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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

[Signature]

FORM NO. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

16/04

In O.A. 215/04

Name of the Applicant(s) ... Shri. Kabitra Chandiwary

Name of the Respondent(s) ... W.O.I. G.M.

Advocate for the Applicant ... A. Chakrabarty

Counsel for the Railway/CGSC ... Mr. J. L. Sarkar

ORDER OF THE TRIBUNAL

OFFICE NOTE

DATE

This Review Petition

25.11.04

List on 1.12.04 for admission
before the Hon'ble Vice-Chairman.

was filed by

the Counsel for the

Union of India

22 (+) The CAT Act,

1985 for Review of the

1.12.2004

Present: Hon'ble Justice Shri R.K.
Batta, Vice-Chairman.

order dated 14.9.2004

passed by the Hon'ble

Vice-Chairman in O.A. 215/04.

Heard before the

Hon'ble Court for further

order.

Heard Mr J.L. Sarkar, learned
counsel for the review petitioner. The
review application is dismissed as per
detailed order contained in separate
sheets.

R -

Vice-Chairman

nkm

Section Officer

17/12/04

Copy of the Judgment
has been sent to the
Officer for issuing the
Notice to the L. Advocates
for the parties

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.16 of 2004
(Original Application No.215/2004)

Date of decision: This the 1st day of December 2004

The Hon'ble Justice Shri R.K. Batta, Vice-Chairman

1. Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati.
2. Chief Personnel Officer, N.F. Railway, Maligaon, Guwahati.
3. Divisional Railway Manager Alipurduar Division, P.O. Alipurduar, Distt.- Jalpaiguri, West Bengal.
4. Railway Board, (Through the Secretary, Railway Board), Rail Bhawan, New Delhi.
5. The Controlling Officer Railway H.S. School, N.F. Railway, Alipurduar Junction, West Bengal. Jang Bahadur, Technical Gr-II.Petitioners

By Advocate Mr J.L. Sarkar.

- versus -

1. Smt Kabita Choudhury Wife of Late Atul Ch. Choudhury, Netaji Road, College Para, P.O.: Alipurduar, Distt.- Jalpaiguri, West Bengal.
2. Shri Angshuman Choudhury Son of Late Atul Ch. Choudhury.
3. Smt Mahua Choudhury Daughter of Late Atul Ch. Choudhury.Respondents

By Advocate Mr A. Chakraborty.

.....
O R D E R (ORAL)

BATTA. J. (V.C.)

Heard Mr J.L. Sarkar, learned counsel for the review petitioner.

2. Review is not an appeal in disguise. The case of the review petitioner is that certain facts were not placed before the Tribunal when the matter was disposed

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of on the first hearing itself and the said facts which were not placed before the Tribunal be taken into account for the purpose of this review application. I am afraid that the facts sought to be placed now do not fall within the ambit of exercise of power for review. I do not find any error apparent on record in respect of O.A. 215 of 2004 wherein the order was passed on the material before the court. The matter was finally disposed of with the consent of the Advocates of the parties appearing in the matter, Since it was represented by the learned counsel for the applicant in the said O.A. that the matter was covered by the earlier decision of this Tribunal and this proposition was not, in fact, disputed by the learned counsel for the respondents.

3. In view of the above, the review application cannot be entertained and is accordingly dismissed.

R

(R. K. BATTA)
VICE-CHAIRMAN

nkm

118/48

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati

R.A. No. 16/2004

IN

O.A. No.: 215/2004

A. Kispotka

By.

IN THE MATTER OF :

An application under Section 22(f) of the Administrative Tribunal Act, 1985 for review of the order dated 14/9/2004 passed in O.A. No. 215/2004.

AND

IN THE MATTER OF :

1. Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. Chief Personnel Officer, N. F. Railway, Maligaon, Guwahati-781011.
3. Divisional Railway Manager, Alipurduar Division, P.O. Alipurduar, Dist. Jalpaiguri, West Bengal.
4. Railway Board,
(Through The Secretary, Railway Board)
Rail Bhawan, New Delhi.
5. The Controlling Officer,
Railway H.S. School, N.F. Railway,
Alipurduar Junction, West Bengal.
Jang Bahadur, Technician Gr-II

Petitioners.

VERSUS

A. Kispotta
 Dy. Inspector of Posts, Jalpaiguri
 (Ex-Sub-Inspector of Posts, Jalpaiguri)

1. Smt. Kabita Choudhury,
 Wife of Late Atul Ch. Choudhury,
 Netaji Road, College Para,
 P.O.: Alipurduar, Dist. Jalpaiguri,
 West Bengal- 736121.

2. Sri Angshuman Choudhury,
 Son of Late Atul Ch. Choudhury.

3. Smt. Mahua Choudhury,
 Daughter of Late Atul Ch. Choudhury.

Respondents

The humble petition of the petitioners
 above-named :-

MOST RESPECTFULLY SHEWETH :

1. That the petitioner No.1 has received the copy of the order dated 14.9.2004 of this Hon'ble Tribunal passed in OA No. 215/2004 on 10/10/2004 through its lawyer and have gone through the same and understood the contents thereof.
2. That the applicants in the Original Application are heirs of Late Atul Ch. Choudhury who retired from service from the Railway Higher Secondary School, Alipurduar. His claim was for counting of past non-Railway services for the purpose of pensionary benefits after retirement. He was not given such benefits because he was not entitled to the same under any provision of Law or Rule.
3. That Late Atul Ch. Choudhury did not apply through proper channel with No Objection Certificate for appointment in Railway School. As such under Rule 28(2) (b) of Railway Services (Pension) Rule, 1993 he is not entitled to counting of past services in non-Railway school for pensionary benefits.
4. That the service of Late Atul Ch. Choudhury in the non-Railway school was non-pensionable. It has been certified by the Additional District Inspector of School, Jalpaiguri that pension scheme to the schools where Late Choudhury

A. K. K. /m/s
27.

served before joining the Railway has been introduced w.e.f. 1.4.1981 only whereas Late Choudhury joined Railway on 27.02.1980.

5. That the case of Sri P.K. Bagchi (O.A. No.227/96) and Other case (OA.No.174/92) have been taken into account while deciding the OA.No.215/2004 but these cases belong to employees who served in schools situated in Assam. Whereas Late Choudhury before joining the Railway served in non-pensionable school in West Bengal. The Assam Secondary Education Provincialising Act,1977 stipulates that on and from the appointed date of employees of all Secondary schools in the state of Assam shall be deemed to have become employees of the State Government of Assam w.e.f. date of appointment. The case of Late Choudhury is as such different and not similar to those cases.

6. That the petitioners crave for the liberty to produce the records at the time of hearing of this review petition.

7. That this petition is made bonafide and for the cause of justice.

In the above facts and premises the petitioners beg to file this review petition on the following amongst other-

G R O U N D S

- i) For that the judgement dated 14/9/2004 deserves to be reviewed and set aside because Late Atul Ch. Choudhury did not join the Railway from a pensionable service.
- ii) For that the impugned judgement deserves to be reviewed and set aside because the applicant did not apply through proper channel and under Railway Services (Pension) Rule,1993 he is not entitled to counting of past services in non-Railway school.
- iii) For that the impugned judgement deserves to be reviewed and set aside because cases, OA.No.227/96 and 174/92 are not similar and the applicants in those cases were serving in Assam and governed by the Assam Secondary Education Provincialising Act,1977.
- iv) For that the impugned judgement deserves to be reviewed and set aside because Late Atul Ch. Choudhury joined Railway on 27.02.1980 whereas the pension scheme in his past non-Railway School was introduced w.e.f. 1.4.1981.

The petitioners crave for the liberty to take additional grounds at the time of hearing of this review petition.

In the above facts and circumstances the petitioners pray that Your Lordships would be pleased to admit this Review Petition and issue notice upon the respondents and after hearing the parties be pleased to set aside the Order and Judgement dated 14.09.2004.

And, for this act of kindness your petitioners shall ever pray.

5)
A. Kispotta
By C. J. S. Chacko
H.E. Secretary General
C.M.C.

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati

Affidavit

I, Sri A. Kispolta, son of ~~late~~ Pradeepan Kispolta, aged about 25 years, resident of Guwahati, working as 24 CPO/1R in N.F. Railway, am authorized by the petitioners to swear in this affidavit. I, do hereby solemnly affirm and state as follows:-

1. That the statements made in paragraphs 1 to 7 are true to my knowledge and belief.
2. That statements in Ground (i) to (iv) are true to my knowledge and also to my legal advice.

And I, sign this Affidavit on this day of November, 2004 at Guwahati.



Identified by me

Surjita Choudhury
1/11/2004
(Advocate)

Deponent

Dy. Commr. of Office/1R
R.C. Office, Mangan
Cantonment

Solemnly affirmed before me
who has been identified by
Sri Surjita Choudhury, Advocate
on this day of
November, 2004.

Signature

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Annexure - 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 215 of 2004.

Date of Order :: This the 14th Day of September, 2004.

The Hon'ble Justice Shri R.K.Batta, Vice-Chairman.

1. Smt. Kabita Choudhury,
Wife of Late Atul Ch. Choudhury,
Netaji road, College Para,
P.O. Alipurduar,
Dist. Jalpaiguri, West Bengal,
Pin - 736121.
2. Sri Angshuman Choudhuri,
Son of Late Atul Ch. Choudhuri.
3. Smt. Mahua Choudhuri,
Daughter of Late Atul Ch. Choudhuri. ...Applicants

By Advocate Sri A. Chakraborty.

- Versus -

1. Union of India,
represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. Chief Personnel Officer,
N.F.Railway, Maligaon,
Guwahati-11.
3. Divisional Railway Manager,
Alipurduar Division,
P.O. Alipurduar,
Dist. Jalpaiguri, West Bengal.
4. Railway Board,
(Through Secretary, Railway Board)
Rail Bhawan, New Delhi.
5. The Controlling Officer,
Railway H.S.School, N.F.Railway,
Alipurduar Junction,
Dist. Jalpaiguri, West Bengal. ...Respondents

By Shri J.L.Sarkar, Railway standing counsel.

ORDER (ORAL)

BATTA, R.K.J.,(V.C)

Late Atul Chandra Choudhuri, the husband of
applicant No.1 and father of applicants No.2 and 3

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initially worked in non Railway Schools recognised by the Government of West Bengal since 1962 till 20.2.97,

after which he joined the Railway service as Assistant Teacher in Tinsukia Railway Primary School, N.F.Railway with effect from 14.3.1977 from where he retired on

31.5.2003. The deceased Atul Ch. Choudhuri had made before and

representations after retirement to the authorities for

counting his past service in non-Railway Schools for pensionary benefits. Pending the decision on the representations, he expired on 9.3.2004 and the matter

was subsequently taken up by the applicants. Since the benefits sought were not granted the applicants have approached this Tribunal.

2. The matter was admitted and with the consent of the learned counsel for the applicant and Railways who standing counsel appeared on behalf of the respondents, the matter was finally heard, Since it was represented by the learned counsel for the applicants that the matter was covered by the earlier decisions of this Tribunal and this proposition was, in fact, not disputed by the learned counsel for the respondents.

3. The important fact which is required to be noted in the matter of consideration is that before joining the Railway school the deceased Atul Ch. Choudhuri was borne on pensionable establishment under the Government of West Bengal. He was working in schools under West Bengal Government with pensionable service and applied

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to the Railways through proper channel. He worked in MC-William Junior H.S.School (formerly known as MC-William Sr.Basic School) Alipurduar, District Jalpaiguri from 1.9.1962 to 31.7.1967 and in Govinda High School, Alipurduar, District Jalpaiguri(WB) from 1.8.1967 to 28.2.1977. Thereafter, he joined the Railway service as Assistant Teacher in Tinsukia Railway Primary School, N.F.Railway with effect from 14.3.1977 and continued to work in the said school till he retired on 31.5.2003. Thus, it is clear even in the schools in which he was working earlier the applicant was borne on pensionable establishment under the Government of West Bengal and as such there is absolutely no reason as to why his earlier service in the said schools should not be counted for the purpose of pensionary benefits including D.C.R.G. Our attention has been drawn to O.A.174/92 and also O.A.227/96 and it is submitted that the present case is squarely covered by the judgments passed therein. In Pabitra Kumar Bagchi vs. Union of India & Ors. O.A.227/96 the applicant had worked as Assistant Teacher in Bengali Higher Secondary School, Paltan Bazar, Guwahati from 8.3.1948 to 29.1.1962. He joined the service in Netaji Bidyapith Higher Secondary School, N.F.Railway on 31.1.1962. Relying upon the instances of one Sri Gopal Krishna Sarkar, who worked as a Teacher in



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Dhing Public School, Dhing from 1.3.1962 to 24.9.1967

before he joined Railway school service and where his

past services were counted for the purpose of pensionary

benefits, It was held that the applicant therein was

entitled to similar benefits. Reference was also made in

this case to O.A.174/92 wherein past service of the

applicant therein with the Government aided school

before he joined the Railway had been counted for the

purpose of pensionary benefits.

4. The applicant has also quoted some other instances and reliance has been placed at Annexure VII and VIII of the application.

5. In view of the above, there is no reason as to why

past service of late Atul Chandra Chaudhuri in the non

Railway schools with effect from 1.9.1962 to 28.2.1977

should not be counted for the purpose of pensionary

benefits including D.C.R.G. The application is

accordingly allowed with a direction that the said past

services of late Atul Chandra Chaudhuri in non-Railway

schools shall be counted for the purpose of pensionary

benefits including D.C.R.G. The pension, commutation of

pension, if any, D.C.R.G etc. shall accordingly be

refixed. The difference of such fixation shall be paid

to the applicants within a period of three months from

the date of communication of this order. Since late Atul

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Chandra Chaudhuri did not take any steps for counting his past service prior to 29.11.2001 and ^{when he} not filed ~~any~~ representation, we are not inclined to grant interest on the difference of the amount due under this order. Nevertheless, if the respondents do not pay the said difference within a period of three months from the date of communication of this order, the respondents shall be liable to pay 6% interest on the amount found due in terms of the order from the date of order.

The application stands disposed of in aforesaid terms. No costs.

Sd/ VICE CHAIRMAN

6/10/04

Chandra Chaudhuri
Sudip Chaudhuri
Chittaranjan Bhattacharya
Chittaranjan Bhattacharya
Sudip Chaudhuri
Sudip Chaudhuri