

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 185/2006

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SECTION OFFICER (Judl.)

Mahboob
25/10/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 185/06
 2. Misc Petition No. /
 3. Contempt Petition No. /
 4. Review Application No. /

Applicant(s) Panimal Kr. Bhattacharyya & SonsRespondent(s) M. O. I. T. S.Advocate for the Applicant(s) Mr. S. Dutta.....Mr. K. K. Dey.....Ms. B. Dey.....Advocate for the Respondent(s) Railway...Counsel.

Notes of the Registry	Date	Order of the Tribunal
1. Application is in form is filed in F. for Rs. 50/- d/p/sd. vide CPC/BD No. 26/03/96 Dated 10.7.2006	07.08.2006	Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman. Hon'ble Sri Gautam Ray, Administrative Member.

1. Application is in form
is filed in F. for Rs. 50/-
d/p/sd. vide CPC/BD
No. 26/03/96
Dated 10.7.2006

Debtors
Dy. Registrar

1/8/06

*Steps taken with
envelops*

Phs.

The Applicants are working in a private School for more than 32 years. But they are not getting pensionary benefits. Their case is that similar teachers earlier approached this Tribunal by filing O.A. No. 88 of 1998, wherein the Applicants were directed to submit representation and on receipt of the representation the Respondents were directed to consider the case of the Applicants. The Applicants now filed this Application seeking the same relief.

Heard Mr. S. Dutta, learned Counsel for the Applicants and Dr. J.L. Sarkar, learned standing Counsel for the Railways.

Contd/-

12

OA 185/06

Contd/-

07.08.2006

Notice & order
Sent to D/Section
for issuing to
resp. nos. 1 to 4.
by regd. A/D post.

21/8/06. D/No- 857 to 860
Dt- 23/8/06.

Service report awaited

20
20.9.06.

/mb/

Post on 21.09.2006.

SG
Member

Vice-Chairman

21.9.06

Learned counsel for the respondents wanted to file written statement. Let it be done. Post the on 10.11.06.

Vice-Chairman

lm

10.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

8-12-06

No wks has been
filed.

20

/mb/

11.12.06. The counsel for the Respondents prays for three weeks time to file written statement. Prayer is allowed. Post the matter on 10.1.07.

Vice-Chairman

-3.01.07
wks submitted
by the Respondents

QJ

wks has been filed.

20

lm

Vice-Chairman

10.1.07.

Written statement has been filed by the respondents. Counsel for the applicant has submitted that he has not received the copy of the written statement. Let copy be furnished to the counsel for the applicant. Post the matter on 5.2.07. In the meantime, Liberty is given to the applicant to file rejoinder, if any.

lm

1.2.07

An affidavit in reply submitted by the applicant.

BB

Vice-Chairman

5.2.2007

Counsel for the Applicant submits that pleadings are complete and the matter may be pleased to list for hearing.

Post on 20.02.2007.

h

No rejoinder has been filed.

BB
2.2.07.

Vice-Chairman

/bb/

6.3.07

Pleadings complete.

lm

07.03.07. Counsel for the applicant has submitted that pleadings are completed. Post the matter on 30.3.07.

h
Vice-Chairman

lm

30.3.07. Judgment delivered in open court.

Kept in separate sheets. Application is disposed of. No costs.

Received

Deep

Advocate

13.4.07

1m

Vice-Chairman

Mele

23/4/07

By Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.185 of 2006

Date of Order: This the 30th Day of March, 2007.

HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN

1. Sri Parimal Kumar Bhattacharjee,
Assistant Teacher (Retd)
Dimapur Railway High School,
P.O.Dimapur, Nagaland.
2. Sri Satyendra Chakraborty
Son of Late Ddebendra Kumar Chakraborty,
Assistant Teacher (Retd)
Dimapur Railway High School,
P.O.Dimapur, Nagaland.
- 3 Sri Chitta Ranjan Raha,
Assistant Teacher (Retd)
Dimapur Railway High School,
P.O. Dimapur.
- 4 Smti Mina Das Raha
Assistant Teacher (Retd)
Dimapur Railway High School,
P.O. Dimapur,
Nagaland.
5. Sri Phani Bhusan Das
Assistant Teacher (Retd)
Dimapur Railway High School,
P.O. Dimapur Nagaland.
6. Sri Nepal Chandra Gosh
Assistant Teacher (Retd),
Dimapur Railway High School,
P.O.Dimapur,
Nagaland.

Applicants.

By Advocate Mr. S.Dutta, Mr.K.K.Dey, Ms.B.Devi

-Versus-

1. Railway Board
Union of India,
Through General Manager (P)
N.F.Railway, Maligaon,
Guwahati-781001.
2. Railway Board,
THROUGH secretary to the Railway Board,
New Delhi
3. The Chief Personnel Officer,

N.F.Railway,
Maligaon,
Guwahati.

4. Principal/Headmaster,
Dimapur Railway High School,
Dimapur, Nagaland.

Respondents.

By Advocate Dr. M. C. Sarma

ORDER(ORAL)

K.V.SACHIDANANDAN,V.C:

The applicants are all retired as Assistant Teachers of Dimapur Railway High School which was established in the year 1951 over a plot of Railway land. The Guwahati University granted recognition to the School in the year 1961. The School was affiliated to Board of Secondary Education Assam up to the year 1974. Thereafter, the school came under the Affiliation of the Nagaland Board of School Education, Kohima in the year 1975. The Govt. of Nagaland took steps then for provincialization of School. But as it was established on the Railway land the same could not be materialized. The Government of Nagaland also extended its financial assistance to the high School from time to time. Since the service of provincialized teachers are pensionable in the erstwhile state of Assam as well as in the state of Nagaland they are entitled to pensionary benefits for their entire service rendered by them in the said school. The N.F.Railway took over the Dimapur Railway High School w.e.f. 1.4.1996 together with all its assets and liabilities. The Railways administration offered temporary appointment to the applicants as Assistant Teachers in the same school subject to passing of the prescribed medical examination and was also provided in the said offer of appointment that their services under the Railway, will be governed by all the rules

and regulations. Apprehending losing of job, the applicants submitted their representation and accepted the same in response to the offer of appointment. The Railway appointed the applicants as Assistant teacher in the High School. The applicants has approached the Tribunal by filing O.A.No.88 of 1998 praying for direction to grant their appropriate pay scale, teaching allowance and count their past service for the purpose of Pensionary benefits. This Tribunal vide order dated 14.12.2000 has held that the matter pertains to making of decisions on evaluation of facts and the formulation of the policy of the scheme which can only be done by the respondents by taking into consideration their own guidelines in the matter and scheme in the matter of provincialisation and other like consideration. But the respondents intimated the applicants that the privately managed Dimapur Railway high School, as the services of staff under private management were not pensionable, there is no question of considering account of past services for pensionary benefits. Being aggrieved the applicant has filed this O.A seeking the following reliefs:

“8.1 That the impugned letters No.E/1/252/86(W) Pt. II dated 8.5.2001 (Annexure II), No.E/1/252/86(w) Pt. I dated 30.8.2001(annexure 14) and No.E/1/252/86(W) Pt. II dated 4.7.2005 (Annexure -15) be set aside and quashed.

8.2 That the respondents be directed to count the entire past service of the applicants from the respective date of their initial appointment as Assistant Teacher in the said Dimapur Railway High School towards the pensionary benefits.”

2. The Respondents have filed their written statement contending that though all the applicants are fully aware of the



rule governing pensionary benefits of the Railway staff, under which all Railway employees who retired before completing 10(ten) years of qualifying service are not entitled to pensionary benefits. During the process of taking over of the school, the teachers were asked to give an undertaking accepting terms and conditions of their appointment. On the above terms and conditions the applicants now cannot go back on their solemn undertaking to accept the terms of the Railways according to which no pension is admissible to the employees who retired without the qualifying service of ten years. The school in question was not provincialized by the State Government of Nagaland but was only affiliated to the Nagaland Board of Secondary Education for the purpose of examination etc. The school thus remained a privately managed school only. The applicants were appointed as temporary Assistant Teachers under certain conditions of service as stated in the letters of offer and letters of appointment after the applicants accepted the terms and conditions of offer and cannot now go back on them as regards the conditions and rules of service. The respondents denied that the applicants are legally entitled to the pensionary benefits on their retirement from service as they have not fulfilled the 10(ten) years qualifying service in the Railway. There is no possibility of their being entitled to pensionary benefits under any Government rules. The demand of pensionary benefits by the applicants is untenable under the Government Rules. From the above mentioned pleadings and different facts and claims of the applicants were rejected as they were not covered by the rules and as they were not

similarly placed as those who were granted the pensionary benefits.

3. I have heard Mr. K. K. Dey learned counsel for the applicants and Dr. M. C. Sarma learned counsel for the Railways. From the arguments, evidence and materials placed on record it is born out that the applicant have put in more than 38 years of service before retirement and their services have not been considered for pensionary benefits, which was recognized from 1996. It is an admitted fact that the Railways decided to take over the High School by the Railway administration w.e.f. 1.4.1996, which was initially a privately managed school. The contention of the applicants is that had the applicants not been subjected to accept the offer of the fresh appointment by the Railways, the applicant could have received full pensionary benefits. Since the Nagaland government has taken steps for provincialisation of the school. The Railway offered temporary appointment to the applicants only on the ground that it was a private one. However, it is a fact that the applicants have been working for long years. The length of service period of the each tabulated as under:

Name	Date of appointment	Date of retirement	Period of service after taken over	Total length of service in the Dimapur Railway High School
Applicant No.1	18.11.58	30.11.96	8 months	38 years
Applicant No. 2	1.5.69	31.3.98	4 years	30 years.
Applicant No.3	23.10.68	31.1.02	7 years 10 months	33 years
Applicant No.4	1.5.69	31.5.02	8 years 2 months	36 years
Applicant	13.11.6	31.12.01	7 years	40 years.

No.5			9 months	
Applicant	4.4.83	31.8.01	7 years 5 months	18 years
No.6				

The applicants have approached this Tribunal, by filing O.A.No.88 of 1998. This Tribunal has passed an order dated 14.12.2000 directing the respondents, to dispose of the Representation the operative portion of which is reproduced as follows:

" In the circumstances we feel that the ends of justice will be met if a direction is issued to the applicants to make fresh representation enumerating all the facts and mentioning all their claims within a months from to-day and on receipt of such representation the respondents shall consider the case of the applicants and also other like persons similarly situated as expeditiously as possible, preferably within six months from the date of receipt of the order."

The relief has been sought by the applicants was for granting of pay scale with reference to the other teachers, which was granted by this Tribunal in the said O.A, the direction was complied with. As per Annexure- 1, it is made clear that no pensionary benefits will be granted to them the said Circular is reproduced as follows:-

Sub: Taking over of privately run-Railway High School/Dimapur by Railway Administration. Reference your letter No.E//252/86(W) Pt.I dated 8.12.1994 on the above subject.

2. The Ministry of Railways have decided that the privately managed Railway School at Dimapur may be taken over by Railway Administration. Necessary action may therefore, be taken immediately to take over the school with effect from 1995-96 academic session. Detailed terms and conditions for taking over the assets and liabilities of the school may be worked out in consultation with the FA & CAO and Law Officer before necessary arrangements are executed with the Managing Committee. It may be particularly necessary to complete the following formalities:
 - i) The Managing Committee of the School should pass a Resolution requesting the Railway to take over the said school with all the assets and liabilities.
 - ii) A complete audit of the assets and liabilities of the school should be carried out by the N.F.Railway in consultation with the FA & CAO
 - iii) At present the land on which the school building is constructed has been leased by the Railway to the School Management. The lease deed will have to be terminated on the date of signing of the agreement.
3. For establishment issues like fixation of pay for teachers and other employees, seniority etc. the Railway may approach the Board subsequently.
4. Expenditure in this respect may be met from the existing Budget allotment. It is noted that the financial implications of taking over the school would amount to a recurring expenditure of approximately Rs.29 lakhs by way of salary and allowances of the teachers and other employees etc. and a non recurring expenditure of Rs.50,000/-.
5. This issues with the concurrence of the Finance Directorate of the Ministry of Railways."

4. The issue involved and to be decided in this case is that the teachers who have worked for many years, should they not be given pensionary benefit ? The specific averment made in this case is that the applicants have been compelled to sign the offer letter to join in the Railway service for fear of termination of service. But the respondents have not granted pensionary benefits. However, in the notification dated 2.6.95 at para 3 it is made clear that for established issues like fixation of pay for teachers and other employees, seniority etc. the Railways may approach the Board subsequently. In that Notification it was stated that for fixation of pay seniority etc. of teachers and employees, the Rules and Regulations would be governed by the Railway Board, not by Railway Administration and it would be applicable in all aspects. It is further borne out from Annexure-5 dated 10.11.97, in respect of granting the scale of pay for the teacher with regard to weightage of 10(ten) years, etc which is quoted below:-

"North East Frontier Railway,

Office of the General Manager (P)
Maligaon
Gyuwaqhati-11
No.E/1/252/86(w) Pt.1 Dated 10.11.97
To
The General Secretary,
N.F.Railway, Mazdoor Union,
Pandu,
Guwahati-12

Dear Sir,

Sub: Prayer for Railway benefit to the teaching staff of Railway High School/Dimapur.
Ref: Your letter No.MU/C/DMV/97 dated 15.1.97.

In reference to your letter quoted above,
The benefit in respect of granting the scale of
pay for the teacher of Dimapur Railway High

School has already been issued vide this office Memorandum of Even Number dated 5.8.97. However, the matter in regard to weightage of 10(ten) years services is under examination."

The contention of the applicants is that the Railway authorities granted benefit of counting past services of similarly situated teachers of Maligaon Higher Secondary School. It appears from the letter that consideration for appointment for considering 10 years as well is under examination, which is not a final decision for being policy matter and the decision has to be taken by the appropriate authority.

5. Under the facts and circumstances I am of the view that the Railway Board is the competent authority, which has to take the decision in all aspects. The counsel for the Respondents has drawn my attention to the Railway Services (Pension) Rules- 1993, para 18 (Annexure- A) which is reproduced as follows:-

Pensionary, terminal or death benefits to temporary railway servants -(1) A temporary railway servant who retires on superannuation or on being declared permanently incapacitated for further Railway service by the appropriate medical authority after having rendered temporary service not less than ten years shall be eligible for grant of superannuation, invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent Railway servant under these rules."

Considering these rules and the prior services of the applicants who have been taken as temporary employees prior to 1.4.1996 on notional basis and then even the applicants are entitled for such benefits.

6. In the above facts and circumstances, I am of the view that since the issue involved is of pensionary benefits and a decision can only be taken by the competent authority i.e., the Railway Board, this Court Directs the applicants to make a comprehensive representation alongwith copy of this order to the General Manager within one month from to-day, and on receipt of such representation the General Manager shall forward the same to the Railway Board for their consideration and the Board shall take an appropriate decision with all relaxation and communicate the same to the applicants. This exercise shall be done within a time frame of four months thereafter.

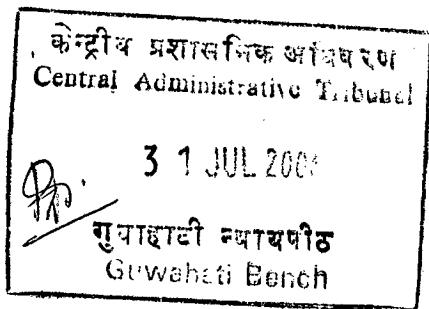
The O.A. is disposed of accordingly. There will be no order as to costs.



(K.V.SACHIDANANDAN)
VICE-CHAIRMAN

lm

PL Adm
7.8.06



Ruled by :
Parimal Kumar Bhattacharjee
B.ors. - - - - - Applicant
19
Mengar
Karenor nanta &
Advocate
31.7.06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :

GUWAHATI BENCH : GUWAHATI.

O.A. 185 OF 2006.

Parimal Kumar Bhattacharjee &ors.

... Applicants.

- Versus -

Railway Board & others.

... Respondents.

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Filed by :-

Advocate.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH, GUWAHATI.

2/
Filing by : Parimal Bhattacharjee & ors. - Applicants
through
Xarun Kanta Dey
Advocate

O.A. 185 OF 2006.

Sri Parimal Bhattacharjee & ors.

... Applicants.

- versus -

Railway Board & others.

... Respondents.

SYNOPSIS OF THE CASE

1. The applicants are all retired Assistant Teachers of Dimapur Railway High School. The Dimapur Railway High School was established in the year 1951 over a plot of Railway land. The school gradually grown up day by day and in the year 1961 it started imparting education upto Class-X standard. The Gauhati University granted recognition to the School in the year 1961. The school was affiliated to Board of Secondary Education, Assam upto the year 1974. Thereafter, the school came under the Affiliation of the Nagaland Board of School Education, Kohima in year 1975. The Govt. of Nagaland took steps for provincialisation of the school but as the it was established

contd...

on the Railway land the same could not be materialised. It may be mentioned here that on a number of occasions Railway Administration extended financial grants/ aids to the said Dimapur Railway High School. The Govt. of Nagaland also extended its financial assistance to the Dimapur Railway High School from time to time. The applicants beg to state that since the service of provincialised teachers are pensionable in the earst-while state of Assam as well as in the state of Nagaland they are entitled to pensionary benefits for their entire service rendered by them in the said Dimapur Railway High School.

2. The applicant No. 1 was appointed in the said Dimapur Railway High School on 18.11.1958 and retired at the age of superannuation on 30.11.1996. On the otherhand applicant No. 2 was appointed on 1.5.1969 and retired on 31.3.1998. The applicant No. 3 was appointed on 23.10.1968 and retired on 31.6.2002. The applicant No. 4 was appointed on 1.5.1969 and retired on 31.5.2002. The applicant No. 5 was appointed on 13.11.1961 and retired on 31.12.2001. The applicant No. 6 was appointed on 4.4.1983 and retired on 31.8.2001.

3. The N.F. Railway took over the Dimapur

Railway High School with effect from 1.4.1996 together with all its assets and liabilities. The Railway administration offered temporary appointment to the applicants as Assistant Teachers in the same school subject to passing of the prescribed medical examination in class C/2. It was also provided in the said offer of appointment that their services under the Railway will count for all purposes from 1.4.1996 and will be governed by all the rules and regulations applicable to a temporary Railway servant. Apprehending lossing of job, the applicants submitted their applications in response to the offer of appointment made by the Railway administration. Thereafter, the Railway administration appointed the applicants respectively as Assistant Teachers in the Dimapur Railway High School.

4. The Railway administration denied their due pay scale, teaching allowance etc. to the applicants. The applicants approached the Railway administration for granting them their appropriate pay scale, teaching allowance of Rs. 100/- per month and counting of their past service for the purpose of pensionary benefits. The respondent Railway administration intimated that the applicants have not completed the qualifying service in order to get pensionary benefits. The Railway

administration also intimated that the service rendered in privately managed Dimapur Railway high School by the applicants can not be counted for grant of pensionary benefits.

5. The applicants No. 1, 2 and 6 jointly filed O.A. No. 88 of 1998 in this Hon'ble Tribunal praying for a direction to the Railway administration to grant them their appropriate pay scale, teaching allowance of Rs.100/- per month and count their past service for the purpose of pensionary benefits. It may be mentioned here that during pendency of the said O.A. 88 of 1998, the respondent Railway Granted them their pay scale and teaching allowance. This Hon'ble Tribunal vide order dated 14.12.2000 passed in the said O.A. NO. 88 of 2000 held that the matter pertains to making of decisions on evaluation of facts and the formulation of the policy of the scheme which can only be done by the respondents by taking into consideration their own guidelines in the matter and scheme in the matter of provincialisation and other like consideration. This Hon'ble Tribunal directed the applicants No. 1, 2 and 6 to make fresh representation enumerating all the facts and mentioning all their claims within a month and on receipt of such representation the respondents shall consider the

case of the applicants and also other like persons similarly situated.

6. The applicants submitted their representation as directed by this Hon'ble Tribunal. Thereafter the Railway authorities intimated the applicants that the privately managed Dimapur Railway High School was taken over by the Railway with effect from 1.4.1996 and all existing staff accepted fresh appointment on the Railway. The Railway authorities further directed that as the services of staff under private management were not pensionable, there is no question of considering account of past services for pensionary benefits.

7. The respondent Railway authorities discriminated the applicants in refusing to grant pensionary benefits on their retirement inasmuch as the similarly situated teachers of Maligaon Railway Higher Secondary school has been granted said benefits. The action of the respondent Railway authorities in refusing to grant pensionary benefits to the applicants is not in accordance with the order dated 14.12.2000 passed by this Hon'ble Court as it did not formulate any policy or scheme for grant of pensionary benefits to the applicants like other similarly situated persons.

8. The plea of the Railway authority that the applicants were appointed afresh with effect from the date of taking over of the Dimapur Railway High School is totally unsustainable inasmuch as they were compelled to apply for such appointment in apprehension of loosing the job. The Railway acted without jurisdiction in directing the applicants to apply for fresh appointment with an implied condition that otherwise they will not be allowed to serve in the post held by them. Hence this application.

LIST OF DATES

filed by:
Parimal Bhattacharjee
2015 - Applicants
through
Koren Kanta Dey
and
38. 7. 06 24

1951 : The Dimapur Railway High School was established over a plot of Railway Land. The school was affiliated to Board of Secondary Education, Assam upto the year 1974. The school came under the Nagaland Board of School education Kohima in the year 1975. The N.F. Railway and the education Department of Govt. of Nagaland used to provide ad-hoc grant to the school from time to time.

18.11.58 : Applicant No. 1 was appointed as Assistant Teacher.

1.5.69 : Applicant No. 2 was appointed as Assistant Teacher.

23.10.68 : Applicant No. 3 was appointed as Assistant Teacher.

1.5.69 : Applicant No. 4 was appointed as Assistant Teacher.

13.11.61 : Applicant No. 5 was appointed as Assistant Teacher.

4.4.83 : Applicant No. 6 was appointed as Assistant Teacher.

contd..

1.4.96 : The Dimapur Railway High School was taken
Annexure-1 over by the N.F. Railway.
page - 30 .

15.2.96 : The Railway administration offered temporary
Annexure-3 appointment to the applicants as Assistant
page-33 . Teacher in the same school subject to
passing of the prescribed medical examination
in class C/2. The applicants applied
for appointment as directed by the Railway
administration apprehending that other they
will loose the job.

31.3.96 : The Railway administration appointed the
Annexure-4 applicants.
page-35 .

10.11.97 : The Railway administration denied appropriate
Annexure-5 pay scale, teaching allowance of Rs.100/-
page-36 per month and count of past service towards
pensionary benefits. The Railway administration
denied to count past service on the plea
that the applicants did not complete qualifying
service and that the past service
rendered in the privately managed Dimapur
Railway High School cannot be counted for
the purpose of pensionary benefits.

30.11.96 : Applicant No.1 retired.
31.3.98 : Applicant No.2 retired.
31.6.02 : Applicant No.3 retired.
31.5.02 : Applicant No.4 retired.
31.12.01 : Applicant No.5 retired.
31.8.01 : Applicant No.6 retired.

14.12.2000 : The applicant No.1, 2 and 6 filed O.A. 88
Annexure-11 of 1998 in this Hon'ble Tribunal. This
page-49 Hon'ble Tribunal held that the matter
requires formulation of scheme by the
Railway authorities in consideration of
relevant consideration, guideline and other
like consideration. This Hon'ble Tribunal
directed those applicants to make fresh
representation and on receipt of such repre-
sentation the respondents shall consider,
the case of the applicants and also other
like persons similarly situated. In view
of the direction of this Hon'ble Court the
applicants submitted their fresh represen-
tation.

3.8.2000 : The Railway authorities granted benefit of
Annexure-13 count of past service of teacher of similarly
page-54 situated Maligaon Railway Higher Secondary
school.

20.11.2000 : The Railway authorities granted count of past service in the similiar situation to Sri P.K. Bagchi, teacher of Maligaon Railway Higher Secondary School.

8.5.2001 : The respondent Railway authorities intimated that privately managed Dimapur Railway High School was taken over on 1.4.96 and all existing staff accepted fresh appointment. The Railway authority further directed that service rendered in privately managed school is not pensionable.

30.8.2001 : The Railway authority informed the Headmaster of Dimapur Railway High School that the applicants do not fall under any provisions of Rule for grant of pensionary benefit.

4.7.2005 : The Railway authority informed that since the applicants rendered less than 10 years service and moreover their past services under private management were not pensionable, they cannot be granted any pension in terms of para 28 of Railway Service (Pension) Rules, 1993.

Annexure-14
page-55

Annexure-12
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Annexure-15
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Annexure-16
page-57

G/

31.7.08

F. I. C. D. B. Y.

Parimal Kumar Bhattacharjee
- Applicants

through
Manu Kanta Dey
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH, GUWAHATI.

O.A. NO. 185 OF 2006.

BETWEEN

1. Sri Parimal Kumar Bhattacharjee,
Assistant Teacher (Retd.)
Dimapur Railway High School,
P.O. Dimapur, Nagaland.
2. Sri Satyendra Chakraborty
Son of Late Debendra Kumar
Chakraborty,
Assistant Teacher (Retd.)
Dimapur Railway High School,
P.O. Dimapur, Nagaland.
3. Sri Chitta Ranjan Raha,
Assistant Teacher (Retd.)
Dimapur Railway High School,
P.O. Dimapur, Nagaland.
4. Smti Mina D's Raha
Assistant Teacher (Retd.)
Dimapur Railway High School,
P.O. Dimapur,
Nagaland.

contd...

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5. Sri Phani Bhusan Das

Assistant Teacher (Retd.)

Dimapur Railway High School,

P.O. Dimapur, Nagaland.

6. Sri Nepal Chandra Ghosh,

Assistant Teacher (Retd.),

Dimapur Railway High School,

P.O. Dimapur,

Nagaland.

- AND -

1. Railway Board

Union of India,

through General Manager (P)

N.F. Railway, Maligaon,

Guwahati- 781001.

2. Railway Board,

through Secretary to the

Railway Board,

New Delhi.

3. The Chief Personnel Officer,

N.F. Railway,

Maligaon,

Guwahati.

contd...

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4. Principal / Headmaster,

Dimapur Railway High School,
Dimapur, Nagaland.

DETAILS OF APPLICATION

1. Particulars of order against which the application is made.

This application is made praying for count of past service of the applicants for the purpose of pensionary benefits which was refused as per letter issued under Memo No. E/1/252/86(W) Pt-II dated 8.5.2001 letter issued under Memo No. E/1/252/86(W) Pt.II dated 10.10.2001 and letter issued under Memo No. E/1/252/86 (W) Pt.II dated 4.7.2005.

2. Jurisdiction of the Tribunal.

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

3. Limitation :

The applicants declare that this application is filed within the limitation as prescribed

contd...

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under section 21 of the Administrative Tribunal, Act, 1985.

4. Facts of the case :

4.1. That the applicants are citizens of India they are all retired teachers of Dimapur Railway High School.

4.2. That the cause of action and relief sought for in this application are common therefore the applicants pray that the Hon'ble Tribunal be pleased to grant permission under Rule 4(5) (a) of the Central Administrative (Procedure) Rules, 1987, to join the applicants in a single application.

4.3. That the applicants beg to state that there were no Bengali medium school at Dimapur and so the Dimapur Railway High School was established by the Local Citizens in November, 1951 over a plot of Railway land. The school gradually grown up day by day and in the year 1961 it started imparted education upto Class-X. The Gauhati University granted recognition to the school in the year 1961. The school was affiliated to Board of Secondary Education, Assam upto year 1974. Thereafter the school came under the affiliation of the Nagaland Board of School Education, Kohima in

contd..

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the year 1975. It may be mentioned here that the Govt. of Nagaland took steps for provincialisation of the School but as it was establish on the railway land the same could not be materialised.

4.4. That the Dimapur Railway High School was run by a managing Committee with the recognition of the Board of School Education, Kohima till 31.3.1966 with 57 teaching and non teaching staff. The N.F. Railway authorities and the education department of Govt. of Nagaland used to provide ad-hoc grant to the school from time to time and the balance expenditure was met out of the fund collected as tution fees and public donations. The applicants beg to state that the applicant No. 1 was appointed as Assistant teacher in the school on 18.11.1958 whereas the applicant No. 2 was appointed on 1.5.1969, applicant No. 3 was appointed on 23.10.1968, applicant No. 4 was appointed on 1.5.1969, applicant No. 5 was appointed on 13.11.1961 and applicant No. 6 was appointed on 4.4.1983 in the same capacity. The applicants further beg to state that they served as Teacher in the said school contineously since the day of their respective appointment till their retirement.

4.5. That the Railway Board, Ministry of Railway, Govt. of India decided to take over the Dimapur Railway

contd..

High School which was communicated vide letter No. E(W)/94-SCL-26 dated 2.6.1995 addressed to the General Manager, N.F. Railway, Maligaon, Guwahati. It was informed by the Railway Board that in reference to the General Manager's letter dated 8.12.1994 on the question of taking over the Railway High School of Dimapur by Railway Administration the Ministry of Railway have decided that the privately managed Railway School at Dimapur may be taken over by the Railway Administration. In para 3 of the said letter it was stated that details and terms and conditions for taking over the assets and liabilities of the school may be worked out in consultation with the FA & CAO and Law Officer before necessary agreement are executed with the management committee particularly the formalities as mentioned below to be completed.

A copy of the aforesaid letter dated 2.6.1995 is annexed hereto and marked as Annexure-1.

4.5 That the N.F. Railway decided to take over the Dimapur Railway High School by the railway administration with effect from 1.4.1996 which was intimated vide letter No. E/1/252/86(W) Pt.I dated 13.2.1996 issued by the Senior Personnel Officer

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for the respondent No. 1. It was further provided in the said letter dated 13.2.1996 that before taking over the school ~~formal offer~~ formal offer letters to the teaching and non teaching staff of the school are being sent separately by special messenger and that after acceptance of the offer, they will be sent for medical examination in phase manner.

A copy of the aforesaid letter dated 13.2.1996 is annexed hereto and marked as Annexure-2.

4.6. That the Senior Personnel Officer(W), office of the respondent No. 3 vide letter No. E/1/252/86(W) Pt.I dated 15.2.1996 intimated the applicant No. 1 that :

" The Dimapur Railway High School will be taken over by the N.F. Railway with effect from 1.4.1996. He was offered temporary appointment in the same school as Assistant Teacher in the minimum of the grade Rs.1200 - Rs. 2040/- subject to his passing the prescribed Medical examination in class C/2. His services under the Railway will count for all purposes from 1.4.1996 or from the date of his joining and he will be governed by all the rules and regulations

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applicable to a temporary Railway servant."

The said letter dated 15.2.1996 further provided that :

"The applicant No. 1 will not be eligible for any pension or any benefit under state Railway Provident Fund or Gratuity Rules or to any absentee allowances beyond those admissible to temporary employees under the rules in force from time to time during such temporary service."

The para No. 5 of the said letter dated 15.2.1996 provided that :

"You will conform to all rules and regulations liable to your appointment."

The said letter dated 15.2.1996 further provided that :

" If the applicant No.1 is agreeable to accept the offer, he should send his acceptance in the specified space shown below in the said letter and appear before SPO(W)/MLG at 10.00 hours on or before 1.3.1996 with all certificates and testimonials

contd...

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and also duly filled in the attached form for further order."

The direction to give acceptance in the specified space runs as follows :

" I accept the offer on the terms detailed above and declare that I shall abide conditions stipulated in para 5."

A copy of the said letter dated 15.2.1996 is annexed hereto and marked as Annexure-3.

4.7. That the N.F. Railway Administration Offered temporary appointment to the other applicants also in the same school on the similar terms and conditions as laid down in the offer of appointment letter dated 15.2.1996 in respect of applicant No. 1. However, under the compelling circumstances for fear of losing the job, the applicants accepted the offer of appointment issued by the N.F. Railway vide their letter dated 15.2.1996.

4.8. That thereafter the General Manager(P), N.F. Railway issued office order appointing the applicants vide office order bearing No. E/1/252/85 (W) Pt.I

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dated 31.3.1996. The said office order dated 31.3.1996 provided that on being approved in the screening test for appointment, the applicants respectively are appointed as Assistant Teacher in the scale of Rs.950-1500 (RPS) and on being found medically fit in category C/2 is hereby appointed as temporary Assistant Teacher on pay Rs.950/- per month with allowances as admissible from time to time with effect from 1.4.1996 and posted in the Dimapur Railway High School against a post of Assistant Teacher on the terms and conditions laid down in the office letter dated 15.2.1996. It may be mentioned here that the office letter dated 15.2.1996 provided pay scale of Rs.1200-2040/- but the respondents arbitrarily reduced the pay scale to Rs. 950- Rs. 1500/-in the appointment letter dated 31.3.1996 . In this connection the applicants beg to rely on the appointment letter dated 31.3.1996 issued in favour of the applicant No.2.

A copy of the aforesaid appointment letter dated 31.3.1996 is annexed hereto and marked as Annexure-4.

4.9. That the applicants beg to state that they are also entitled to teaching allowance at the rate of Rs.100/- per month as has been granted by the Railway Board to the school teacher under their letter

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(4)

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bearing No. E(P&A)I-87/5/P-5 dated 11.4.88, but they have not been paid the Teaching allowance by the respondent Railway.

4.10. That the applicants also approached to the Railway Administration for counting of their past Service rendered in the Dimapur Railway High School for the purpose of pensionary benefits. The General Manager(P), N.F. Railway, Maligaon, vide letter No. E/1/252/86(W) Pt.I dated 10.11.97 informed the General Secretary, N.F. Railway Mazdoor Union, Pandu, Guwahati that as regards the placement of scale of pay in respect of Assistant Teachers of Dimapur Railway High School has already been issued vide office memorandum dated 5.8.1997 and it is also stated that the matter in regard to weightage of 10 years service is under examination.

A copy of the said letter dated 10.11.1997 is annexed hereto and marked as Annexure-5.

4.11. That the applicant beg to state that the respondents plea of examination of weightage of 10 years service of the applicants is redundant inasmuch as they have served much more than 10 years in the Dimapur Railway High School. Therefore they are legally

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entitled to get the pensionary benefits on their retirement from service.

4.12. That the applicants beg to state that Chapter-14 of Railway Services (Pension) Rules, 1993 deals with qualifying services. Para 20 of the said pension Rules, 1993 provides as follows :

" 20. Commencement of qualifying service - The qualifying service commence from the date he takes charge of the post to which he is first appointed."

The para 28(1) of the said pension Rules, 1993 provides as follows :

" 28. Counting of temporary Services under the State and central Govt. and allocation of pensionary liability- (1) The Govt. Servant can be allowed benefits of counting their qualifying service both under the Central Govt. and the State Govt. for grant of pension by the Govt. from where they retire.

Provided that the gratuity, if any, received by the Govt. employee for temporary service under the Central or State Govt. shall be refunded by him to the Govt. concerned."

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4.13. That the Dimapur Railway High School was recognised by the education Department of Assam as well as by the education Department of State of Nagaland and the services of the Teachers of provincialised school of the State of Assam as well as the State of Nagaland are pensionable services, therefore the applicants can not be denied the benefit of the past service towards pensionary benefit. It may be mentioned here that on a number of occasions Railway Administration extended financial grants/ aids to the said Dimapur Railway High School which would be evident from the DRM(P) Lumding's letter No.E/252/31-LM(W) dated 24.10.89 and also from the Govt. of India, Ministry of Human Resource Department's letter bearing No. F.17-1-94-SPT.2 dated 9.2.95 whereby sanctioned an amount of Rs.75,000/- for repairing works of the school as well as Rs.20,000/- under the scheme for providing facilities for teaching of sanskrit in Dimapur Railway High School have been granted. The Nagaland Govt. also extended its financial assistance to the Dimapur Railway school from time to time and also recognised the Dimapur Railway High School which is evident from the letter issued by the Director of Education, Nagaland, Kohima bearing letter No. ED/DEB-IV /3/73 dated 8.5.73. The applicants beg to state that, since the service of provincialised teachers are

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Parimal Bhattacharya

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pensionable in the earstwhile state of Assam as well as in the State of Nagaland, they are entitled to pensionary benefits for their entire service rendered by them in the said Dimapur Railway High School.

Copies of the aforesaid letters dated 24.10.89, 9.2.95 and 8.5.73 are annexed hereto and marked as Annexures- 6, 7, and 8 respectively.

4.14. The Assistant Personnel Officer (W), for General Manager (P)/MLG sought clarification from the Director, Secondary Education, Assam as to whether the past services of teachers working in the grant-in-aid system schools under the Govt. of Assam prior to 1.10.1977. (i.e. date of Assam Secondary Education provincialised Act, 1977 came into force). The Director, Secondary Education, Assam vide letter No. PEN/C/63/98/8 dated 28.1.99 informed the said Assistant Personnel officer (W) that teachers who were working in the grant-in-aid system school under the Govt. of Assam Secondary Education (Prov.)Act, 1977 their services will be pensionable if he opted to retire at the age of 58 years and that if any teachers left the school for joining other than school services or died prior to 1.10.77 the past service is not under

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pensionable service. The said information given by the Director, Secondary Education, Assam was communicated by the said Asstt. Personnel officer(W) vide letter No.E/252/243(W) Pt.I dated 7.4.99 to the DRM(P) LMG etc.

A copy of the aforesaid letter dated 7.4.99 is annexed hereto and marked as Annexure-9.

4.15. That all the applicants have retired as Assistant Teacher of the Dimapur Railway High School. For a ready reference the applicants beg to quote particulars of their date of appointment, date of retirement, period of service after taken over of the school by the Railway and total length of service in Dimapur Railway High School as follows :-

Name	Date of appointment.	Date of retirement.	Period of service vice after taken over.	Total length of service in the Dimapur Railway High School.
Applicant No.1.	18.11.58	30.11.96	8 months	38 years.

Applicant No.1. 18.11.58 30.11.96 8 months 38 years.

Applicant No.2 1.5.69 31.3.98 4 yrs. 30 years.

Applicant No.3 23.10.68 31.1.02 7 yrs 33 years.
10 months.

Applicant No.4 1.5.69 31.5.02 8 years 36 years.
2 months.

Applicant No.5 13.11.61 31.12.01 7 years 40 years.
9 months.

Applicant No.6 4.4.83 31.8.01 7 years 18 years
5 months

4.16. That as per provisions of the Railway Service(Pension) Rules, 1993 and due to the fact that the Govt. of Assam, Govt. of Nagaland as well as Railway administration provided grants for management

of the Dimapur Railway High School, the applicants are entitled to pension on retirement from their service. But the Railway administration illegally and arbitrarily refused to grant them pension on their retirement.

4.17. That thereafter, the applicants No. 1, 2 and 6 jointly filed O.A. NO. 88 of 1998 in this Hon'ble Tribunal praying for a direction directing the Railway administration to their pay in the appropriate pay scale, give their due allowance and count their past services for pensionary benefits. The applicants beg to state that the respondents Railway authorities filed written statement in the said O.A. No. 88 of 1998. In paragraph 9 of their written statement the Railway authorities stated that as per extent Rules past pensionable services are only taken into account with the present services on the Railway for the purpose of pensionary benefits. The Railway authorities further stated that the past services of the applicants were under privately managed institution and thus the Railway have nothing to do with their past private services. They have also stated that as regards weightage of 10 years, the matter is already settled. In this connection the Railway authorities further stated that lump sum grant to the school from

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the Govt. of Nagaland and from the Railway to privately managed Dimapur Railway High School does not mean that the services of staff of such privately managed school was pensionable. They have also stated that the past services of the applicants was not pensionable in privately managed school and as such the question of counting of their past services with their present services on the Railway for the purpose of pensionary benefit does not arise. It may be mentioned here that during pendency of the case the Railway administration allowed the their due pay scale. Thereafter, this Hon'ble Tribunal vide order dated 14.12.2000 passed in the said O.A.NO. 88 of 1998 held that the matter pertains to making of decisions on evaluation of facts and the formulation of the policy of the scheme which can only be done by the respondents by taking into consideration the relevant consideration their own guidelines in the matter and scheme in the matter of provincialisation and other like considerations. This Hon'ble Tribunal directed the applicants No. 1, 2 and 6 to make fresh representation enumerating all the facts and mentioning all their claims within a month and on receipt of such representation the respondents shall consider the case of the applicants and also other like persons similarly situated.

Copies of the aforesaid written statement

contd.,

and order dated 14.12.2000 are annexed hereto and marked as Annexures-10 and 11 respectively.

4.18. That following the direction of this Hon'ble Tribunal, the applicants submitted their representation. Thereafter the Asstt. Personnel Officer (W), for General Manager (P), N.F. Railway vide letter No. E/1/252/86(W) Pt. II dated 8.5.2001 addressed to the applicant Nos. 1, 2 and 2 directed that the privately managed Dimapur Railway High School was taken over by the Railway with effect from 1.4.96 and all existing staff accepted fresh appointment on the Railways. The Railway administration further directed that as the services of staff under private management were not pensionable, there is no question of considering accounted of past services for pensionary benefits.

A copy of the aforesaid letter dated 8.5.2001 is annexed hereto and marked as Annexure-12.

4.19. That the applicants beg to state that the respondent Railway authorities discriminated them in refusing grant pensionary benefits on their retirement inasmuch the similarly situated teachers of Maligaon Railway Higher Secondary school has been granted the said benefits vide letter dated 3.8.2000 of the Joint

contd..

Parimal Bhattacharya
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Joint Director (Welfare), Railway Board, New Delhi
addressed to the General Manager, North East Frontier
Railway, Maligaon.

A copy of the aforesaid letter dated
3.8.2000 is annexed hereto and marked as Annexure-13.

4.20. That the applicants beg to state that
the respondent Railway authorities vide memorandum
issued under memo No.E/252/56/436(W) dated 20.11.2000
accorded their approval towards counting of past
services of one Sri P.K. Bagchi, Teacher of Netaji
Vidyapith Railway High School, Maligaon with his
services on the Railway towards pensionary benefits.

A copy of the said memorandum dated
20.11.2000 is annexed hereto and marked as Annexure-14.

4.21. That the applicants beg to state that
the letter dated 8.5.2001 is not in accordance with
the order dated 14.12.2000 passed by this Hon'ble
Tribunal as it did not formulate any policy or scheme
for grant of pensionary benefit to the applicants like
other similarly situated persons.

4.22. That the applicants are poor low paid

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teachers and it was not possible for them to approach this Hon'ble Tribunal immediately once again consequently they knocked the door of the Railway authority time and again for consideration of their grievance. The Assistant Personnel officer (W) for General Manager (P), N.F. Railway, Maligaon vide letter No. E/1/252/86/(W) Pt.I dated 30.8.2001 addressed to the Headmaster, Dimapur Railway High School informed that in reference to the representations dated 16.5.2001 of the applicants, the matter regarding pensionary benefits to age old teachers of Dimapur Railway High School has been examined carefully and found that they do not fall under any provision of Rule for grant of pensionary benefit.

A copy of the aforesaid letter dated 30.8.2001 is annexed hereto and marked as Annexure-15.

4.23. That the applicants also submitted representation dated 22.3.2005 before the president of India for a direction to the Railway authority for grant of pensionary benefit to them. Thereafter the Deputy Chief Personnel officer/IR for General Manager (P), N.F. Railway, Maligaon vide letter No.E/1/252/86(W) Pt.II dated 4.7.2005 informed one Sri Sindhu Bhushan Chakraborty, Teacher, Dimapur Railway High School

that privately managed Dimapur Railway High School was taken over by the Railway with effect from 1.4.1996 and all existing staff were absorbed as fresh in Railway from the date of taking over the school. He also informed that since, the Teachers who have represented have rendered less than 10 years service and moreover their past services under private management were not pensionable, they cannot be granted any pension in terms of para 28 of Railway service (Pension) Rules, 1993.

A copy of the said letter dated 4.7.2005 is annexed hereto and marked as Annexure-16.

4.24. That the plea of the Railway authority that the applicants were appointed afresh with effect from the date of taking over of the Dimapur Railway High School is totally unsustainable inasmuch as they were compelled to apply for such appointment in fear of loosing the job. The Railway acted without jurisdiction in directing the applicants to apply for fresh appointment with an implied condition that otherwise they will not be allowed to serve in the post held by them.

5. Ground for relief with legal provisions :

contd..

5.1. That refusal of the Railway authorities in granting pensionary benefits to the applicants vide letters dated 8.5.2001 (annexure-11), 30.8.2001 (annexure-14) and 4.7.2005 (annexure-15) is without jurisdiction and illegal inasmuch as it is contrary to the direction of this Hon'ble Tribunal made in the order dated 14.12.2000 (annexure-10) directing the respondents to formulate a policy of the scheme in this regard and to consider the case of the applicants like other similarly situated persons.

5.2. That the refusal of the Railway authorities to grant pensionary benefits to the applicants is highly discriminatory and without fair play in action inasmuch as the same benefit has been granted to a number of similarly situated persons of other schools.

5.3. That the materials on record shows that the Dimapur Railway High School was under the Gauhati University, then under the Board of secondary education, Assam and then under the Nagaland Board of School Education till the date of taking over by the Railway administration. The Govt. of Assam, Govt. of Nagaland and the Railway administration itself provided grant from time to time for management, of the school till the date of taking over by the Railway. Under the circumstances

the Railway authorities committed illegally in not applying paragraph 28 of the Railway services (Pension) Rules, 1993 for grant of pensionary benefit to the applicants.

5.4. That the plea of the respondents of fresh appointment of the applicants is redundant inasmuch as the letter dated 2.6.1995 (annexure-1) shows that the Dimapur Railway High School was taken over by the Railway administration with all assets and liabilities as such the date of appointment of the applicants shall be the date when they were initially appointed in the school.

5.5. That the letter dated 15.2.96 (annexure-1) of the Railway authority directing the applicants to give their consent for fresh appointment is arbitrary, illegal and malafide which has been made with a view to deprive the applicants from their legitimate pensionary benefit as such mere application submitted by the applicants for their appointment with effect from the date of taking over the school could not be termed as fresh appointment.

5.6. That the consent of the applicants for their fresh appointment has been obtained by

the Railway Authority on implied use of threat of terminating their job and as such the applicants shall be deemed to have been appointed on the date of the initial appointment in the school.

6. Details of remedies exhausted :

That the applicants state that they have no other alternative and other efficacious remedy than to file this application. Representation through proper Channel were submitted by the applicants to the competent authority.

7. Matters not previously filed or pending with any other court/ Tribunal.

The applicants further declare that they previously filed O.A. No. 88 of 1998 in this Hon'ble Tribunal. This Hon'ble Tribunal vide order dated 14.12.2000 passed in the said O.A. No. 88 of 1998 directed the respondents to formulate a policy of the scheme in this regard and to consider the case of the applicants like other similarly situated persons.

8. Reliefs sought for :

In view of the facts and circumstances

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stated in paragraph 4 of this application, the applicants pray for the following reliefs :

- 8.1. That the impugned letters No. E/1/252/86 (W) Pt-II dated 8.5.2001 (annexure-11), No. E/1/252/86 (W) Pt.I dated 30.8.2001 (annexure-14) and No. E/1/252/86 (W) Pt.II dated 4.7.2005 (annexure-15) be set aside and quashed.
- 8.2. That the respondents be directed to count the entire past service of the applicants from the respective date of their initial appointment as Assistant Teacher in the said Dimapur Railway High School towards the pensionary benefits.
- 8.3. Cost of the application.
- 8.4. Any other relief or reliefs to which the applicants are entitled to as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed :

During pendency of the application, the applicants pray for the following interim reliefs :

- 9.1. That the impugned letters No. E/1/252/86 (W) Pt.II

contd..

dated 8.5.2001 (annexure-11), E/1/252/86(W) Pt.I
dated 30.8.2001 (annexure-11) and No.E/1/252/86(W)
Pt. 11 dated 4.7.2005 (annexure-15) be suspended,
and

9.2. That a direction may be issued to the
respondents to pay provisional pension to the
applicants.

10. Particulars of Indian Postal order in respect of
the application fee :

10.1. Number of the Indian : 26 G 324903
Postal Order.

10.2. Name of the issuing : G.P.O, Guwahati
post office.

10.3. Date of issue of postal: 10.7.06
order.

10.4. Post office at which : Guwahati
payable.

11. List of enclosures :

A separate list of enclosures is enclosed
herewith :

contd...

VERIFICATION

I, Parimal Kumar Bhattacharjee, aged about 69 years, the applicant No. 1 and authorised to sign this verification on behalf of applicants No. 2 to 6, do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 11 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 28 th day of July 2006 at Guwahati.

Parimal Bhattacharjee

LIST OF ANNEXURES

1. Letter No.E(W)94 SC2-26 dated 2.6.95 of the Railway Board.
2. Letter No.E/1/252/86(W) Pt.I dated 13.2.96 of the General Manager, N.F. Railway.
3. Letter No.E/1/252/86(W) Pt.I dated 15.2.96, of the Chief Personnel Officer, N.F. Railway.
4. Letter issued under Memo No.E/1/252/86(W) Pt.I dated 31.3.96 of the General Manager(P), N.F. Railway.
5. Letter No. E/1/252/86(W) Pt.I dated 10.11.97 of the General Manager(P), N.F. Railway.
6. Letter No.E/252/31-DM(W) dated 24.10.89 of the DRM(P)/ Lumding.
7. Letter No.F.17-1/94-Spt.2 dated 9.2.95 of Govt. of India, Human Resource Development, Department of Education.
8. Order No. ED/DEV-IV/3/73 dated 8.5.93 of the Director of Education, Nagaland.
9. Letter No.E/252/245(W) Pt.I dated 7.4.99 of the General Manager(P), N.F.Railway.

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10. Written statement filed by the respondents in O.A. 88 of 1998.
11. Order dated 14.12.2000 passed by this Hon'ble Tribunal in O.A. 88 of 1998.
12. Letter No. E/1/252/86(W) Pt.II dated 8.5.2001 of the General Manager (P), N.F. Railway.
13. Letter No. E(W) 197/ED-22 dated 3.8.2000 of the Railway Board.
14. Memorandum issued under memo No.E/252/56/436(W) dated 20.11.2000 of the General Manager(P), N.F. Railway.
15. Letter No. E/1/252/86(W) Pt.I dated 30.8.2001 of the General Manager(P), N.F. Railway.
16. Letter No.E/1/252/86(W) Pt.II dated 4.7.2005 of the General Manager(P), N.F. Railway.

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Annexure-2 1

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS, RAILWAY BOARD

No. E (W) 94002-26

Dated 2.6.95

To
The General Manager
N.F.Railway
Maligaon
Guwahati

Sub : Taking over of privately run-Railway High School/Dimapur by Railway Administration.

Reference your letter No. E/1/252/86 (W) Pt. I dated 6.12.1994 on the above subject.

2. The Ministry of Railways have decided that the privately managed Railway School at Dimapur may be taken over by Railway Administration. Necessary action may, therefore, be taken immediately to take over the school with effect from 1995-96 academic session.

3. Detailed terms and conditions for taking over the assets and liabilities of the school may be worked out in consultation with the FA & CAO and Law Officer before necessary arrangements are executed with the Managing Committee. It may be particularly necessary to complete the following formalities :

- i. The Managing Committee of the school should pass a Resolution requesting the Railway to take over the said school with all its assets and liabilities.
- ii. A complete audit of the assets and liabilities of the school should be carried out by the N.F. Railway in consultation with the FA & CAO.
- iii. At present the land on which the school building is constructed has been leased by the Railway to the School Management. The lease deed will have to be terminated on the date of signing of the agreement.

3. For establishment issues like fixation of pay for teachers and other employees, seniority etc., the Railway may approach the Board subsequently.

Contd....

Attest
A. K. Deka

certified to be
true copy

N. N. Deka
Advocate
28.7.95

Annexure-2 (Contd.)

4. Expenditure in this respect may be met from the existing Budget allotment. It is noted that the financial implications of taking over the school would amount to a recurring expenditure of approximately Rs. 29 lakhs by way of salary and allowances of the teachers and other employees etc. and a non-recurring expenditure of Rs. 50,000/-.

5. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

Sd/- Illegible

(A.V.M. KUTTY)
Jt. Director Estt. (Welfare)
Railway Board

No. E (W) 94302-26

New Delhi dated 2.6.95

Copy to :

1. FA & CAO, N.F. Railway, Maligaon, Guwahati.
2. Principal Director of Audit, N.F. Railway, Maligaon, Guwahati.

Sd/- Illegible

(A.V.M. KUTTY)
Jt. Director Estt (Welfare)
Railway Board,

Copy to F(E) Sp1. and x(x) II Branches of Railway Board.

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Abir
Abir
Anirudh
Durg
Advocate
28.7.95

N.F.Railway

32
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-31-

Office of the General Manager (P),
Maliagon

No. E/1/252/86 (W) Pt. I

Office of the General Manager (P),
Maliagon,

To

Dt. 13.2.1996

DRM (P)/LMG

Sub : Taking over of privately run Railway
High School/Dimapur by Railway
Administration.

In continuation to this office letter of even number
dated 29.6.95, it has been decided to take over the school by
Railway Administration w.e.f. 1.4.1996.

Before taking over the school formal offer letters
to the teaching and non-teaching staff of the school are
being sent separately by special messenger. After acceptance
of the offer, they will be sent for medical examination in
phase manner.

Please depute one Welfare Inspector to inform the
school accordingly.

(A. K. Sopatra)
Sr. Personnel Officer
for General Manager (P)

Copy to :

Headmaster/Dimapur Railway High School for information

SD/- Illegible
13.2.96

for General Manager (P)

After 1/2/96
certified to be
true copy
V. V. Sopatra
Advocate
28.7.06

N.F.Railway

Annexure-3

NO.E/1/252/86 (W) Pt.I

To
Shri Parimal Kr. Bhattacharjee

Shri Parimal Kr. Bhattacharjee
Dimapur Rly. High School

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

Sub : Taking over of Dimapur Railway High School.

The Dimapur Railway High School will be taken over by the N.F.Railway with effect from the forenoon of 1.4.96. You are hereby offered temporary appointment in the same school as Assistant Teacher in the minimum of the grade Rs. 1200-30-1380-EB-1500-EB-40-1800-EB-40-2040/- subject to your passing the prescribed Medical Examination in Class C/2. Your service under the Railway will count for all purposes from 1.4.96 or from the date of your joining and you will be governed by all the rules and regulation applicable to a temporary Railway servant.

Your appointment will initially be on temporary basis and confirmation will be made on completion of one year's satisfactory service subject to availability of permanent posts to provide the seniority position along with that of other teachers in different Railway Schools on the Railway premises.

2. You will not be eligible for the payment of any benefit under State Railway Provident Fund or Gratuity Rules or to any absentee allowances beyond those admissible to temporary employees under the rules in force from time to time during such temporary service.

3. You will be required to take an oath of allegiance or make an affirmation in the form indicated below :

"I, Shri Parimal Kr. Bhattacharjee do swear/solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India by law established and that I will carry out the duties of my office loyally honestly and with impartiality. So help me God".

Note : Persons objecting to taking oath may make a solemn affirmation in the prescribed form indicated above.

Contd....

Attest
A. Adv.
A. Adv.

certified to be
true copy
N. K. Dey
Advocate
28.7.96

1-4-96

Annexure-5 (Contd.)

5. You will conform to all rules and regulations liable to your appointment.

6. You must be prepared to accept the offer of appointment at any school of the North East Frontier Railway System. Although you are initially appointed for a particular school. You are liable to be transferred to any school on this Railway in the exigencies of service and you should definitely indicate in your acceptance that you will be abide by these conditions.

7. Quarters will be provided only if available and no guarantee can be given.

8. If you are agreeable to accept the offer, please send your acceptance in the specified space shown below and appear before SFO (W)/MLG at 10.00 hours on or before 1.3.96 with all certificates and testimonials and also duly filled in the attached form for further order.

I accept the offer on the terms detailed above and declare that I shall abide conditions stipulated in para 5.

SD/- Illigible

Parimal Kumar Bhattacharjee

Signature of the candidate & date
20.2.96

SD/- Illigible 15.2.96

(A.Kirpotra)
Sr. Personnel Officer (W)
N.E.Railway : Siliguri

Accepted
H.K. Adhikari

Accepted
Sury
Advocate
28.7.96

35
Annexure

NORTH EAST FRONTIER RLY

OFFICE ORDER

Shri Nepal Chandra Ghosh on being approved in the Screening Test for appointment as Asstt. Teacher in scale Rs. 950-1500 (RPS) and on being found medically fit in category C/2 is hereby appointed as temporary Asstt teacher on pay Rs. 950 per month with allowances as admissible from time to time with effect from 01.04.96 and posted in the Dimapur Railway High School against a post of Asstt. Teacher on the terms and conditions laid down in the office letter of even number dated 15.2.1996.

The appointment of Shri Nepal Chandra Ghosh is pending verification of his character and antecedents by the Police authority subject to the condition that if any adverse report is found in verification report he/she will be liable to be discharged from Railway Service without any notice.

(A.KISPOFTA)

CH. CONTROLLER OFFICER ()
FOR GENERAL MANAGER (PERSONNEL)
NORTH EAST FRONTIER RAILWAY - MLG

No. E/1/252/86 (W) Pt. I Maligaon, dt. 31.03.1996
Copy forwarded for information to :

1. Controlling Officer, Dimapur Railway High School, (Sr. DMO/Dimapur).
2. Headmaster, Dimapur Railway High School. Necessary Medical Fitness Certificate alongwith the copies of all relevant documents are enclosed for opening Personal Case/Service Book. The pay of Shri Nepal Ch. Ghosh should be drawn from 01.04.96 onwards provided he/she joins school on 01.04.96 and onwards and signed the attendance register from that date. He is requested to communicate the date of joining of Shri Nepal Ch. Ghosh to this office.
3. D.A. As above.
4. L.M.M (P) / LMG
5. Shri Nepal Ch. Ghosh should report to the Controlling Officer for further orders.
6. Spare copy for P/Case

35
Bd/- Illegible 31.3.96
for GENERAL MANAGER (PERSONNEL)
N.E.Railway : Maligaon

AC/est/cd
certified to be
true copy
n. n. das
Advocate
28.7.06

NORTH EAST FRONTIER RAILWAY

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

No. E/1/252/86 (W) Pt. I

Dated 10.11.97.

To

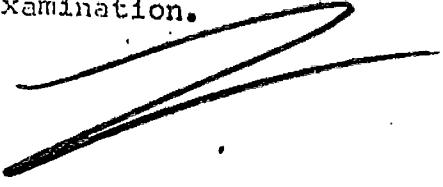
The General Secretary,
N.F. Railway Mazdoor Union,
Pandu,
Guwahati-12

Dear Sir,

Sub : Prayer for Railway benefit to the teaching staff of
Railway High School/Dimapur.

Ref : Your letter No. MU/C/DMV/97 dated 15.1.97.

In reference to your letter quoted above, the benefit
in respect of granting the scale of pay for the teacher of
Dimapur Railway High School has already been issued vide this
office memorandum of Even Number dated 5.8.97. However, the
matter in regard to weightage of 10 (ten) years services is
under examination.


Yours faithfully,

Sd/-

(A. KISPOTTA)

Sr. Personnel Officer (I),
for General Manager (P)/MLG.

Dated 11.11.97

No. MU/C/DMV/97

Copy is forwarded to the Branch Secretary/NFRMU/DMV (2 copies).

Sd/- Illegible 11.11.97

GENERAL SECRETARY

N.F. RAILWAY MAZDOOR UNION
PANDU.

*Atul
Advocate*
certified to be
true copy
n.n. das
Advocate
28.7.06

- 65 -
- 52 -
- 37 -
- 67 -
Annexure - 6

N.F.RLY.

No.E/252/31-DM(W)
Dt. 24.10.1989

Office of the DRM(P)/Lumding

To - DEN/III/LMG

Sub : Grant of non-recurring financial assistance
to privately managed Rly. High School/
Dimapur (Nagaland)

The Secy. Privately managed Rly. High School/Dimapur
(Nagaland) under his letter No. DRS/6/RL/89/210 dt. 25.9.89
(copy enclosed) has informed to this office that the
school's committee has now agreed to get the repairing
works of the school done by the Rly. Admin. within the
sanctioned amount of Rs. 75,000/- only.

As such, you are, requested to take the Construction/
Repairing work of the school as earliest as possible.

for DRM(P)/Lumding

Copy to :

1. The Secy. Privately managed Rly High School/Dimapur
(Nagaland) for information in ref. to his letter No.
DRS/6/RL/89/210 dt. 25.9.89.
2. CPO/MLG together with a copy of the Secy. privately
managed Rly. High School/Dimapur (Nagaland's) letter
No. DRS/6/RL/89/210 dt. 25.9.89 for information in
ref to his L. No. E/1/252/86(W) Pt.I dt. 29.9.89.

Sd/- Illegible 24.10.89

*S. C. S. / C. O.
A. S. I. W.*

*Certified to be
true copy
n. u. day
Advocate
28.7.86*

Annexure-137

No. F. 17-1/94-Spt. 2
 Government of India
 Ministry of Human Resource Development
 (Department of Education)

New Delhi the 9th Feb 1995

To

The Principal Accounts Officer,
 Pay & Accounts Office,
 Ministry of Human Resource Development,
 New Delhi

Subject : Central Plan Scheme-Development of Sanskrit Education-Providing facilities for teaching of Sanskrit in Secondary Schools-Release of Central Grant-in-aid during 1994-95.

Sir,

I am directed to say that the Government of India have approved an expenditure of Rs. 20,000/- (Rupees twenty thousand only) during 1994-95 by the Government of Nagaland, on implementing the Central Plan Scheme of providing facilities for teaching of Sanskrit in Secondary Schools by way of appointment of three Sanskrit teachers in Dimapur Railway High School, Dimapur.

2. I am also to convey the sanction of the President to the payment of a sum of Rs. 20,000/- (Rupees twenty thousand only) to the Education Secretary, Government of Nagaland, Kohima for implementation of the above mentioned scheme during 1994-95.

3. The expenditure involved is debitable to Major Head- "360J" - Demand No. 47-Department of Education - G.Grants-in-aid to State Governments-G.2 Grants for Central Plan Schemes-G.2 (10)-Special Education (Providing facilities for teaching Sanskrit in Secondary Schools) (Plan) 1994-95.

4. It is certified that the grant-in-aid is being released in accordance with the pattern of assistance approved by the Planning Commission and the Ministry of Finance as also in conformity with the rules and regulations of the scheme.

5. The grant-in-aid is subject to adjustment later on receipt of the accounts statement from the State Government to be furnished to the Central Government latest by 31st October, 1995.

Contd...

*At this point
A.P.C.*
 certified to be
 true copy
 in my day
 Advocate
 28.7.96

Annexure-18 (Contd.)

6. This issues in exercise of delegated powers in consultation with the Finance Branch vide their Dy. No. 89/95-IF.2 dated 16.1.1995.

Yours faithfully,

Sd/-

(O.P. Gehlaut)

Under Secretary (Skt.)

Copy forwarded for information and necessary action to :-

1. The Accountant General, Assam Nagaland, Shillong.
2. The Secretary, Directorate of School Education, Government of Nagaland, Kohima.
3. The Secretary, Planning Department, Government of Nagaland, Kohima.
4. The Secretary, Finance Department, Government of Nagaland, Kohima.
5. The Accountant General, Central Revenues, New Delhi.
6. The Secretary, Dimapur Railway High School, Dimapur, P.B. No. 126, Nagaland-791112 with request to furnish Utilisation Certificate at the earliest possible.

Sd/- Illegible

(O.P. Gehlaut)

Under Secretary (Skt.)

Copy also forwarded to :-

1. E.C. Unit
2. IF 2 Section
3. Planning (Stat.) Section.
4. Guard File.

Sd/-

(Mrs. S. Mahajan)
Asstt. Education Officer (Skt.)

✓(628/cd)
A/Adv.

Answered
Adv.
Advocate
28.7.96

18
40
- 55 -
TRUE COPY.

Annexure-8

Ref _____

Date _____

GOVERNMENT OF NAGALAND
OFFICE OF THE DIRECTOR OF EDUCATION
NAGALAND : KOHIMA

No. ED/DEV-IV/3/73

Dt. Kohima, the 8th May '93

Renewal of recognition is hereby recorded for a period of three years with effect from the date of issue of this order to Railway High School, Dimapur in the Kohima district.

The renewal of recognition is recorded on the conditions that :-

1. The School maintains a reasonable standard of Institution.
2. The School maintains good discipline.
3. The School abides by the rules and regulations prescribed by department.
4. The School follows the prescribed curriculum.

Sd/- (Yajen Aier)
Director of Education
Nagaland, the 8th May '73

No. ED/DEV-IV/3/73 Dated Kohima, the 8th May '73

Copy to :-

1. The Inspector of Schools, Nagaland, Kohima for information.
2. The Deputy Inspector of Schools, Dimapur.
3. The Headmaster Manipur Road Railway High School, Dimapur, for information and necessary action.

Sd/- (Yajen Aier)
Director of Education
Nagaland, Kohima.

*Acting
A. A. Aier
Advocate
28.7.06*

41

Annexure-9

OFFICE OF THE
GENERAL MANAGER (P)

Maligaon: Dt, 7-4-99.

No. E/252/243 (W) Pt. I

To,

DRM(P)/LMG, TSK, APDJ, DY.CME/MLG, DBWS

Principal, Rly. H.S. School/IMC, BPD, MLG, APDJ

Principal, Netaji Vidyapith Rly-H.S. School/PHO.
KD.MASTAR Rly.H.S. SCHOOL/IMV.

Sub : Counting of Past services of school
teachers employed in provisionalised
Schools of Assam before appointment
in the Railways.

It was a point of objection as to whether the past services of the teachers working in the grant-in-aid system Schools under the Government of Assam prior to 1.10.77 (i.e. date of Assam Secondary Education provisionalised Act-1977) joined the Rlys. will be taken in to account for pensionary benefits. Accordingly a reference was made to the Director, Secondary Education Assam and the clarification received vide-letter No PEE/C/63/98/B dated 28.1.99 is reproduced below :

"With reference to your letter No. on the subject cited above I am directed to say that teachers who were working in the Grant - In - aid System School under the Govt of Assam Secondary Education(prov.) act - 1977 their services will be pensionable if he opted to retire at the age of 58 yrs. If any teachers (were G.I.A.) left the School for joining other than school service or died prior to 1.10.77 the past service is not under pensionable service. This is for your information and necessary action."

(J. Rabidas)
Asstt. Personnel Officer (W)
for General Manager (P)/MLG.

certified to be
true copy
K. K. Dey
Advocate
28.7.06

42
191 6 MAY 2001
65
- Annexure - 10

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

IN THE MATTER OF :

O.A. No. 38/98

Sri Satyendra Chakraborty & Ors

- Vs. -

Union of India And Ors.

- AND -

IN THE MATTER OF :

Written statements on behalf of
respondents No. 1, 3 and 4.

The answering respondents beg to state as under :-

1. That the answering respondents have gone through the copy of the application and have understood the contents thereof. Save and except the statements which are specifically admitted here-in-below, other statements made in the application shall be deemed to have been denied by the answering respondents.
2. In reply to Para 4.9 it is stated that the Railway Board vide their letter No. E(P&A) I-87/PS-5/PE-9 dated 4.10.1989 have prescribed qualification and pay scales of teachers ~~for Railway~~ for Railway Schools. The pay scale of Rs. 1200-2040/- is meant for the lowest category of teachers

Contd.... 2/-

*certified to be
true copy
n.n. das
advocate
28.7.06*

President's Order
15/9/79

S. P. S. S. / Maligash
Gyanashakti
Gyanashakti

contd.

(i.e. Primary teachers). Accordingly offer of appointment was given in favour of the applicants in the said scale.

But on final scrutiny it was found that they have no prescribed qualification. In case of taking over of the school they are to be absorbed. There is provision for absorption of such underqualified teachers in terms of Railway Board's letter No. PE-69/PS-5/PE-3 dated 07.12.1972 that case they may be given pay scale of Rs. 110- 180/- which is equivalent to Rs. 950- 1500/- and on completion of 10 years service on the Railway as on 27.05.1970 or thereafter they will be given pay scale of Rs. 125- 320/- which is equivalent to the pay scale of Rs. 1200- 2040/-.

This system was followed in case of all taking over schools by the Railways in the past.

The applicants have mentioned about the pay scales and tried to avoid tactfully the matter regarding their qualification. Thus, the actions of the Railway Administration are in order. There is no question of any arbitrary and unfair means.

A copy of the Railway Board's letter dated 4.10.89 is Annexed as Annexure 'A'.

- 11/10 -

Contd. 3/-

Asterisk
D. S. S.
Advocate
28.7.89

A copy of the Railway Board's letter dated

07.12.1972 is annexed as Annexure 'B'.

3. In reply to Para 4.10 it is stated that it is not correct to say that Railway Board revised the Pay Scales of teachers. Vide their letter No. E(P & A)I-87/PS-5/PE-5, dated 11.01.1988. In fact 3 tier system of non-functional promotions were prescribed in the letter of the Railway Board. These are not related to the present case. Practically Pay Scale with qualification was revised vide Railway Board's letter mentioned against Para- 4.9 above. Thus, it is true that appropriate pay scale of Primary Teacher having requisite qualifications is Rs. 1200- 2040/- and those who ~~have~~ have no requisite qualification they are treated as teachers in left over category in scale Rs. 950- 1500/-.

4. That in reply to Para-4.11 it is stated that the claim for appropriate pay scale could not be entertained for obvious reasons was explained above. Further, the statements of the applicants that they have completed 12 years service is totally false because the school was taken over by the

Contd...4

Arvind
Sur
Advocate
28.7.88

- 4 -

Railway on 01.04.1996 and the applicants were given fresh appointments w.e.f. 01.04.1996. The Railway have nothing to do with their past services in privately managed school.

As regards teaching allowance they should have approached to the Divisional Authority first.

5. That in reply to Para 4.12 it is stated that the Memorandum No. E/1/252/86 (W) dated 05.08.1997 was meant for the Graduate Teachers who are supposed to get pay scale of Trained Graduate Teachers i.e. Rs. 1400/- 2600/- on acquiring B.Ed.

qualification. The applicant No.1 is also a Graduate teacher whose name is also there in said Memorandum. The under-graduate teachers are supposed to get pay scale of Primary teacher i.e. Rs. 1200/- 2440/-. If any such teacher acquires requisite qualification similar Memorandum will be issued wherein the name of applicant No.2 and 3 will appear if they are found in service. The Memorandum dated 05.08.1997 as annexed by the applicants as Annexure- 15 clearly indicated that it is meant for Graduate Teachers and pay scales have been shown as per qualifications. Thus, inclusion of the names of applicant No.2 and 3 who are undergraduate does not arise.

Contd... 5/

Attested
Surf
Advocate
28/7

The action was taken as per existing Rules and as such

question of giving scope for the sake of natural justice does not arise.

6. That in reply to Para- 4.13 it is stated that since this is a High School, there should be 2 categories of teachers i.e. Trained Graduate Teachers in scale Rs. 1400/- 2600/- and Primary Teachers in scale Rs. 1200/- 2040/- .

Accordingly, at the time of screening, Graduates were taken for Trained Graduates Teachers and under-graduates for Primary teachers. Some of the graduates have requisite qualifications and some subsequently acquired and this year also a few more ^{have} acquired and as such they have been given appropriate pay scale from 01.04.1996 or from the date of acquiring requisite qualifications which ever is later and rest are placed in left over category of teachers in scale Rs. 950/- 1500/-. As regards under-graduates none has yet acquired requisite qualifications and naturally they are in left-over category i.e. in pay scales of Rs. 950/- 1500/- and such their names have not been included in the Memorandum issued on 05.08.1997 which is related to Graduates only.

Cont'd on next page

Westerland
Serg
Advocat
28.7.08

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The applicants are not trying to improve their quality by acquiring requisite qualification for the betterment of the students . On the other hand they are trying to have the undue pay scales under the shelter of arguments by misguiding the Hon'ble Court .

7. That in reply to Para-4.14 it is stated that the pay scale of Rs. 950-1500/- is admissible for under-qualified teachers and as such teachers have no right to claim for higher pay scale for not possessing requisite qualifications.

8. That in reply to Para-4.15 it is stated that as regards grant of teaching allowance, the applicants should have approached to the Divisional Authority first and then to ~~Minik~~ HQ's office if not settled at the Divisional level. No reference from the Divisional Authority has been received in the HQ's office so far.

9. That in reply to Para 4.16 it is stated that as per extent Rules past pensionable services are only taken into account with the present services on the Railway for the purpose of pensionary benefits. The past services of the applicants under privately managed institution. Thus, Railway have nothing to do with their post private services.

As regards weightage of 10 years, the matter is already settled.

Contd. on page 7/-

Attended
only
yesterday
28.7.03

The under qualified teachers i.e. left-over category of teachers will be given pay scale of Rs. 1200-2040/-, on completion of 10 years services on Railway. Lumpsum grant to the school from the Government of Nagaland and lumpsum grant from the Railway to privately managed Dimapur Railway High School does not mean that the services of staff of such privately managed school was pensionable. In this context it is stated that past services of the applicants was not pensionable in privately managed school and as such the question of counting of their past services with their present services on the Railway for the purpose of pensionary benefits does not arise.

10. Under the facts and circumstances the instant application deserves to be dismissed with cost.

VERIFICATION:-

I, PRADEEP KUMAR SINGH....., Son of.. BHUPILAL SINGH.....

aged about...33... Years, Working as.. Doctor/MD.....

N.F.Railway, Maiigaon do hereby verify that the statement made in Paragraph 1 to 9 are true to my knowledge and the rest is my respectful submission before this Hon'ble Tribunal.

Date : 14/7/99

pradeep kumar singh
Medical Officer

Attested
Pradeep
Kumar Singh
28.7.99

① 49
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.88 of 1998

Date of decision: This the 14th day of December 2000

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr M.P. Singh, Administrative Member

1. Shri Satyendra Chakraborty,
Assistant Teacher,
Dimapur Railway High School,
Dimapur, Nagaland.
2. Shri Parimal Kumar Bhattacharjee,
Assistant Teacher (Retd.),
Dimapur Railway High School,
Dimapur, Nagaland.
3. Shri Nepal Chandra Ghosh,
Dimapur Railway High School,
Dimapur, Nagaland.

.....Applicants

By Advocates Mr A. Dasgupta, Mr M. Chanda and
Mrs N.D. Goswami.

- versus -

1. The Union of India, through the
General Manager (P),
N.R. Railway, Maligaon,
Guwahati.
2. The Railway Board, through the
Secretary to the Railway Board,
New Delhi.
3. The Chief Personnel Officer,
N.F. Railway, Maligaon,
Guwahati.
4. The Principal/Headmaster,
Dimapur Railway High School,
Dimapur, Nagaland.

.....Respondents

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

.....
ORDER (ORAL)

CHOWDHURY J. (V.C.)

This application relates to granting of allowances in terms of Railway Board's Circular and also for counting the past services of the applicants from the respective date of their initial appointment as Assistant Teacher in the Dimapur Railway High School towards the

*certified to be
true copy*

*n.n. dasgupta
Advocate
28-7-06*

: 2 :

to
pensionary benefits etc.

2. The Dimapur Railway School was initially a private school, which was taken over by the Railway Administration with effect from 1.4.1996. At the time of taking over of the school by the Railway Administration, the applicants were serving as Assistant Teachers. At the time of filing of this application, the applicant Nos.1 and 2 retired and the applicant No.3 was ~~continuing~~. This application is made by the applicants for granting them the appropriate scale of pay with effect from 1.4.1996 as per Railway Board's circular dated 11.11.1988, Teaching Allowance at the rate of Rs.100/- per month as per Railway Board's circulars dated 11.1.1988 and 1.4.1988 and also to count the entire past services of the applicant from the respective date of their initial appointment as Assistant Teacher in the Dimapur Railway High School towards the pensionary benefits. During the pendency of the proceedings the respondents accorded the pay scale of Rs.1200-2040 with effect from 1.4.1996 in terms of the Railway Board's circular dated 11.1.1988 stated by Mr M. Chanda, learned counsel for the applicants. The applicants have also challenged the Memorandum dated 5.8.1997, but Mr Chanda has submitted that that relief has also been granted by this time. The learned counsel for the applicant is now pressing for granting of the Teaching Allowance of Rs 100/- per month to the applicants with effect from 1.4.1996 in terms of the Railway Board's Circular dated 11.1.1988 and 11.4.1988 and also for a direction to the respondents to count the entire past service of the applicants from the respective date of their initial appointment as Assistant Teacher in the Dimapur Railway High School towards the pensionary benefit

3. Mr J L Sarkar learned Railway Counsel has stated that the applicants did not move the Railway Authority before moving this Tribunal for awarding Teaching Allowance at the rate of Rs 100/- per month. Mr Sarkar also opposed the prayer of the applicants for awarding the past service benefit from the respective date of their initial appointment as Assistant Teacher. Mr Chanda referred to two decisions of this Tribunal in O A No 174/1992 disposed of on 16.1.1996 and

*Entered
Duly
J. D. S.
28.7.96*

O.A.No.227/1996 disposed of on 26.4.1999.

4. Upon hearing the learned counsel for the parties we are of the view that the matter pertains to making of decision on evaluation of facts and the formulation of the policy of the scheme which can only be done by the respondents by taking into consideration the relevant considerations, their own guidelines in the matter and scheme in the matter of provincialisation and other like consideration.

5. In the circumstances we feel that the ends of justice will be met if a direction is issued to the applicants to make fresh representation enumerating all the facts and mentioning all their claims within a month from today and on receipt of such representation the respondents shall consider the case of the applicants and also other like persons similarly situated as expeditiously as possible, preferably within six months from the date of receipt of the order.

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

Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

*Artered
Sd/
Advocate
28.7.06*

Certified to be true Copy

मताधिक विवादी

21/12/2020

*Section Officer
Central Administrative Tribunal
Central Administrative Tribunal
Government of Maharashtra
Mumbai - 400 050, Maharashtra*

No. E/1/262/86(W) Pt. II.

Office of the
General Manager (P),
Guwahati - 781011.
Dated 08-5-2002.

To,

1. Shri Satyendra Chakraborty,
Asstt. Teacher/DIV.
2. Shri Parimal Kr. Bhattacharjee,
Asstt. Teacher(Retd.)/DIV.
3. Shri Nepal Ch. Ghosh,
Asstt. Teacher/DIV.

Through Headmaster,
Rly. High School/DIV.

Sub:- Submission of representation for counting
of past services for teaching staff for
pensionary benefits of Railway High School,
Dibrugarh, Meghalaya.

Ref:- Your identical representations dated
8/1/2001 and 17/1/2001.

Your identical representations under reference
submitted as per Judgement given by Hon'ble C A T/Guwahati
in O.A. No. 88 of 1998 have been critically examined as
under :-

Para 1, 2 & 3 :- Railway High School/DIV was a privately
managed school on the date of taking over
by the Railway i.e. on 01-4-1996. As such
the services of staff of privately managed
school were not pensionable in any way.

Para 4 :- There was no indication in S. Personnel
Officer(W)'s letter No. E/1/262/86(W) Pt. I
dated 10/11/97 that 10 years voltage will
be given to staff of Railway High School/DIV
to facilitate retiring staff for their
pensionary benefits.

Para 5 & 6 :- The circumstances under which Railway Board
decided to count past services of staff of
Railway High School/Maligaon were not similar
to that of privately managed Railway High
School/Dibrugarh.

Para 7 & 8 :- Financial help given by the Railway to any
privately managed non-Railway school never
means that the school is under the direct
control of the Railway and the services of
staff of such school will be pensionable
from the Railway.

Contd..... 2.

certified to be

true copy

n. n. dasgupta

Advocate

28.7.06

Para-9 :- Railway employees can run privately managed non-Railway Schools. This never means that a school having Majority of Railway employees in the managing Committee will automatically be termed as Railway managed school.

Para-10, 11 & 12 :- It is true that services of staff of provincialised schools are pensionable. But, Railway High School/Dimapur was never a provincialised school whereas some schools in Nagaland are provincialised.

Para-12 :- In case of death of a staff while in service, family pension is granted as per existing rules. This family pension has nothing to do with the pension on superannuation.

From the above, it is clear that privately managed Railway High School/Dimapur was taken over by the Railways w.e.f. 01-4-19996 and all existing staff accepted fresh appointment on the Railways. As the services of staff under private management were not pensionable, there is no question of considering the account of past services for pensionary benefits.

This issues with the approval of the competent authority.

J. Rabidas
8/5/2001

(J. Rabidas)
Asstt. Personnel Officer/H.
for General Manager(P).

Copy to :- APO/LC/Maligaon for information in reference to his letter No. E/170/Legal Cell/698/98 dated 26-01-2001.

for General Manager (P),
N.P.Railway/Maligaon.

8 8 8 8 8

*Acted for
Advocate
28.7.06*

MINISTRY OF INDUSTRY
RAILWAY DEPARTMENT

No. E(W)97 (D-2-2)

New Delhi dated : 08.2000

**The General Manager,
Northeast Frontier Railway,
Maligaon,
Guwahati.**

c. 10

5/1/12

516

Sub: Counting of past service of teaching and non-teaching staff of Railway High School, Maffgao for pensionary benefits.

Referred to N.P. Railway's letter No. 252-F-1980-2(W), dated 23.6.2000
on the above subject. Sanction of the Student is hereby granted to the services
rendered by the teaching and non-teaching staff in Railway Higher Secondary
School, Malianpur prior to its taken over by the Railway administration on
1.1.1977, being counted for pensionary benefits except of only those who
retired on superannuation or died in service during Railway service.

This issues with the concurrence of Finance Director of the Ministry of
Finance.

Please acknowledge receipt

(B. R. Duluya)

Joint Director, East & West
Highway Board.

Key Delta, Inc. 08.2003

NO EW107 ED. 2

ATC/5

Consideracao de Rulus

二、Daidyu

1860-1861. *John McAllie*
as *Major Board*.

500 Dollars, dated 10.08.2000

No. E(W)97/ED-23

3/11/19 8:15

Copy to Director of Audit, Wellington City, 1977

Geoffrey E. BOILL and AGOYI-Brachet et al. (eds.)

Copy to FERDILLAN

certified to be
true copy

copy
K. K. Day

Advocate
28.7.06

NORTHEAST FRONTIER RAILWAY

MEMORANDUM

85

CPO/IR has accorded his approval towards counting of Past Services of Shri P.K. Bagchi, Ex. Graduate & Trained Teacher of Netaji Vidya Path Rly. H. S. School/Maligaon rendered in Bengali H.S. School/Duwahati from 8.3.48 to 29.01.62 with his services on the Railway from 30.01.62 to 31.02.87 towards Pensionary benefits.

This has the vetting of FA & GM vide U.O. No. EN (R) P/S Pt. III (Loose) dated 16.11.2000.

(J. Rabidus)
Asst. Personnel Officer(W)
for GENERAL MANAGER(P)/MLO

No. E/252/58/438(W)

Maligaon, Dt. 20.11.2000

Copy to:-

1. Principal, Netaji Vidya Path Rly. H.S. School/MLO.

He is requested to arrange for early revision of Pension of Shri P.K. Bagchi taking into account his Past services.

2. Shri P. K. Bagchi,
Ex. TOT/Netaji Vidya Path
Rly. H.S. School/MLO at
Ulubari Chatiali/ony-781007

For Information.

3. APO/LC - For information.
4. FA & GM/MLO - For information.

J. Rabidus
for GENERAL MANAGER(P)/MLO
17/11/2000

certified to be
true copy
K. K. Das
Advocate
28.7.06

Annexure - 12

576
N.R.RAILWAY

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

Dt. 30-3-2001.

Rs. R/1/252/86(W)Pt. I

To
The Bondaaster,
Railway High School/Dimapur.

Sub:- Prayer for permission of pension to the Tekon over
Railway High School/DMV - 100 old teachers.

Ref:- Representation of Sri Parimal Kr. Bhattacharjee & 8
other teachers dt. 16-5-2001.

The matter regarding pensionary benefits to 100 old teachers
of Railway High School/DMV has been examined carefully and found that
they do not fall under any provision of Rule for grant of pensionary
benefits. They may be informed accordingly.

This issue with the approval of O.P.O.

1/6/2001
(J. RABIDAS)
Asstt. Personnel Officer/
for General Manager(P)/N.G.

certified to be
true copy
N.K. Dey
Advocate
28.7.06

Annexure - 16

No. E 11252 86(W) Pt.II

Office of the
General Manager (P)
Maligaon, Guwahati-11
Date: 04-7-05

57

ax

To
Shri Sindhu Bhusan Chakraborty,
Teacher of Railway High School DMV
(& 9 other teachers)

Sub: Representation received from the President Secretariat regarding the complaint pertaining to N.E. Railway.

Ref: Your representation dated 22-3-05 to the Hon'ble President of India.

The privately managed Railway High School DMV was taken over by the Railway w.e.f. 01-4-96 as per Railway Board's letter No. E(W)94 SC2-26 dated 2-6-95. All existing staff were absorbed as fresh in Railway w.e.f. 1-4-96. Since, the teachers who have represented have rendered less than 10 years service and moreover their past services under private management were not pensionable, they cannot be granted any pension in terms of para 28 of Railway Service (Pension) Rules, 1993.

This is for your information.



(A. Kispetta) 4/7/05
Dy. Chief Personnel Officer/IR
For General Manager (P)

Copy to:

1. Under Secretary (P), Presidents' Secretariat, Rastrapati Bhavan, New Delhi-110004 for information in reference to his letter No. PI/A-47079 dated 30-3-05.
2. Dy. Director (PG), Railway Board, New Delhi for information in reference to his letter No. 2005.PG 16.5 NFR PS dated 05-05-2005.
3. Dy. Secretary to AGM with reference to his letter No. Z/82/5/1/PS/7/2005/PG dated 13-05-2005.

certified to be
true copy
u.v. dey
advocate
28.7.06

For General Manager (P)
N.F. Railway: Maligaon
Guwahati-781011

3 JAN 2007

गुवाहाटी बायाकोट
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

IN THE MATTER OF

O.A. 185/2006

Shri Parimal Kumar Bhattacharjee
& Others

Applicant

Versus

Union of India & Others

Respondents.

AND

IN THE MATTER OF

Written statement on behalf of the respondents.

The answering respectfully SHEWETH :

1. That they have gone through the copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which have been borne on the records all other averments/allegations made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those allegations/averments of the applicant which are found relevant for enabling the Hon'ble Tribunal to take a proper decision on the matter.

3. That the application suffers from want of a valid cause of action. All the applicants are fully aware of the rule governing pensionary benefits of the railway staff, under which all Railway Employees who retire before completing 10 (ten) years of qualifying service are not entitled to pensionary benefits.

A copy of the extract of the relevant paragraph of the Railway Services (Pension Rule) 1993 is annexed herewith and marked as ANNEXURE - A. (PARA-18)

4. That the application is barred by limitation under provision of Section 21 of the Administrative Tribunal Act, 1985 as they retired many years ago as has been admitted by the applicants in paragraph 2 of the O.A. As such the case of the applicants is not tenable due to limitation and hence application deserves to be dismissed.

Filed by
M. C. Sarker
Rly. Advocates

D.R. M. C. Sarker 01/1/2007

A. Kishore
A. Kishore
Rly. Advocates
Rly. Advocates
Rly. Advocates

मुख्य कानूनी वकील

मुख्य वकील

Dy. Chief Personnel Officer
Dy. Chief Personnel Officer
Dy. Chief Personnel Officer

N.R. Railways
N.R. Railways
N.R. Railways

5. History of the case

5.1. The Dimapur Railway High School was a privately managed School till 1996. It was taken over by the Railway administration on 01.04.1996 as per instructions of the Railway Board issued vide letter quoted by the applicants as Annexure I of the O.A.

5.2. During the process of taking over of the school, the teachers were screened and medically examined and were asked to give an undertaking accepting terms and conditions of their appointment. A sample copy of the letter of offer has been provided by the applicants in Annexure 3 (page 33) of the O.A. Para 2 of this letter of offer clearly stated:-

"You will not be eligible for the pension or any benefit under State Railway Provident Fund or Gratuity Rules beyond those admissible to temporary employees under the rules in force from time to time during such temporary service"

Para 5 of the letter in question stated :-
"You will conform to all rules and regulations liable to your appointment".

5.3. On the basis of the letter of offer all the applicants had signed an undertaking in the following words as indicated in the last paragraph of Annexure 3 of the O.A.:-

"I accept the offer on the terms detailed above and declare that I shall abide conditions stipulated in para 5"

5.4. All the applicants also took an oath of allegiance or make an affirmation in the form indicated in para 3 of the letter offer (Annexure 3).

It would thus be clear that by accepting the offer of appointment with the above-mentioned terms and conditions the applicants now cannot go back on their solemn undertaking to accept the terms of the Railways according to which no pension is admissible to employees who retired without the qualifying service of ten years.

5.5. Another infirmity in the case of the applicants was that they were all appointed ~~xxx~~ on temporary basis as clearly stated at the end of paragraph 1 of the letter of offer in the following words:-

"Your appointment will initially be on temporary basis and confirmation will be made on completion of one year's satisfactory service subject to availability of permanent posts provided the seniority position along with that of other teachers in different Railway schools on the Railway permits".

It would thus be clear that actual permanent service of the applicants is much less than what is stated in paragraph 4.15 of the O.A. at p.15.

5.6. The applicants themselves accept that the old privately managed school was taken over by the Railways on 01.04.1996. It is also clear that the teachers were taken as temporary teachers from that date on terms and conditions accepted by them. The respondents beg to make it absolutely clear that Railways have nothing to do with their past services in the privately managed school.

6. Parawise commentx:

6.1. That as regards paragraphs 4.1 and 4.2, the respondents have no comments to make.

6.2. That as regards paragraph 4.3, the respondents beg to draw attention to the admission of the applicants that the School in question was not provincialised by the State Government of Nagaland but was only affiliated to the Nagaland Board of Secondary Education for the purposes of examination etc. The School thus remained a privately managed School only.

6.3. That as regards paragraphs 4.4, 4.5 and 4.6, the respondents have no remarks to offer as what are stated therein are part of the records.

6.4. That as regards paragraph 4.7, the respondents deny that the applicants accepted the offer of appointment in the School for fear of losing the job as they accepted the appointments voluntarily and consciously in view of the fact that they were all literate teachers of experience.

6.5. That as regards paragraphs 4.8, 4.9, 4.10 and 4.11, the respondents beg to reiterate that the applicants were appointed as temporary Assistant Teachers under certain conditions of service as stated in the letters of offer and letters of appointment after the applicants accepted the terms and conditions of offer and cannot now go back on them as regards the conditions and rules of service. The respondents deny that the applicants are legally entitled to the pensionary benefits on their retirement from service as they have not fulfilled the conditions of service for the same, namely ten (10) years' qualifying service in Railways.

6.6. That as regards paragraph 4.12, the respondents beg to state that the Pension Rules have been quoted out of context. The Rules do not anywhere indicate that service under private management is countable for pensionary benefits.

6.7. That as regards paragraph 4.13, the respondents beg to state that recognition or affiliation of the School by any State Government in regard to examination conducted by the School does not mean taking over of the School by the State, thereby meaning provincialisation. Similarly, grant

of financial assistance by the State Government or by the Railways never means that the services of staff of such privately managed institutions are automatically pensionable as the rules do not provide for the same.

6.8 That as regards paragraph 4.14, the respondents beg to state that the reference to Annexure 9 of the O.A. by the applicants has no relevance to the matter agitated upon by the applicants. The matter related to Annexure 9 was about grant-in-aid system of schools under the Govt. of Assam as on 01.10.1977. The Railway High School Dimapur was not under Grant-in-aid system of any State Government and there is not even the remotest possibility of their being entitled to pensionary benefits under any of the rules. The demand of pensionary benefit by the applicants is therefore untenable under the rules.

6.9. That as regards paragraphs 4.15, 4.16, 4.17 and 4.18, the respondents have no remarks to offer as the points made are part of the records which the applicants are obliged to prove. The respondents further reiterate, as indicated by the applicants in para 4.18, that there is no question of considering the past services rendered to the privately managed school by the applicants for pensionary benefits.

6.10. That as regards paragraph 4.19, the respondents deny that there was any discrimination of the applicants in the matter of granting pensionary benefits as they were never entitled to the said benefit under extant rules. It is further denied that the applicants were similarly placed with those who were granted pensionary benefits on merit of being employed in provincialised schools and as per rules framed by the concerned State Government. The case of the teachers of Railway H.S. School, Maligaon, referred to by the applicants in paragraph 4.19 of the O.A. was quite different from that of the privately managed Railway High School at Dimapur. The pensionary benefits of the teachers of Maligaon H.S. School were granted as they were provincialised and the decision was covered by letter No. Pen/C/63/98/g ^{ml} dated 28.01.99 from the Director of Secondary Education, Govt. of Assam. The case of the applicants is quite different in that their school was neither provincialised at the time of taking over of the school by the Railways, nor was it so at the time when the applicants initially or in the intermediate joined their service. Moreover, they retired with less than 10 years' qualifying service in the Railways and were not covered by the Railway's rules for grant of pensionary benefits.

A copy of the letter dated 28.01.99 from the Director of Secondary Education, Govt. of Assam is annexed here with and marked as ANNEXURE B.

6.11. That as regards paragraph 4.20, the respondents beg to state that the case of Shri P.K.Bagchi, Teacher of Netaji Vidya Pith Railway H.S.School, Maligaon, was different and was covered by the State Government's directive applicable to Provincialised Schools. Secondly, Shri Bagchi had more than 10 (ten) years ~~in~~ of qualifying service in the Railway School before he retired whereas the applicants did not have such qualifying service.

6.12. That as regards paragraph 4.21, the respondents do not agree with the contention of the applicants that the decision of the respondents in their representations were NOT in accordance with the order of the Hon'ble Tribunal. The decision of the respondents was as per the policy and accepted schemes for pension formulated in the Railway's codes which are uniformly and universally applied to all staff without discrimination. The claims of the applicants were rejected as they were not covered by the rules and as they were not similarly placed as those who were granted the pensionary benefits.

6.13. That as regards paragraphs 4.22 and 4.23, the respondents beg to state that the contents of the annexures 15 and 16 are quite clear as to why the applicants were not entitled to pensionary benefits as applied. The contents of these annexures are self-explanatory and they clearly state the reasons why the applicants were not entitled to pensionary benefits for obtaining which this O.A. was filed.

6.14. That as regards paragraph 4.24, the respondents beg to deny that the applicants were compelled by the Railway authority to accept fresh appointment. The applicants were free not to accept the offer on the terms and conditions which were clearly stated in the letter of offer at the time of taking over of the school by the Railways. In this connection attention is drawn to paragraph 2 of the letter of offer (Annexure 3 of the O.A.) which reads as follows:-

"You will not be eligible for the pension or any benefit under State Railway Provident Fund or Gratuity Rules or to any absentee allowance beyond those admissible to temporary employees under the rules in force from time to time during such temporary service".

This offer letter was dated 15.02.1996 and the target date for acceptance of the offer was 01.03.1996. Thus the applicants had enough time to think and decide on the matter.

There was therefore no question of anyone compelling the applicants to apply as all of them were educated adults capable of taking their own decisions. The Railways acted within jurisdiction in indicating the terms and conditions of appointment and in accepting them as temporary teachers on receipt of their acceptance of the offer conditions.

Under the circumstances, the respondents beg to submit that the application merits dismissal on account of the fact that, among other things, the application was not filed in time, thereby suffering from limitation under section 21 of the A.T. Act, 1985, and also because of want of a valid cause of action as indicated above.

It is therefore prayed that the application be dismissed with costs.

And for this act of kindness the respondents shall as in duty bound ever pray.

• ; •

VERIFICATION.

I, Shri A. Kispatra, son of Late Andreas Kispatra ~~and~~ aged about 57 years, at present working as Dy. CPO/IR, N.F.Railway, Maligaon, do hereby solemnly affirm that the statements made in paragraphs 1 to 6 are true to the best of my knowledge and derived from records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the _____ day of December, 2006.

Signature A. Kispatra
राष्ट्र सुरक्षा कार्यालय अधिकारी
Designation Dy. CPO/IR
N. F. Railway, Maligaon
Dy. Chief Personnel Officer



पी.आर.बी. 285 (द्विभाषिक)
22/10/1993 (हो.एस.के.1V)
PRB. 285(Diglot)
22000-1993 (D. S. K. IV)

मारक सरकार

रेल मंत्रालय

(रेलवे बोर्ड)

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

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

मूल्य/Price. देश में / Inland : रु./Rs. 45.00
विदेश में/ Foreign : £ 1.35 or \$ 2.25

25

pension, retirement gratuity and family pension at the same scale as admissible to permanent railway servant under these rules.

Explanation : For the purpose of sub-rule-(1) of this rule "service" shall have the meaning assigned to it in sub-rule (6) of rule 1002 of the Code except that it shall not include the period of first four years of apprenticeship of Special Class Railway Apprenticeship.

(8) In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of service such as voluntary retirement, or death, the full amount of the retirement gratuity, death gratuity or special contribution to Provident Fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash which shall be released immediately on the vacating of such railway accommodation.

17. Pensionary benefits to staff declared unfit.—If a railway servant is medically unfit for his post but is retained in service in an alternative appointment under the provisions of the Code and subsequently becomes entitled to receive retirement gratuity or pension, he shall be given the option of accepting either of the following, whichever he may, prefer,—

(i) the gratuity or pension which he would normally be granted with reference to his total service in both the spells of his service taken together;

(ii) the sum of—

(a) gratuity or pension which he would have been granted if he had been medically invalidated out of service instead of being retained in an alternative appointment at the end of the first spell of his service; and

(b) the retirement gratuity or pension which he would normally have been granted for the second spell of this service rendered in the alternative appointment :—

Provided that if the total qualifying service of the railway servant in both the spells of the service taken together exceeds 33 years, the qualifying service in the second spell shall be reduced by the number of years by which total qualifying service in both the spells taken together exceeds 33 years and his ordinary gratuity or pension and death-cum-retirement gratuity for the second spell of service shall be calculated with reference to the reduced qualifying service so calculated.

18. Pensionary, terminal or death benefits to temporary railway servants.—(1) A temporary railway servant who retires on superannuation or on being declared permanently incapacitated for further railway service by the appropriate medical authority after having rendered temporary service not less than ten years shall be eligible for grant of superannuation, invalid

(2) A temporary railway servant who seeks voluntary retirement after completion of twenty years of service shall continue to be eligible for retirement pension and other pensionary benefits like retirement gratuity and family pension as admissible under these rules.

(3) In the event of death in harness of a temporary railway servant his family shall be eligible to family pension and death gratuity on the same scale as admissible to families to permanent railway servants under these rules.

(4) The terminal or death gratuity shall not be admissible,—

(i) to a probationer or other railway servant discharged for failure to pass the prescribed test or other examination;

(ii) in a case where the railway servant concerned resigns his post or is removed or dismissed from railway service;

(iii) to employees re-employed under the terms of re-employment applicable to retired employees.

(5) The rules and orders applicable to the admissibility of death-cum-retirement gratuity to permanent pensionable railway servants shall apply as far as may be to the terminal or death gratuity also subject to the provisions of the sub-rules (6) to (10).

(6) No nomination for death or terminal gratuity shall be necessary.

(7) The payment of the terminal gratuity in the case of a temporary railway servant who dies before receiving payment of the said gratuity or of the death gratuity shall be made to his family in the following order of preference :—

(1) wife or wives including judicially separated wife or wives in the case of a male railway servant;

- (2) husband including judicially separated husband in the case of a female railway servant,
- (3) sons including step sons and adopted sons,
- (4) unmarried daughters including step daughters and adopted daughters,
- (5) widowed daughters including step daughters and adopted daughters.
- (6) father } including adopted parents in the case of individuals whose personal law permits adoption;
- (7) mother }
- (8) brothers below the age of eighteen years including step brothers.
- (9) unmarried sisters and widowed sisters including step sisters,
- (10) married daughters, and
- (11) Children of a pre-deceased son.

(8) If the person eligible to the gratuity in the order of preference mentioned in item (1) of sub-rule (7) is totally denied any share in the property of the railway servant under a will or deed made by him,

such person shall be treated as ineligible to receive the gratuity which shall then be paid to the next person in the order of preference and where the railway servant makes any such will or deed he may intimate the fact in writing to the Head of Office who shall keep a note in the service book of the railway servant.

(9) The amount of gratuity payable to a temporary railway servant or to his family in the event of his death may be determined on the basis of the entries made in this service book and drawn without a formal application or accounts report, just as pay claims in pay bill form.

(10) The non-service staff appointed on the personal staff of Minister(s) or Deputy Ministers that is the staff appointed at the discretion of the Ministers or Deputy Ministers and who on the date of their appointment are not already in Government service shall be treated as purely temporary employees for the purpose of the benefits admissible under this rule.

19. **Pension on re-employment.**—Pension on re-employment shall be subject to the conditions laid down in rule 33.

(10)

ANNEXURE-B.

9x

**GOVT. OF ASSAM
OFFICE OF THE DIRECTOR OF SECONDARY EDUCATION:::ASSAM,
KAHILIPARA:::GUWAHATI:- 19.**

No.Pen/C/63/98/8

Dtd. Kahilipara. the 28th January. 99'

From : Sri N.C. Bardaloi,
Dy. Director of Secondary Education, Assam,
Kahilipara, Guwahati-19.

To, : The Sr. Personnel Officer(Welfare),
for G.M.(P), Maligaon.

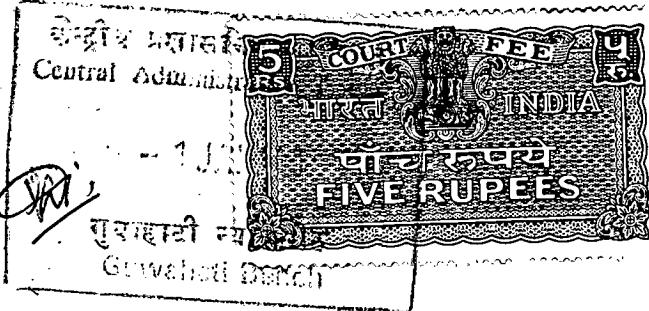
No. : E/252/243 (W) Pt.I dt. 7.10.98

With reference to your letter No. on the subject cited above I am directed to say that teachers who were working in the Grant-in-aid system school under the Govt. of Assam and if and subsequently services in provincialised as per the Assam Secondary Education (Prov)act 1977 their services will be pensionable if he opted to retire at the age of 58 yrs. If any teachers (were G.I.A.) left the school for joining other than school service or died prior to 1.10.77 the past service is not under pensionable service. This is for your information and necessary action.

Yours faithfully,

Attested

Dy. Director of Secondary Education, Assam,
Kahilipara, Guwahati-19.



Filed by :
Parimal Bhattacharjee
28 - Appellant
through
Karma Manta Dev
Advocate
31.1.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
AT GUWAHATI.

In the matter of :-

O.A. 185 of 2006

Sri Parimal Kumar Bhattacharjee
and others.

... Appellant.

- Versus -

Union of India and others.

... Respondents.

- AND -

In the matter of :-

An affidavit-in-reply
by the applicants against the
written statement filed by the
respondents.

I, Parimal Kumar Bhattacharjee, son of Late Paresh
Chandra Bhattacharjee aged about 69 years resident of
Lumhiti Colony, Dimapur, P.S. Dimapur, District Kohima,
Nagaland do hereby solemnly affirm and say as follows :-

1. That I am the applicant No. 1 in the instant case and other applicants have entrusted me

contd..

to take steps in the case on behalf of them. I am fully conversant with the facts and circumstances of the case.

2. That a copy of the written statement filed by the respondents has been served upon me which I have gone through and understood the contents thereof.

3. That save and except the statements made in the said written statement which are specifically admitted in this affidavit-in-reply all other statement shall be deemed to have been denied by the applicants.

4. That the statements made in paragraph 3 of the written statement are denied by the answering applicants. The deponent states that the respondents have misinterpreted the rules governing pensionary benefits of the railway employees. In this connection the deponent reiterate and reaffirm the statements made in paragraph No. 4.11, 4.12 and 4.15 of the application and say that they have served in the school for a period much more the 10 years as such they are entitled to pensionary benefits. The respondents have denied their due pensionary benefits and as such the applicants and as such the applicants have cause of action in the case.

5. That the statements made in paragraph 4 of the written statement are denied by the applicants. The deponent states that denial of pensionary benefits are continuing cause of action as such the instant application is not barred by limitation under section 21 of the Administrative Tribunal Act, 1985. Moreover the applicants have filed an application registered as M.A. 3 of 2007 in this Hon'ble Tribunal praying for condonation of delay in filing the instant application.

6. That the statements made in paragraph 5 of the written statement are not correct and the deponent denies the same. In this connection the deponent reiterate and reaffirm the statements made in paragraph Nos. 4.13 and 4.14 of the application and say that the Dimapur Railway High School was recognised by the Govt. of Assam and Govt. of Nagaland respectively. The Govt. of Assam and Govt. of Nagaland provided time to time grant to the Dimapur Railway High School. The Dimapur Railway High School was under the control and supervision of Gauhati University, Board of Secondary Education, Assam and Board of School Education, Nagaland. The plea of the respondents that the applicants accepted fresh appointment under the Railway one misconceived

which are denied by the applicants. In this connection the deponent reiterate and reaffirm the statements made in paragraphs No. 4.7 of the application and say that the respondent Railway authority compelled the applicants to sign the alleged undertaking under implied threat of ousting from the service. The applicants signed the alleged undertakings in fear of loosing the job. The plea of the respondent s that the services of the applicants were temporary are malafide, discriminatory and ridiculous. The applicants spent their whole life in serving the Dimapur Railway High School as such they can not be termed as temporary teachers at the dictate and whims of the respondents.

7. That as regards the statements made in paragraph 6.2, 6.4 and 6.5 of the written statement, the deponent has already replied in the foregoing paragraphs of this affidavit in reply. The deponent further beg to state that the conditions of service appearing in the alleged letters of offer and letters of appointment has been deliberately put by the respondents with a malafide intention to deprive the petitioners of their legitimate pensionary benefits as such mere acceptance of those conditions under compelling circumstances dientitle the applicants from their pensionary benefits.

contd..

8. That the statements made in paragraph 6.6 of the written statement are denied by the answering applicants. The deponent states that the pension Rules has been misquoted by the respondents.

9. That the statements made in paragraphs 6.7, 6.8 and 6.9 of the written statement are denied by the applicants. The deponent states that the Dimapur Railway High School was under the Supervision and control of the Govt. of Assam and thereafter Govt. of Nagaland. Those Govts. granted financial assistance from time to time to Dimapur Railway High School. The The school followed the Rules and regulations of the respective Govt. of Assam and Govt. of Nagaland as such Dimapur, Railway High School can not be termed as privately managed school. The applicants reiterate that they are entitle to pensionary benefits as retired teachers of Dimapur Railway High School.

10. That the statements made in paragraph Nos. 6.10 and 6.11 of the written statement are not correct and the deponent denies the same. The deponent states that the letter dated 28.1.1999 of the Deputy Director of Secondary Education, Assam (annexure-B to the written statement does not say

anything that Maligaon H.S. School was a provincialised school before taking over by the Railway administration.

11. That the statements made in paragraph 6.12 of the written statement are denied by the applicants.

The applicants reiterate and reaffirm their statements made in paragraphs 4.17 and 4.21 of the application and say that the respondents are duty bound to formulate a scheme for grant of pensionary benefits to the applicants.

12. That the statements made in paragraph 6.13 of the written statement are denied by the applicants.

The deponent states that the respondent Railway authority illegally denied their pensionary benefits.

13. That the statements made in paragraphs 6.14 of the written statement are denied by the applicants. The applicants have already replied the allegation of the respondents made in paragraph 6.14 of the written statement. In this connection the applicants beg to x rely on the statements made above in this affidavit-in-reply.

14. That the prayer made in the written statement are not tenable and liable to be rejected by this Hon'ble Tribunal.

contd..

15. That the statements made in paragraphs 1 to 5, 12 and 13 of this affidavit-in-reply are true to my knowledge and those made in paragraphs 6 to 11 and 14 thereof being matters of record are true to my information derived therefrom which I believed to be true.

Identified by me,

Karenia Kanta Dey
31.1.07

Advocate

Parimal Bhattacharjee

DEPONENT