.E/2(1)-356 dated 12.6.87 passed by the Chief Permanent Pay Inspector, N.F. Railway, Guwahati, I have been posted in the scale of pay Rs. 775 - 1025/- and my basic pay has been fixed at Rs. 775/- only without giving me the benefit of fitment in the new revised scale of pay from the old scale of pay. So it mention here that I have not been paid any amount of salary and allowances for the entire period of dismissal as stated above up till now.
- (8) That I submitted a representation on 18.7.87 to you through the P.U.I. Guwahati with a prayer to consider my case for payment of arrear salary and allowances and for fixation of basic pay as revised subsequently. But unfortunately I could not get any reply from you.
- A copy of the said representation is enclosed herewith for favour of your kind perusal.
- (9) That I am a very poor man and I had to borrow money from friends and relatives during the period of those dark days of my dismissal from service and these debts are yet to be repaid.
- (10) That I am a law-abiding citizen and as a duty-bound servant I am discharging my sincere services for the greater interest of the Railways.

... Contd .. (2)

শ্রী জুবিনেশ্বর কলিতা

Received  
Bk.co  
30/7/88  
V. C. Baruah, Guwahati

D. W. ...  
Advocate

Under the circumstances, I therefore pray before you most earnestly kindly to consider my case most sympathetically for settlement of the following :

- (i) To pay me the Salary and Allowances since 6.10.65 to 11.6.67 with the benefit of Annual increments,
- (ii) To give me the benefit of increment of Salary and Allowances from the old scale of pay to the new scale of pay as revised with the payment of Arrear benefits,
- (iii) To give me all other benefit of service as I am entitled to from time to time.

And for this as the petitioner is duly bound shall ever pray.

श्री पूरनेश्वर कलिङ्ग

Copy to the (1) The Divisional Railway Manager, N.F. Railways, Ludhiana, Dist. Hoshiarpur (Assam) for information and necessary action.

(2) The Chief Permanent Way Inspector, N.F. Railway, Guwahati - 1, for information and he is requested to forward the copies to the higher authorities as submitted through proper channel.

(3) The General Manager, N.F. Railways, Maligaon Guwahati for information and necessary action.

श्री पूरनेश्वर कलिङ्ग

Certified

D. Kumar  
Advocate



From:-

Bhubaneswar Kalita,  
Gang Man  
Under C.F.V.I. N.F. Rly,  
Guwahati.

41  
68  
ANNEXURE I - 8

To:

The General Manager,  
N.F. Railway,  
Maligaon.

Through <sup>Insper</sup> Power Channel.

Date:-

Sub: WILFULL DISHONOURING OF THE JUDGEMENT PRONOUNCED BY  
HON'BLE C.A.T., GUWAHATI BRANCH.

Ref: Judgement of Hon'ble C.A.T, Guwahati Branch, in the case  
No. G.C. No. 218 of 1986, pronounced on the 27th day  
of March 1987.

Sir,

Most humbly and respectfully I beg to forward that, I  
am rather compelled to let you know that the Divisional Management  
of Lending Division has wilfully dishonored the Judgement of the  
Hon'ble C.A.T, Guwahati Branch under reference.

The Hon'ble C.A.T. has quashed and set aside the impugned  
dismissal order No.E/Dt A/Cen/LM/Pt-I dtd.24.10.1985  
issued by DRM/LMO and order No.28/55/15/20rup/NGD-PHL dtd.17.2.86  
issued by C.E/N.F.Rly, on alignment and also directed me to be in  
continuous service. As on duty with effect from the date of the  
impugned order of dismissal in para 15 and 26 of the Judgement  
in question.

The Judgement of the Hon'ble C.A.T. should have been a  
complied with in all respects within clear 90(Ninety)days as  
per the law of the land. But inspite of service representations  
submitted by me time and again, the Divisional authority did not  
act accordingly on the following issues.

- (i) Regularisation of the period from 06-10-85 to 11.5.87  
as on duty.
- (ii) Payment for the arrear salaries and all other allow-  
ances for the period mentioned above in para(i).
- (iii) Revision and fixation of pay as per recommendation of  
4th P.C.
- iv) Fixation of Basic pay considering the service as con-  
tinuous.
- v) Sanction and payment of arrear increments.

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D. V. M.  
Advocate

contd....p/2

- 2 -

Under the prevailing situation, I may please be excused for letting you know that, if the above irregularities are not regularised with an intimation to me within 30(Thirty) days from the receipt of this representation, I will be compelled for litigation under CR.PC concerned.

Dated

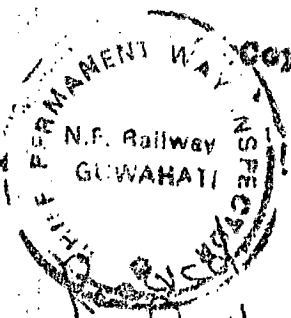
10/11/88.

Yours faithfully,

শ্রী ভুবনেশ্বর কলিতা

(Bhubaneswar Kalita.)

D/Mon W/ldm CPN/4/88.



Copy forwarded for information and necessary action to:-

- (a) The Chief Engineer, N.E. Ry.  
Landing.
- (b) Divisional Ry Manager, N.E. Ry.  
Landing.

10/11/88.

Certified to be true Copy  
 D. V. M.  
 Advocate

Seal  
210 - 270  
Pay - 260 / 1.8.85

①

②

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*D. W. [Signature]*  
Advocate

Office order.

71

Consequent on posting of Mr. Bhuvaneshwar  
Kadita as General Manager under PWG/NGC at Ahy in scale  
Rs 775-1025/- vide AER/Atty & No. E/2-1.601 dt 11-6-87  
the annual increments is hereby provisionally sanctioned  
as under.

12-6-87 -	Rs. 775.00	(in scale 775-1025 as G.M.
		vide AER/Atty & No. E/2-1.601
		dt 11-6-87).
1-6-88 -	" 787.00	
1-6-89 -	" 799.00	
1-6-90 -	" 811.00	
1-6-91 -	" 823.00	
1-6-92 -	" 835.00	

For the approval of the competent authority.

No. E/132/3-LM(E) dt 24.9.92

Sd/-  
For DPM/DMMA

N.F. Railway.

Copy forwarded for information & necessary  
action to: —

- 1) PWG/NGC at Ahy (in duplicate). He is requested  
to prepare the supp. Bdt in favour of the staffs &  
submit the same with in five days of its receipt  
on the latter.
- 2) AER/Atty. 3) DPM/LMC. 4) DEN/LLMC.
- 5) SE Bdt at office. 6) P/case.
- 7) Staff concerned through PWG/NGC at Ahy.

Certified

D. V. S. /  
Advocate

Completed  
20/10/92

Sd/- 24.9.92  
For DPM/DMMA  
N.F. Railway.

45  
42  
ANNEXURE 8-10  
Series

SHIRAI PM 06/5/712106 752021	<p>भारतीय डाक</p> <p>SUNAHATI GPO (781001)</p> <p>RL 5842</p> <p>PA : SRA</p> <p>To:GN. NF RLY..</p> <p>HALIGAON. GHY 11.PIN:</p> <p>Wt:17grams</p> <p>PS:0.00.Amt:19.00.30/04/2001.13:56:14</p> <p>HAVE A NICE DAY</p>	<p>भारतीय डाक</p> <p>SUNAHATI GPO (781001)</p> <p>RL 5843</p> <p>PA : SRA</p> <p>To:CF.NGR. NF RLY...</p> <p>HALIGAON.GHY 11.PIN:</p> <p>Wt:22grams</p> <p>PS:0.00.Amt:22.00.30/04/2001.13:56:29</p> <p>HAVE A NICE DAY</p>
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Certified to be true  
D. S. M. Advocate





R.P.-54

तारीख-मोहर

তারিখ স্থপ মোহর

Name-Stamp of office of posting

10

Date Stamp

Shri. Bhuvaneshwar Kalita

५० B C Pathak, Advocate

R. G. Barnes Road, Ganeshgure

Gurwahat

पिन/भिन/Pin

7	8	1	0	0	5
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प्रमाणित/IMP(FU), Sant - Postal/92 (GFS/1/20/SC/11/1/8-4-92) - 30-7-92 - CC 000

D. V. [Signature]  
Advocate

Representation dt. 12/4/2001

प्रामाणिकता (रसीद) / Acknowledgement

एक पत्र/पोस्टकार्ड/पैक/पैरल प्राप्त हुआ  
 या पोस्टकार्ड/पैक/पैरल/पैक/पैरल प्राप्त हुआ  
 \* Received a Registered Letter/Postcard/Packs/Parcel No.  
 Insured  
 पाने वाले का नाम  
 पाने वाले का पता  
 Addressed to (name)  
 \* बीमा रकम (रुपयों में)  
 \* बीमा शुल्क अर्पण विवरण  
 \* Insured for Rupees  
 विलम्ब की तारीख  
 \* Date of delivery 19 पाने वाले के हस्ताक्षर/आपका हस्ताक्षर/Signature of addressee  
 \* अनिवार्यक की बात दिया जाये/सामान्यतः प्रत्येक दिन/Not necessary matter not required.  
 \* केवल बीमा वस्तुओं के लिए/केवल बीमा वस्तुओं के लिए/For insured articles only.

TO The General Manager  
 NF Railway Maligaon  
 Guwahati 781011

12/4/2001  
 11

Certified to be true Copy.

D. M. Advocate

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श्री - 54

भारतीय डाक-विभाग/भारतीय डाक विभाग  
DEPARTMENT OF POSTS, INDIA

तारीख-मोहर  
Date Stamp

श्री - 68

श्री - 64

प्रेषक डाकघर का नाम-मोहर/अङ्ग्रेजी डाकघर का नाम-मोहर  
Name-Stamp of office of posting



Date Stamp

50

Shri. Shubaneowar Kalita

प्रेषक का पता / प्रेषक का नाम ठिकाना / Sender's address

C/O. B. C. Pathan, Advocate

R. G. Barua Road, Ganeohguri

Guwahati -

पिन / Pin

781005

Sant- Postal/92-(SFS/1/22/35/P1. 11/8-4-92)-18-7-92- .00.000.

Certified to be true Copy.

D. [Signature]  
Advocate

Regd. with A/D Post

48

10/11/83

77

Date: 12/4/2001

To

The Chief Engineer  
N.F. Railways,  
Maligaon,  
Guwahati-781011.

( Through the P.W.I., N.F. Railways, Guwahati )

Sub: Prayer for correction of conditions of service vide  
CAT, Guwahati Bench, G.C. No. 281/86.

Sir,

Most humbly and respectfully I beg to lay before you  
the following few lines for favour of your kind consideration  
and necessary action.

1. That Sir, I was appointed as Gangman with effect from  
4.12.79 in the Scale of Pay Rs. 200-250/- vide N.F. Railway  
letter No. E/5 ( Apptt ) -535 dated 29.7.82 . A copy of the  
said letter dated 29.7.82 is enclosed herewith for ready refe-  
rence. From 4.12.79 onwards, I have been discharging my duties  
as a regular employee without any break in service.

2. That the Hon'ble CAT, Guwahati Bench, vide its judgement  
/ passed in  
and order/dated 27.3.87 G.C. No. 218/86, it also clearly held  
that I shall deemed to be in continuous service. But inspite of  
the said facts and circumstances the Chief Permanent way Inspector  
N.E. Railway, Guwahati, vide his order No. E/2(1)-356 dated 12.6.87  
posted me as Gangman in the scale of pay Rs.775-1025/- without  
giving me any fitment/fixation of pay considering my past services/  
length of services as per 4th Pay Commission recommendation.

Moreover the said order dated 12.6.87 is punitive in nature which  
amounts to reduction in rank also pay and allowances. In addition  
to non-fixation of pay in terms of 4th Pay Commission, I have not

affixed to be true  
D. V. S. S. S.  
Admission

been paid my salaries and allowance for the period with effect from 6.10.85 to 11.6.87.

A copy of the order dated 12.6.87 is enclosed herewith for your perusal please.

3. That after the order dated 12.6.87 fixing the pay at the initial basic pay at Rs.775/- (as if I was appointed as a fresh employee), the DRM(P.) Lunding, N.E. Railway vide order No. E/132/3-LM(E) dated 24.9.92 had issued the provisional sanction order of annual increments for the year 1987-88, 1988-89, 1989-90, 1990-91, 1991-92.

The copy of the said order dated 24.9.92 is enclosed herewith for your kind perusal.

4. That Sir, I submitted two representations on 28.7.88, 10.11.89 which were received by Chief Permanent way Inspector, N.E. Railway on 30.7.88 and 10.11.89 respectively. But my grievances remained unattended and unredressed.

The copies of representations dated 28.7.88 and 10.11.89 are enclosed herewith.

5. That sir, I am a man having little knowledge and education about law, procedure and about my rights. I am the only earning member of my 7 members family having my old mother. I have rendered by sincere services to the department for the last 22 years. But I have not been given the accrued benefits of annual increments as 4th Pay Commission by fixing my pay at a higher rate as entitled as per rule and also to give consequential benefits thereof including the subsequent benefit as per 5th Pay Commission recommendation. The 4th Pay Commission came into effect from 1.10.86 and the 5th Pay Commission from 1.8.97.

6. That Sir, the non-sanction/granting of annual increments

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D. V. V.  
Advocate

at the applicable rates and payment of salaries and allowances as per wrongly calculated fixation of basic pay and non-granting of due annual increments as per due pay fixation is a perpetual in nature and such injustice done against me is a continuing wrong as and when the salaries and allowances are paid to me in every month and the annual increments are falling due in every year.

7. That Sir, under the above, facts and circumstances I, therefore, 4th grade employee humbly pray before you to consider my case, sympathetically and as per law and arrange to pay/ grant me the following :

- (a) to pay my arrear salaries and allowances for the period 6.10.85 to 11.6.87.
- (b) to fix my basic pay etc. as per 4th Pay Commission recommendation considering my past services and earlier pay scales since 1979.
- (c) to fix my basic pay etc. as per 5th Pay Commission w.e.f. 1.8.97.
- (d) to pay arrear salaries and allowances after fixation of pay etc. as per 4th & 5th Pay Commission recommendation
- (e) Any other consequential benefit to which I am entitled to.

Yours faithfully,

Encl :- As stated

(Bhubaneswar Kalita )

Copy to :- The General Manager  
N.E. Railways  
Maligaon, Guwahati - for information & necessary action.

Certified to be true Copy.  
D. V. M.  
Advocate

E/13213-lm(E)

N.F.R.Ly

Office of the  
D.M(P) Ling.  
Dt. 15/6/2007.

11

To

Shri Bhuvaneshwar

1st man under SE (P. way) MLC at City

Subj: fixation of pay in terms of SH pay  
commission.

Ref: GM (P) MLC's L/NO. E/468E/5 Pt IV (E)  
2002 I dt. 21.5.2007.

In reference to your representation regarding  
fixation of pay in connection with SH pay  
commission as forwarded by GM (P) MLC vide  
L/NO. E/468E/5 Pt IV (E) 2002 I dt. 21.5.2007,  
you are requested to submit all documents  
as mentioned in your representation immediately  
for finalization of your case.  
Please treat the letter as most urgent.

Notified to  
D. V. M.  
Advocate

For  
15/6/07  
For D.M(P) Ling.  
N.F.R.Ly



O/c

ANNEXURE :- 2

Date: 3/7/2001

FROM:- Bhulaneswar Kalita.  
G/man-under SE (P-way) MGC at G.Hy.

To The Divisional Railways Manager (P)  
Lumding, N.F. Rly. (Through proper channel)  
Ref:- your letter NO. E/132/3-IMIE dt. 15/6/2001.

Sub:- Fixation of Pay since 4th Pay Commission  
& payment of arrears.

Sir,

As directed by you vide your letter dt. 15.6.2001  
as referred to hereabove, I am submitting the relevant  
documents as under:-

SL NO.	Particulars of Documents	Pages
1.	Copy of Office Order NO. E/1/1 (LM-Engg) dt. 15.12.80 by which I was selected for appointment W.P. 1.12.79 showing my name at SL NO. 75 of the select list.	1 Sheet.
2.	Appointment letter NO. E/5 (Apptt) - 535 dt. 29.4.82 issued by Asst Engr. N.F. Rly. Gauhati appointing as Stationman in the scale of pay Rs. 200-250 W.P. 1.12.79.	1 "
3.	Dismissed from service vide Order NO. E/ D&A/CON/LM Pt. I dt. 24.10.85 issued by DRM, Lumding.	1 "
4.	Regularisation of period of suspension vide order NO. E/2-C-1461 dt. 6.11.85 issued by Asst. Engr. N.F. Rly. G.Hy.	1 "
5.	Copy of Appeal under Rule 12 of the Railway Servants (D&A) Rules, 1962 submitted by me with Regd. AID post.	5 "
6.	Appeal rejected vide order NO. CE/SS/ 15/201UP/NGE-PH I dt. 17.2.86 issued by the Chief Engineer, N.F. Rly Maligaon.	1 "

filed in  
D. V. M.  
Advocate  
6.

P.T.O.

32 sheets  
pages

7. G.C. NO. 218/86 - case filed in the Central Administrative Tribunal, Guwahati. Bench. Judgement passed on 27.3.87 thereby setting aside the impugned dismissal order and holding me as in continuous service. Copy of Judgement enclosed.

8. Representation dt. 10.11.89 submitted claiming regularisation service from 6.10.85 to 11.6.87, revision of pay as per 4th Pay Commission w.e.f. 1.10.86 & payment of arrears due etc.

9. With out regularising the period from 6.10.85 onwards, posted as a new person in the scale of Rs. 775-1025/- without any fixation of pay as per 4th Pay Commission vide order NO. E/2(1)-356 dt. 12.6.87.

10. Submitted representation dt. 28/7/88 claiming regularisation of period from 6.10.85 to 11.6.87, regularisation of period of dismissal, payment of all benefit as in continuous service and pay fixation & payment of arrears as per 4th Pay Commission.

Filed to Mr. D. V. S. Advocate

Increment sanctioned as if I was appointed afresh on 12.6.87 in the Basic pay of Rs. 775/- showing date increment on 1.6.88 marks period prior to 12.6.87 upto 6.10.85 totally ignored and period of service from 4.12.79 to 6.10.85 not taken into consideration in violation of the Tribunal's order. Increment sanctioned and pay fixed vide order NO. E/132/LM(E) dt. 24.9.92.

Received  
B. 11/7/91  
for Mr. D. V. S. Advocate  
Advocate  
19, Balaiah Street

Further representation dt. 12.4.2001 filed which has been responded by the Rly. The representation is self-explanatory.

I hope, your Honour would consider the case of this poor 4th grade employee most sympathetically in view of the Tribunal's order.  
Please acknowledge receipt of the documents annexed  
yours faithfully

Encl - Attached

Dr. D. V. S. Advocate

भारतीय डाक



(DISPUR SQ)) Cntr.2

REG AD 4672

NAME:THE MANAGER N F RLYS,  
CITY:GUWAHATI 781

INS FOR RS. 0 / P-STAMP Rs. 0

AMT: 28.00/ Gms.24M / 30/03/2002 10:30

भारतीय डाक



(DISPUR SQ)) Cntr.2

REG AD 4673

NAME:THE CHIEF ENGR,MALIGAON  
CITY:GUWAHATI 781

INS FOR RS. 0 / P-STAMP Rs. 0

AMT: 28.00/ Gms.24M / 30/03/2002 10:31

भारतीय डाक



(DISPUR SQ)) Cntr.2

REG AD 4674

NAME:DIVNL RLY MSANAGER,N F RLYS  
CITY:LUNDING 000

INS FOR RS. 0 / P-STAMP Rs. 0

AMT: 28.00/ Gms.24M / 30/03/2002 10:31

Certified to be true & correct  
D. V. V.  
Advocate

O/c  
Dilip Baruah, B.Com, LL.B

ADVOCATE  
Gauhati High Court

Regd. with A/D

Rukmini Nagar  
Dispur  
Guwahati - 781 006  
Phone: 202222 (ch.)

13/12/85 84

To,  
The General Manager  
N.F. Railways, Maligaon  
Guwahati-11

Date : 1.3.2002

Sub: Legal Notice demanding regularisation of service from 6.10.85 to 11.6.87, fixation of pay & allowances since 4th Pay Commission, annual increments and payment of arrears thereof.

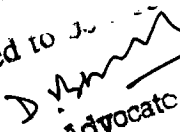
Dear Sir,

Under instruction and for and on behalf of my client, Shri Bhubaneswar Kalita, S/o late Bhakti Ram Kalita, resident of Village-Lachakona, P.O. Kendukona, District-Kamrup (Assam), I serve on you this legal notice as under :

1. That my client, Shri Bhubaneswar Kalita, was regularised in service as CL/CPC/Sub with effect from 4.12.79. This was done vide your office order No.E/1/1(Lm-Engg) dt.15.12.80. The name of my client appeared at serial No.75 in the said list amongst others. Thereafter, my client was appointed as Gangman with effect from 4.12.79 vide appointment letter No.E/5(Apptt)-535 dt.29.7.82 in the scale of Rs.200-250. Accordingly, as my client was already rendering his services, continued to serve as Gangman and subsequently as Gateman with his all sincerity and devotion.

2. That my client was dismissed from service with immediate effect from 24.10.85 for alleged ~~dereliction~~ dereliction of duties. Against that order of dismissal my client had preferred an appeal under the

... contd...p/2

Certified to J.  
  
Advocate

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85

Rules of the department on 30.11.85. The said appeal was rejected by the Chief Engineer(P), N.E. F. Railways, Maligaon on 14.2.86 and the same was communicated to my client vide letter No. CE/SS/15/201 UP/NNGE-PH-I dt. 17.2.86.

3. That my client having no other alternative, approached to the Hon'ble Central Administrative Tribunal, Guwahati Bench, through an application under Section 19 of the CAT, Act, 1985 and the said application was registered as GC No. 218/86. The said application, after hearing both the sides, was allowed in favour of my client and the order of dismissal was set-aside. As a result, my client was ordered as deemed to be in continuous service. This judgement and order was passed on 27.3.87 by a Division Bench of the said Hon'ble Tribunal.

4. That after the judgement of the Hon'ble Tribunal, my client was allowed to join in service with effect from 12.6.87. In the meantime, the 4th Pay Commission recommendation was implemented by the Railways department. Accordingly, my client was also entitled to get all the benefits of the said pay revision. But surprisingly, the pay was fixed at the minimum of the scale of pay of Rs. 775-1025 i.e. at Rs. 775/- ignoring all his past services and the order of the Hon'ble Tribunal. This was done vide Office Order No. E/2(1)-356 dt. 12.6.87. My client being a person having little education, approached to authorities for justice, but there was no result.

5. That when nothing was done by the management to regularise his period of suspension/dismissal from service in terms of the aforesaid judgement of the Hon'ble Tribunal for the period from 6.10.85 to 27.3.87 and 27.3.87 to 11.6.87 onwards with fixation of pay, increments and payment of arrears dues, my client submitted a representation on 28.7.88 to the competent authority. By the

... contd....p/3

Certified to be true Copy.  
Advocate

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3  
said representation my client had demanded regularisation of the period from 6.10.85 to 11.6.87, payment of all benefit and also for fixation of pay and payment of arrears as per 4th Pay Commission recommendation. The said representation dt. 28.7.88 has not been responded by the authority although the same was duly received by the Chief Permanent Way Inspector on 30.7.88. My client again submitted another representation on 10.11.89, which was also duly received by the Chief Permanent Way Inspector. By the said representation, my client had claimed regularisation of the period from 6.10.85 to 11.6.87, revision of pay as per 4th Pay Commission recommendation which came into force with effect from 1.10.86. My client went on pursuing his genuine demands and continued to move from pillar to posts.

6. That ultimately, after long five years, the authority issued the order vide No. E/132/3-LM(E) dt. 24.9.92 and thereby sanctioned increments for the year 1.6.88, 1.6.89, 1.6.90, 1.6.91 and 1.6.92 showing the basic pay at Rs. 775/- in the minimum of the scale of Rs. 775-1025 per month as Gateman. By this order again, the authority intentionally and deliberately did not consider the period of service of my client from 4.12.79 to 5.10.85 and 6.10.85 to 11.6.87 to regularise the service and also did not give actual pay revision benefit to him in violation of his fundamental as well as other legal rights and the established conditions of service. By the said order dated 24.9.92, it has been clearly indicated that the authority has illegally considered my client as in fresh employment with effect from 12.6.97. Such action of the authority is illegal, arbitrary, directly violative to the judgement and order dt. 27.3.97 passed by the Hon'ble Tribunal and contumacious in nature. It is needless to mention here that the Railways authority did not challenge the said order and judgement passed by the Hon'ble Tribunal in any higher Court and hence the said judgement and order ~~is~~ has attained its finality and is

Certified to be true Copy  
D. V. [Signature]  
Advocate

... contd....p/4

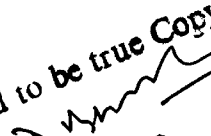
holding the field having binding force.

7. That my client, being a person of little education and poor, low-grade employee, went on approaching the various authorities in person but in vain. Then my client again submitted another representation on 12.4.2001, which was duly received by your and Chief Engineer's offices simultaneously. By that representation, my client again demanded payment of arrear salaries and allowances for the period 6.10.85 to 11.6.87, fixation of pay as per 4th Pay Commission recommendation considering all past services since 4.12.79, fixation of pay with effect from 1.8.97 as per 5th Pay Commission recommendation and for payment of all consequential benefit and arrear dues.

The authorities, however, has ~~rem~~ responded to this representation dt. 12.4.2001 and your office was pleased to give some direction to the Divisional Railway Manager vide letter No. GM(P)MLG's L/No.E/468E/5 Pt.IV(E) Loose I dt.21.5.2001. Accordingly, the Divisional Railway Manager (P)LMG, N.F.Railways, vide his letter No.E/132/3-LM(E) dt.15.6.2001 directed my client to submit all documents mentioned in the representation. On receipt of the said letter dt. 15.6.01, my client immediately submitted all the relevant documents on 3.7.2001, which was duly received by the Asstt. Engineer, N.F.Railways on 11.7.2001. But even after the lapse of clear 8 months, my client could not get any reply or justice from you uptill now. All such actions of the Railway authorities are continuing wrong(offence) and the same are continuing by the lapse of each and every year, months and day violating the accrued right of my client.

8. That my client is a poor, low-grade employee having little education. He is the only earning member of his family comprising several members. But without any legally valid reason

... contd...p/5

Certified to be true Copy.  
  
 Advocate

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- 5 -

or ground, my client has been deprived of his legitimate claims/ dues for the services he has rendered to the department of Railways. My client does not like litigation, but, if situation compels him, he would be forced to approach the law court for justice.

9. That, under the facts and circumstances, I for and on behalf of my said client demand you to settle and pay the following dues to my said client within a period of 30(thirty) days from the date of receipt of this notice, failing which I have the further instruction to initiate appropriate legal action against you without any further reference to you in this regard:

The claims of my client :

- (a) To pay salaries and allowances with annual increments for the period from 6.10.85 to 11.6.87.
- (b) To fix and revise pay as per 4th Pay Commission recommendation w.e.f. 1.10.86 by considering the past services from 4.12.79 and also give effect of pay revision for the period 6.10.85 to 11.6.87 and thereafter and pay all such arrear becoming due.
- (c) To fix and revise pay and allowances in terms of the 5th Pay Commission recommendation w.e.f. 1.8.97 and also to pay all consequential benefit as arrears, all annual increments and all other service benefit including seniority since 4.12.79 to which my client is entitled to.

Please treat this as Most Urgent.

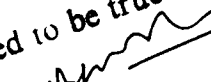
Yours Sincerely,

  
( Dilip Baruah )

Advocate.

Copy to:

- (1) Divisional Rly. Manager, N.F. Railways, Lumding - for his kind information and doing the needful.
- (2) Chief Engineer, N.F. Railways, Maligaon, Guwahati-11, for his kind information and necessary action.

Certified to be true Copy  
  
Advocate

  
( Dilip Baruah )

Advocate.



60

Srinindra Narayan Roy

**४७९**

पू. सी० लाल शर्मा  
Divi Personnel Officer  
N P O, Ludhiana

O.A.No. 402 of 2002

.....Applicant.

- 114 - VS -

### ..... Respondents

Written statement filed by the respondents 1 to 6.

1. That the respondents have received the copy of the Written Statement and have gone through the same. Save and except the statement which are not specifically admitted here in below, rests may be treated as total denial by the respondents. The statement which are not borne out of records may also be treated as total denial.

2. That with regard to the statement made in para 1, 2, 3, 4.1, 4.2, 4.3 and 4.4 of the OA, the answering respondents do not admit anything contrary to the records.

3. That with regard to the statement made in para 4.5 to 4.12 of the OA the answering respondents beg to state that the issue involve in this case has been examined and accordingly an order has been issued bearing no. E/132/3-LM(E) dated 23.12.2002 by the Divisional Railway Manager (P), Lumding to ADEN/GHY regularising the period of suspension from 6.10.85 to 28.10.85

Filed by  
the Respondents-Through  
Siddhanta Saha

Advocate  
1818103

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Sanjiv Kumar Ray  
90नरेश कुमार अधिकारी  
पू. सी. रेलवे वि. वि.  
Divl Personnl. Officer  
N. E. Lumding

and the dismissal period w.e.f. 29.10.85 to 11.6.87 as on duty. Necessary fixation of pay in reference to the 4th and 5th Pay Commission Report have been done by the Divisional Railway Manager (P), Lumding vide office Order No.E/132/3-LM(E) dated 30.4.2003 with copy of the same to all concerned including the applicant. Pursuant to the aforesaid order necessary payment of arrear Salary and allowances is under preparation and will be settled within a short time.

Copies of the orders dated 23.12.2002 and dated 30.4.2003 are annexed as Annexure-R1 and R2 respectively.

4. That the respondents in view of the aforesaid facts and circumstances pray before this Hon'ble Tribunal to dismiss the OA with Cost.

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VERIFICATION

I Shri Souindra Narayan Roy, aged about ...60... years, son of Late Suresh ch. Roy, presently working as Divisional Personnel Officer, N.F. Railway do hereby verify and state that the statement made in paragraphs .....1, 2, 4....., are true to my knowledge and those made in paragraphs .....3..... being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 12<sup>th</sup> day of August 2003.

Souindra Narayan Roy  
Deponent

बदल कामिक अधिकारी  
पू. सी. रेलवे कामाई  
Divl Personnel Officer  
N.F. ... Lumding

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- 4 -

Annexure - 2 1

N.F.Rly.

No.E/132/3-IM(2)

Office of the  
Divil.Rly.Manager (P),  
Landing, dtd: 23/12/02,

To

ADEN/CRY  
N.F.Rly.

Sub:- Regularisation of service welf: 06/10/1985  
to 11/06/87 in favour of Shri Shuboneswar  
Khalita, Jr.Trackman under SE/T-way/ ECC.

Ref:- CM(P)/MIG's L/No. B/4683/15 Pt.IV(E) Loose  
dtd: 21-5-2001

In pursuant of CM/CRY's order dtd: 27-3-87 on CC No.  
218/86 and representation of the above staff addressed to  
CM/N.F.Rly. MIG commr. dated under CM(P)/MIG's Letter No. B/  
4683/15 Pt.IV(E) Loose (1) dtd : 21-5-2001 it has been decided  
that the period of Suspension from 06/10/85 to 28/10/85 and the  
period of dismissal from 29/10/85 to 11/6/87 may be regularised  
as on duty as per extant rules.

Accordingly his pay may be fixed in RP/86 and RP/897.

You are, therefore, requested to take necessary action  
to regularise the above under intimation to this office  
immediately.

This has the approval of the competent authority.

As 23/12/02  
for Divil.Rly.Manager (P),  
N.F.Rly. Landing.

Attended  
By  
Advocate

6x85 } 5-  
29x85 } Surpaw  
A.F.Rly

Anneanne - 2a3

Office Order

Office of the  
Divil.Rly.Manager (P),  
Lumding, dtd: 30/04/03.

Shri Bhubaneswar Kalita, Sr.Trackman in scale Rs.200-250/- appointed wef. 4-12-79 who was subsequently dismissed from service wef. 29/10/85 vide DRM/LMG's L/No.E/DLG/Cor/ LM/Pt-I Dt.24-10-85 in connection with accident of Cachar Express and the period from 4-10-85 to 28-10-85 has been regularised as suspension.

Thereafter, in pursuance of CAT/GHY and DRM(P)/LMG's L/No.E/D&A/Cor/Pt.III dtd:10/6/87 he has been re-instated in the service and resumed duty wef. 12/6/87 in scales. 775-1025/-

The period of dismissed from service wef. 29/10/85 to 11/6/87 and the suspension wef. 6/10/85 to 28/10/85 has been regularised as duty vide DRM(P)/LMG's L/No.E/132/3-LM(E) dtd:23-12-2002. Consequent on Hon'ble CAT/GHY's order dtd:27-3-87 on GC No. 2/8/86 and GM(P)/Maligon's letter No.E/468E/15 Pt. IV (E) Loose (i) dtd: 21-5-2001.

As such his pay in scale Rs.210-270/- is fixed in terms of 4th and 5th CPC which is as under:-

Pay already fixed

1-3-85	Rs.260-(210-270)
12-6-87	Rs.775-(775-1025/-)
1-6-88	787-
1-6-89	799-
1-6-90	811-
1-6-91	823-
1-6-92	835-
1-6-93	847-
1-6-94	859-
1-6-95	871-
1-6-96	2730-(2610-3540)
1-6-96	2790-
1-6-97	2850-
1-6-98	2910-
1-6-99	2970-
1-6-2000	3030-
19-3-2001	3105-(2650-4000)
1-3-2002	3170-

Pay now fixed.

1-3-85	Rs. 260-(210-270)
1-3-86	Rs.965-(800-1150)
1-3-86	980-
1-3-87	995-
1-3-88	1010-
1-3-89	1030-
1-3-90	1050-
1-3-91	1070-
1-3-92	1090-
1-3-93	1110-
1-3-94	1130-
1-3-95	1150-
1-1-96	3580(2650-4000)
1-8-96	3650-
1-8-97	3720-
1-8-98	3790-
1-8-99	3860-
1-8-2000	3930-
1-8-2001	4000/-(Max.)

Sd/-

(A.K.Dey)

APQ/PC/LMG.

for Divil.Rly.Manager (P),  
N.F.Rly. Lumding.

No.E/132/3-LM(E) Lumding, dtd: 30/04/03.

Copy forwarded for information and n/action to:-

- 1) SE/P-way/NGC-He is advised to calculate the loss payment in favour of Shri Bhubaneswar Kalita, Sr.Trackman under SE/P-way/ NGC immediately.
- 2) DEM/LMG (3) Sr.DEN/MLG (4) ADEN/GHY (5) Staff concerned thro:-respective subordinate
- 6) S/copy for P/case.
- 7) EE Bill at Office.

Sa/-

(A.K.Dey)

APQ/PC/LMG.

for Divil.Rly.Manager (P),  
N.F.Rly. Lumding.

attested  
14/7/03  
for N.F.Rly. Lumding  
Office

30/4/03