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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

C.P-40/98 ordered sheet pg-1 to 3

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Disposed date- 30/3/99

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLN. NO. 269 OF 1995
TRANSFER APPLN. NO. OF 1995
CONTEMPT APPLN. NO. OF 1995 (IN OA NO.)
REVIEW APPLN. NO. OF 1995 (IN OA NO.)
MISC. PETN. NO. OF 1995 (IN OA NO.)

..... B. P. Nath, APPLICANT(S)

..... M. O. J. A. M. .., RESPONDENT(S)

FOR THE APPLICANT(S) ... MR. R. Dutta

MR.
MR.
MR.

FOR THE RESPONDENTS ... MR. B.K. Sharma, Rly. advocate

OFFICE NOTE	DATE	ORDER
1 This application is in form and within time C. E. of Rs. 50/- deposited vide IPO/BID No. 52 4345 Dated 30.11.95 By. Registrar B[12] PD	15.12.95	Learned counsel Mr R. Dutta moves this application on behalf of the applicant seeking direction for payment of his wages from 24.2.88 to 31.10.91 and for pension from 1.11.91 alongwith gratuity and other retirement benefits on the ground that the concerned authority has not passed any order within the period of 3 months from the date of communication of copy of the order dated 2 31.10.94 in O.A.110/93 as directed therein. Learned Railway counsel Mr B.K. Sharma submits that according to his instruction some order has been passed in this connection but he has no record in support thereof. He also submits that this application has got nexus with the order dated 31.10.94 in O.A.110/93 and direct consequence therefrom and the matter is to be dealt with by the Division Bench. Place for consideration of admission before Division Bench on 9.1.96.

Member

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLN. NO.	OF 1995
TRANSFER APPLN. NO.	OF 1995
CONTEMPT APPLN. NO.	OF 1995 (IN OA NO.)
REVIEW APPLN. NO.	OF 1995 (IN OA NO.)
MISC. PETN. NO.	OF 1995 (IN OA NO.)

..... APPLICANT(S)

-VS-

..... RESPONDENT(S)

FOR THE APPLICANT(S)

...MR.
MR.
MR.
MR.

FOR THE RESPONDENTS

...MR.

OFFICE NOTE

DATE

ORDER

9-1-96

At the request of Mr. R. Dutta
adjourned to 19-2-96.

Member

Vice-Chairman

1m

(2)

9-1-96

At the request of Mr.R.Dutta
adjourned to 19-2-96.6
Member

Vice-Chairman

lm

(3)

19-1-96

Mr.R.Dutta for the applicant. Mr.B.K. Sharma counsel for the respondents is reported to be on leave. As back as on 15-12-95, it was stated that the respondents counsel that some order has already been passed. Till to-day nothing is produced. We were anxious to see if the matter be worked out ^{could} ~~at this stage~~ as itself as question of retirement benefits is involved. However as we are not in a position to do so, the O.A. is admitted. 8 weeks for written statement. Adjourned to 30-4-96 for orders.6
Member

Vice-Chairman

lm

(4)

30.4.96

Mr S.Sarma for Mr B.K.Sharma for the respondents. Written statement has not been submitted. Mr Sarma requests for time for filing written statement.

List on 7.6.96 for written statement and further orders.

6
Member

31-5-96

Filed on pg
behalf of Resps. 26/84-6-96
Notice day served
on Resps. No. 1

B.R.

(3)

9

O.A. 269/95

(5)

7.6.96

Mr. R.Dutta learned counsel for the applicant.
Mr. S.Sarma for Mr. B.K.Sharma for the respondents.

Written statement has been submitted. Copy of the same may be served on learned counsel of the applicant. List for hearing on 3.7.96.

Member (J)

60
Member (A)

trd

(6)

3.7.96

Mr R.Dutta for the applicant. Requests time for filing rejoinder.

List for hearing on 31.7.96. Mr Dutta may file rejoinder in the meantime with copy to the counsel of the opposite party.

60
Member

pg

24.7.96

(7)

31.7.96

None present. List for hearing on 26.8.96.

Rejoinder submitted
on behalf of applicant
response to Writ in Rejoinder.

60
Member

100

(4)

O.A.269/95

(8) 26-8-96

Learned counsel Mr. R. Dutta for the applicant. List for hearing on 23-9-96.

69
Member

lm

26/8

23.9.96

Learned counsel Mr. R. Dutta for the applicant.

List for hearing on 12.11.96.

69
Member

Rejoinder has not been
b/w.

nkm

24/9

(9) 12.11.96

Mr. R. Dutta for the applicant.
None for the respondents.

List for hearing on 10.12.96.

69
Member

pg

24/11

(10)

17-3-97

Counsel for the partie are present
Let this case be listed for hearing on
11-4-97.

69
Member


Vice-Chairman

lm

(11) 11.4.97

On the prayer of Mr. R. Dutta, learned
counsel for the applicant, this case is adjourned
to 15.5.97.

69
Member


Vice-Chairman

nkm

16/4

(5)

(12) 15.5.97

Left over. List it on 3.7.97 for hearing.

60
Member

Vice-Chairman

nkm

JK
2015

(13)

3-7-97.

Partly heard. For hearing tomorrow.

JK

By Order.

(14)

4.7.97

List on 8.7.1997 for further hearing.

60
Member

Vice-Chairman

trd

8-7-97 Passover for in day.

By order

(15)

9.7.97

List on 11.7.97 for further hearing.

60
Member

Vice-Chairman

trd

11-7-97

Passover for in day.

By order

11-7-97

Due to ref, the court is suspended after 12 noon. Adjourned to 21.7.97

By order

OA/TA/CP/RA/MP No. of 19

OFFICE NOTE

DATE

ORDER

21.7.97

There is no representation.
List on 29.7.97.
By order

6

W/S. and rejoinder
has been filed

SD
18/8

29.7.97

On the prayer of the counsel for the
parties let the case be listed for hearing
on 19.8.97.

6

Member


Vice-Chairman

pg
S. 29/7

19.8.97

On the prayer of the learned counsel
for the parties this case is adjourned till 21.8.97.

6

Member


Vice-Chairman

nkm
20/8

21.8.97

Part heard. List for further hearing

on 15.9.97.

6

Member


Vice-Chairman

nkm
22/8

16.9.97

Mr R. Dutta, learned counsel for the
applicant, wants to file a rejoinder and also to
amend the prayer portion of the original application.
Mr B.K. Sharma, learned Railway Counsel has no
objection. Prayer allowed. List it on 19.9.97.

6

Member


Vice-Chairman

nkm
15.9.97

Pass over for the
day.

SD
14/9

15.9.97

SD
14/9

7

Page No.

QA/TA/CP/RA/MP No. of 19 O.A. 269/95

OFFICE NOTE

DATE

ORDER

19.9.97

18-9-97

Addl. Rejoinder
filed on behalf
of the applicant
at page 47 to 53.

Additional rejoinder has been filed
and copy of the same has been served on
the other side. No objection has been raised.
Accordingly rejoinder is accepted.
List on 26.9.97 for hearing.

6/1
Member

Vice-Chairman

pg

✓✓/T

26.9.97

22-9-97
Memo of appearance
filed by Mr. B.K.
Sharma, Railway
Advocate.

Heard counsel for the parties at
some length.

List on 29.9.97 for further hearing.

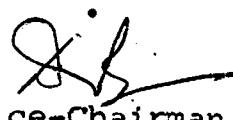
6/1
Member

Vice-Chairman

pg

29.9.97

Heard in part. List for further
hearing on 28.10.97.

6/1
Member

Vice-Chairman

pg

✓✓/9

28-10-97

Heard in part. List for further
hearing on 13-11-97. to

6/1
Member

Vice-Chairman

lm

✓✓/10

3.11.97

Adjourned to 10.11.97.

By order,

10.11.97

Adjourned to 17.11.97.

By order,

17.11.97

Adjourned to 26.11.97.

By order,

⑧ OA. 269/75

26.11.97

Heard the learned counsel for the parties.
Hearing concluded. Judgment reserved.

w/s, Respondent &
Addl. Respondent
Seww HW

60
Member

nkm

SB
Vice-Chairman

8.1.98

Judgment delivered in open Court, kept
in separate sheets.

The application is allowed. No costs.

60
Member

SB
Vice-Chairman

pg

23.1.98

Copy of the Judgment
has been sent to the
D/sec for securing the
same to the parties.

60
23/1

Issue vide
D.N.O. 186 to 187
d. 27.1.98

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 269 of 1995
T.A. NO.

DATE OF DECISION 8-1-1998

Shri Banka Behari Nath

(PETITIONER(S))

Mr R. Dutta

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Mr B. K. Sharma, Railway Counsel

ADVOCATE FOR THE
RESPONDENT (S)

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

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman

D. Baruah

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.269 of 1995

Date of decision: This the 8th day of January 1998

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

• The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Banka Behari Nath,
Sonacherra, P.O. Chandranathpur,
District- Cachar, Assam.
By Advocate Mr R. Dutta.

.....Applicant

-versus-

1. The Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati.
2. The Divisional Railway Manger, N.F. Railway, Lumding, Nowgong, Assam.
3. The Divisional Engineer/II, N.F. Railway, Lumding, Nowgong, Assam.
4. The Assistant Engineer, N.F. Railway, Badarpur Ghat, P.O. Badarpur, Karimganj, Assam.Respondents

By Advocate Mr B.K. Sharma, Railway Counsel.

.....

O R D E R

BARUAH.J. (V.C.)

In this application the applicant has prayed for direction to the respondents for payment of his wages for the period from 24.2.1988 to 31.10.1991 and for pension with effect from 1.11.1991 alongwith gratuity and other retirement benefits as he is entitled to under the rules. Facts for the purpose of disposal of this application are:

The applicant was initially appointed Casual Gangman in the year 1958. Thereafter, he was absorbed as regular Gangman under the Chief Permanent Way Inspector, N.F. Railway, Badarpur in the year 1963.

X3

2. In August 1984, one Shri Sukumar Sutradhar lodged an F.I.R. in the Borkhola Police Station in the District of Cachar against one Shri Krishnapada Sutradhar and seven others including the applicant alleging, interalia, that Shri Sukumar Sutradhar and his father were assaulted. As a result of such assault, the father of Shri Sukumar Sutradhar sustained severe injuries and later on succumbed to the injuries. The police registered a case and after investigation submitted chargesheet against the accused persons including the applicant under Section 302 and other various Sections. On 24.2.1988 the learned Sessions Judge, Cachar, after trial, found the accused persons including the applicant guilty under Section 302, 325 and 323 read with Section 34 of the Indian Penal Code and sentenced them rigorous imprisonment for life and with a fine of Rs.1000/- under Section 302 and rigorous imprisonment for two years with a fine of Rs.250/- under Section 325 and also rigorous imprisonment for three months under Section 323. On appeal, the Hon'ble Gauhati High Court by order dated 22.7.1988 passed in Criminal Appeal No.43 of 1988 acquitted the accused persons including the applicant by setting aside the order of conviction in respect of Section 302 of the IPC and modified the conviction and the sentence.

3. On 5.8.1988, the applicant was placed under suspension with retrospective effect. Thereafter, in October 1988 the 4th respondent- the Assistant Engineer, N.F. Railway, Badarpur, removed the applicant from service with retrospective effect from 24.2.1988 as per Rule 14(I) of the Railway Servant (Disciplinary & Appeal) Rules, 1968, on the ground that the applicant was convicted by the Sessions Judge. No notice, however, was issued to the applicant before the order of removal was passed. Being aggrieved, the applicant preferred an appeal before the

Divisional.....

Divisional Engineer(II), N.F. Railway, Lumding, for his reinstatement in service. The matter was pending and meanwhile, in October 1991, the applicant attained the age of superannuation. Thereafter, in 1993 the appeal was disposed of declining to reinstate him. However, he was offered re-employment as a fresh entrant. According to the applicant the question of re-appointment did not arise as he had already attained the age of superannuation. Being aggrieved, the applicant filed an original application (O.A.No.110/1993) before this Tribunal for setting aside the order of removal from service and also for direction to the respondents for payment of his pension. This Tribunal partly allowed the original application No.110/93 by setting aside the order of removal and the appellate order. However, the Tribunal directed the Disciplinary Authority, i.e. the 4th respondent to pass a fresh order in accordance with the law and rules within a period of three months from the date of receipt of the order as the earlier order of removal from service was passed without giving the applicant an opportunity of hearing and was also not in conformity with the provisions of the rules. However, no order was passed within the period of three months as stipulated by the Tribunal. Hence the present application was filed in the last week of December 1995.

4. On 23.12.1995 the applicant received a notice dated 9.12.1995 asking him to show cause as to why he should not be removed from service. The applicant replied the notice, stating that as he had already superannuated on 31.10.1991 and the period of three months fixed by the Tribunal had already elapsed the 4th respondent had no authority or jurisdiction to issue notice or give any punishment under the Railway Servant (Disciplinary & Appeal) Rules, 1968 and prayed for cancellation of the show cause notice.

5. The respondents entered appearance and filed written statement. The applicant has also filed a rejoinder. In the written statement the respondents have refuted the claim of the applicant. In para 5 of the written statement the respondents have stated as follows:

.....and the O.A. was re-heard on merit on 6.10.94 and eventually, the Judgment dated 31.10.94 was passed directing the respondents to pass a fresh order on the basis of the observation made in the Judgment and materials on record. This part of the story has been suppressed by the applicant. Be that as it may, the records pertaining to the case was sent to the Headquarter for the purpose of filing M.P. No.112/94. Although the Judgment was delivered on 31.10.94 with the direction to pass a fresh order within three months from the date of receipt of the copy of the Judgment, in absence of the record, the matter could not be processed. The records were somehow misplaced and after making correspondences in this regard and after tracing of the record, process was already started towards passing the final order in terms of Judgment. To that effect, a show cause notice was issued to the applicant on 9.12.95 which he duly acknowledged....."

The respondents, in the written statement, deny that the applicant had attained the age of superannuation on 31.10.1995, inasmuch as before he could attain the age of superannuation he was removed from service pursuant to his conviction in a criminal case. According to the respondents although the Tribunal set aside the orders passed by the disciplinary and appellate authorities, the Tribunal, however, was not pleased to direct the respondents for reinstatement of the applicant in service in view of the criminal conviction of the applicant. They have further stated in the written statement that due to the circumstances beyond control of the respondents the final order could not be passed afresh within the time allowed by this Tribunal.

6. We heard Mr R. Dutta, learned counsel for the applicant and Mr B.K. Sharma, learned Railway Counsel appearing on behalf of the respondents. Mr Dutta submitted that the respondents had no jurisdiction and authority to issue the impugned notice to show cause why disciplinary

action.....

ought not to be taken inasmuch as, by then, admittedly, the applicant attained the age of superannuation and he ceased to be an employee under the department. In case of a retired person, normally, no disciplinary proceeding can continue without following the procedure prescribed. The learned counsel further submitted that in case of conviction in a criminal charge of an employee imposition of penalty was not a must. In this connection Mr Dutta has drawn our attention to a decision of the Supreme Court in Union of India and another -vs- Tulsi Ram Petel, reported in 1985(2) SLJ (SC) 145. The learned counsel also submitted that the applicant on his attaining the age of superannuation ceased to be a Railway Servant. In order to take action against a person who ceased to be Railway Servant in case of grave misconduct and negligence prior to ceasing to be a Railway Servant, the provisions contained in Rule 9 of the Railway Services (Pension) Rules, 1993, ought to be followed. In this, the procedure was not followed. Therefore, the impugned notice asking the applicant to show cause why disciplinary action should not be taken against him for the alleged misconduct was contrary to the rules. According to Mr Dutta, the authority had no jurisdiction, whatsoever, to issue such notice and the impugned notice issued by the authority, lacking jurisdiction, should be set aside immediately.

7. Mr B.K. Sharma, learned Railway Counsel, on the other hand, submitted that the application itself was liable to be dismissed summarily as there was no cause of action in view of the fact that only a notice was issued and the employee could have very well sent a reply to the authority to persuade the authority to drop the proceeding. He having not done that, the application itself was premature and liable to be dismissed. Mr Sharma also submitted that the applicant

being.....

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being a convict in a criminal case, naturally, a punishment ought to be imposed as envisaged under the relevant rules. Mr Sharma also refuted the argument of Mr Dutta that the authority having not complied with the direction of the Tribunal to consider the case of the applicant within a period of three months, the applicant could be deemed to be in service because of the non-compliance of the order.

8. On the rival contentions of the learned counsel for the parties, it is now to be seen whether the impugned notice dated 9.12.1995 can sustain in law. The admitted facts are that the applicant was convicted under Section 302, 325 and 323 read with Section 34 of the IPC and sentenced to undergo rigorous imprisonment for life under Section 302 and rigorous imprisonment for two years under Section 325 and also rigorous imprisonment for three months under Section 323. However, on appeal, the judgment of the Trial Court was set aside by modifying the conviction and the sentence. He was, thereafter removed from service, however, without giving any opportunity of being heard. The applicant approached this Tribunal by filing original application No.110/1993. This Tribunal partly allowed the said original application directing the respondents to consider the case of the applicant after giving him an opportunity of hearing within a period of three months. The authority, however, did not dispose of the matter within the time allowed by this Tribunal. Long after the period had elapsed the authority issued the impugned notice to show cause why disciplinary proceeding ought not to be taken against the applicant for his conviction in a criminal case.

9. Rule 9 of the Railway Service (Pension) Rules, 1993, provides that the President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either full or in part, whether permanently or for a specified.....

Dr

specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. It is further provided that such proceeding if not instituted while the railway servant was in service, whether before his retirement or during his re-employment, shall not be instituted save with the sanction of the President and shall not be in respect of any event which took place more than four years before such institution. In the instant case, admittedly, the alleged misconduct was much earlier to four years before the date of issuance of the notice. The learned Railway Counsel has not be able to show that the Railway Administration had received the President's sanction for initiation of the disciplinary proceeding. The earlier disciplinary proceeding and the punishment having been set aside by the Tribunal the fresh institution is not permissible in view of the lack of sanction and also because the occurrence took place long before the initiation of the disciplinary proceeding by issuing the notice to the applicant to 'show cause. Therefore, in our opinion the fresh initiation is not permissible as the alleged misconduct took place in 1988 and the notice was issued only in the year 1995. Mr Dutta also submitted that even the Tribunal had no jurisdiction to allow the Railway Administration to take up a fresh proceeding within three months as it will be contrary to the provisions of the rule. The learned counsel has submitted before us that the order to that extent by this Tribunal was not correct. This Tribunal passed the order long before and no review application was filed. Therefore, we are

not.....

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not going to reopen the matter as to whether the Tribunal had the jurisdiction to give direction for initiation of proceedings or not. However, as the disciplinary proceeding was not initiated within the period prescribed, i.e. within three months we are to examine as to whether disciplinary proceeding could be initiated by issuance of show cause notice long after the alleged misconduct was committed and that too, when the applicant had attained the age of superannuation. Mr Dutta further submitted that the disciplinary proceeding could not be initiated in view of the fact that he ceased to be a railway servant as defined in Clause 13 of Rule 102 of the Indian Railway Establishment Code Volume I (IREC for short). Clause (13) of Rule 102 of the IREC defines Railway Servant as follows:

"(13) 'Railway servant' means a person who is a member of a service or who holds a post under the administrative control of the Railway Board and includes a person who holds a post in the Railway Board. Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition. This term excludes casual labour for whom special orders have been framed."

There is no doubt, as per the said definition, at the time of issuance of the impugned show cause notice by the Railway Administration applicant ceased to be a railway servant and no disciplinary proceeding could be initiated against him without the sanction of the President and also within the period of four years. As this was not done, in our opinion, no fresh disciplinary proceeding could be initiated. The applicant shall be deemed to be in service till the date he attained the age of superannuation and he shall be entitled to get all the dues he was entitled to as if he was not removed from service.

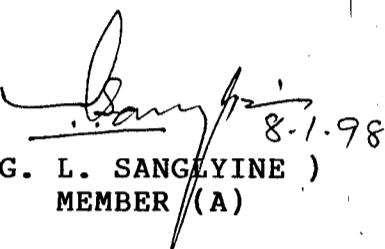
10. Accordingly, we direct the respondents to pay to the applicant his wages, pension and gratuity etc. as if he was

in.....

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in service till the date he attained the age of superannuation. The respondents are further directed to make the payment to the applicant within a period of three months from the date of receipt of this order.

11. The application is accordingly allowed. However, in the facts and circumstances of the case we make no order as to costs.


8-1-98
(G. L. SANGLYINE)

MEMBER (A)


(D. N. BARUAH)
VICE-CHAIRMAN

NkM

47
20
File No. 87/97
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH :

GUWAHATI

Central Administrative Tribunal
গুৱাহাটী বিভাগ
• 1281
• 8 SEP 1997
Guwahati Bench গুৱাহাটী বিভাগ

O.A. No. 269 of 1995

Banka Behari Nath ... APPLICANT
- Vs. -
Union of India & Ors. ... RESPONDENTS

Written submission on behalf of applicant in reply to the written submission submitted on behalf of the Railways :-

1. In para-1 of the written submission of the Respondents, it has been submitted that this O.A. is premature inasmuch as it is only at the state of Show Cause Notice, the instant O.A. has been filed. This submission is not based on facts inasmuch as the O.A. has been filed prior to issue of the show cause notice. O.A. was filed on 5.12.95 whereas the show cause notice dated 9.12.95 was issued later. As such the O.A. cannot be premature due to issue of Show cause notice after filing of the O.A.

2. In para-2 of the written submission of the Railways, it has been submitted that the applicant being convict in a criminal case, necessarily a punishment will have to be imposed. In respect of this submission it is humbly submitted that their lordships of the Hon'ble Supreme Court in para 117, at page 232, of Union of India & Anr. Vs. Tulsi Ram Patel reported in 1985(2)SLJ SC 145, have held -

*Humbley
B. K. Shrestha
for B. K. Shrestha
S. C. B.
G. A. A.*

"where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be."

The above decision of the Supreme Court clearly established that in case of conviction on a criminal charge the imposition of penalty is not a must, as submitted by the Railway.

The Rule 14 of the Railway Servant (Discipline & Appeal) Rule 1968, and the instructions issued by the Railway Board on this subject was discussed in Issue No.3 by the Hon'ble Tribunal in O.A. No.110 of 1993 and there also it has been observed at para-7 that while acting under Rule 14, the authority has to look to the merit of the case and has to take into account the conduct, which led to conviction independently of the finding recorded by the criminal Court. The above observation of the Hon'ble Tribunal also contradict the submission of the Railways on the account.

Three citations made in the written submission of the Railways do not have any bearing in the case inasmuch as the punishment or setting aside of the punishment were in question in the appeals before the Hon'ble Supreme Court.

3. In respect of para-3 & 4, it may be submitted that in view of quashing of the removal order by the Hon'ble Tribunal by Order dated 31.10.94, the applicant stands to be in service till he attains the date of superannuation. As the Hon'ble Tribunal's order permitting the Respondents to impose punishment within a period of 3 months from the date of receipt of the order was not complied by Respondents nor the Respondents applied for extension of time schedule to the Hon'ble Tribunal for enabling them to pass an order, as the order and the

judgement has become final, ^{with} _{RD} normal consequence of law that the applicant was in service till the date of his superannuation.

It may be submitted here that Rule 6 of the Railway servant (Discipline & Appeal) Rules-1968 enumerates the punishments that can be awarded to Railway servants. Rule 2(1)(e) of the Railway Servant (Discipline & Appeal) Rule, 1968 states that Railway Servant means a railway servant as defined in Clause (13) of Rule 102 of Vol. I of Indian Railway Establishment Code. Clause 13 of Rule 102 of Volume-1 of the Indian Railway Establishment Code defines Railway servant as under :-

"(13) 'Railway servant' means a person who is a member of a service or who holds a post under the administrative control of the Railway Board and includes a person who holds a post in the Railway Board. Persons lent from a service or post which is not under administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition. This term excludes casual labour for whom special orders have been framed."

As the applicant after his superannuation on 31.10.91 do not hold any post under the railways nor a member of any service and does not come under the above definition, no punishment can be awarded to him under Railway Servant (Discipline and Appeal) Rules, 1968. For taking action against a person who has already ceased to be a Railway servant for committing grave misconduct or negligence prior to his ceasing to be a railway servant, provisions have been made in Rule 9 of the Railway Service (Pension) Rules, 1993 which provide that the President reserves to himself the right of withholding or withdrawing pension or gratuity or both if in any departmental or judicial proceeding, the pensioner is found guilty of grave ~~and~~ misconduct or negligence during the period of his ~~any~~ service. It has been

further provided that such proceeding if not instituted while the railway servant was in service shall not be instituted save with the sanction of the President and shall not be instituted in respect of any event which took place more than 4 years before such institution.

As the applicant attained the age of superannuation on 31.10.91, the Railway Servants (Discipline & Appeal) Rules, 1968 has no application over him and he cannot be awarded any punishment enumerated in Rule 6 by the disciplinary authority. The temporary jurisdiction of 3 months from the date of receipt of the order and judgement dated 31.10.94 of the Hon'ble Tribunal in O.A. No.110 of 1993 was not acted upon and after expiry of the period of 3 months from the date of receipt of the order, the respondents have no authority to initiate or take any action under the rules against the applicant.

In Umesh Prasad Sinha Vs. Union of India & Ors. reported in (1997) 35 ATC 329 (Para-11), it has been held by the Patna Bench of the Hon'ble Tribunal that once the master and servant relationship has come to an end after the railway servant has superannuated from service, none of the penalties prescribed under Rule-6 can be imposed upon the retired Government servant.

4. In respect of para-5, it may be submitted that as ~~submitted~~ earlier, Rule 9 of the Railway servant (Pension) Rules, 1993, the President reserves the right of withholding or withdrawing whole or part of the Pension or gratuity, but the proceeding shall not be instituted in respect of any event which took place more than 4 years before such institution. As no such proceeding has been initiated as yet, it cannot be instituted in respect of an event which took place in 1984 to 1988.

5. In respect of para-6 of the written submission of the Railways, it may be submitted that in A.L. Kalra Vs. Project & Equipment Corporation of India Ltd., reported in ~~SCC~~ 1984(2) SLJ 82, the Hon'ble Supreme Court has held in para 33 (page 99) as under:-

" When removal from service is held to be illegal and invalid, the next question is whether : the victim of such action is entitled to backwages. Ordinarily; it is well-settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly. "

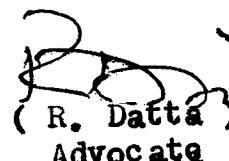
Out of 4 citations given in the submission of the Railways, 3 relate to corruption cases and the Hon'ble Supreme Court held in 1997 3 SCC 483 observed that payment of back wages after re-instatement might put premium on corruption. In the case reported in 1997(2) SLJ 38 cited in Railway's submission, the Hon'ble Supreme Court held that the question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding which was found unsustainable in law and he was unlawfully prevented from discharging the duties. This decision of the Hon'ble Supreme Court entitles the applicant to get back wages as he was prevented, though available being on bail from 26-7-88, to perform his duties by unlawful order of removal from service which was set aside by the Hon'ble Tribunal. In view of the law laid down in 1984(2) SLJ 82 A.L. Kalra Vs. Project & Equipment Corporation Ltd. and 1997 (2) SLJ 38 State of Punjab & Ors. Vs. Guru Sharan Singh & Ors., the applicant is entitled to the back wages.

6. In respect of last para of the submission, it is humbly submitted that the application is not premature nor liable to be dismissed on that account. As for the prayer for permitting the applicant to pass a final order, it is submitted that the order of the Tribunal became final after expiry of the

period of 3 months during which the respondents were permitted to initiate a fresh action towards imposing penalty on the applicant. As the respondents did not apply or pray for extension of time within a period of 3 months from the date of receipt, the judgement has become final. It may also be submitted even at the late stage of submitting written statement or even thereafter till ¹²⁶ the date the applicant did not file any application before the Hon'ble Tribunal praying for extension of time and as such question of permitting them to pass the final order is not sustainable in law.

It may also be submitted here that the show cause notice dated 9.12.95 (Annexure-A) of the written statement) proposing imposition of removal of service is a void order in view of the fact that the respondent No.4 had no authority to issue notice under law in view of the fact that on the date of issue of the notice applicant was not a railway servant. It may be stated that the Hon'ble Supreme Court in para 116 (page 231) Union of India Vs. Tulsiram Patel - 1985(2) SLJ 145 held that there cannot be exercise of power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of non-existent power and would be void. As the respondent No.4 do not have power now to take action against the applicant, the notice dated 9.12.95 (Annexure-A of the written statement) is void notice and there cannot be a question of taking any action under such a void notice. The question of the Hon'ble Tribunal permitting such action does not arise as the Hon'ble Tribunal did not restrain the respondents to take action on the notice.

7. It is, therefore, humbly submitted that the application may be allowed and the respondents directed to pay the retirement benefits and back wages for which the applicant and his counsel shall ever pray.


 R. Datta
 Advocate 8/9/97

26
Kesari Prakash
8/1/95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Original Application No. 269 of 1995.

Shri B.B. Nath. : Application.

- Versus -

Union of India & Others : Respondents.

LIST OF DATES

<u>DATE</u>	<u>PARTICULARS</u>	<u>PARA</u>	<u>PAGE</u>
1958	Applicant appointed as Causal Gangman.	4.2.	2
05.10.63.	Absorbed as regular Gangman ^{Way} under Chief Permanent Inspector ²³ N.F. Railway, Badarpur.	4.2.	2
23.08.84.	One Shri Sukumar Sutradhar lodged a FIR in Barkhala Police Station in the District of Cachar. That, one Shri Krishnapada Sutradhar and 7 others including the applicant assaulted him and his father on 23.08.84. As a result, of which his father succumbed to the injury. On receipt of which the Police registered a case and submitted chargesheet against the accused persons including the applicant under section 147/145/149/302/303/ 325 I.P.C.	4.3	2 & 3

Cont ... P/2.

<u>DATE</u>	<u>PARTICULARS</u>	<u>PARA</u>	<u>PAGE</u>
24.02.88.	The learned session Judge, Cachar, Silchar convicted all the accused including the applicant under section 302/34, 325/34 and 323/34 I.P.C. sentenced them for rigorous imprisonment for life and with a fine of Rs.1,000/- under section 302/34 I.P.C and rigorous imprisonment for 2 years with a fine of Rs. 250/- under section 325/34 I.P.C and also rigorous imprisonment for 3 months under section 323/34 I.P.C.	4.3.	3
26.07.88.	The applicant ^{and} another accused were released on ^{26.7.88} Bail ^{A.P.D.} by the Hon'ble Guwahati High Court vide order dated 22.07.88 in. Criminal Appeal No. 43 of 1988.	4.4.	3
12.07.89.	Their Lordships of Gauhati High Court vide judgement dt. 10.07.89 walkind to set aside the conviction and sentenced under section 302/34 I.P.C of the applicant along with 6 other co-accused of the applicant. Sentence under section 325/34 I.P.C was modified to the period already undergone	4.5.	3 & 4

<u>DATE</u>	<u>PARTICULARS</u>	<u>PARA</u>	<u>PAGE</u>
	only and conviction and sentence under 323/34 I.P.C was set aside.		
05.08.88.	The applicant was placed under suspension with retrospective effect from 24.02.88. R.D.	4.6	4
05.10.88.	The Assistant Engineer, N.F. Railway, Badarpur Ghat (Respondent No.4) removed the applicant from Service with retrospective effect from 24.02.88 under rule rule 14(I) of the Railway Servant (Discipline & Appeal) Rules 1968 on the allegation that the applicant was convicted with life sentenced by the Hon'ble session judge, Silchar. No notice to show cause was issued to the applicant before the order of removal was passed.	4.7	4
11.10.88. & 25.09.89.	The applicant preferred appeal to the Divisional Engineer (II), N.F. Railway, Lumding for his reinstatement of Service.	4.8	5
31.10.91.	That, the applicant attained the age of Supernuation.	4.12	7

<u>DATE</u>	<u>PARTICULARS</u>	<u>PARA</u>	<u>PAGE</u>
04.02.93.	The Divisional Engineer (Respondent No.3) disposed of the appeal regretting the request for reinstatement but offered re-appointment as fresh entrant. But the question of re-appointment does not arise as the applicant attained the age of superannuation on 31.10.91.	4.8. Annx-A/2	5 12
1993	The applicant filed Original Application No.110 of 1993 before the Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati for setting aside the order of removal issued under No. E/2(Loose)/154 dtd. 05.10.88 and order of appellate authority issued under No.E/47/1-E(new) dtd. 04.02.93 and payment of Pension etc.	4.9.	5
31.10.94.	The Hon'ble Central Administrative Tribunal partly allowed Annx-A/3 RD Original Application No.110/93 aside by setting the order of removal issued under No.E/2(Loose)/154 dtd. 05.10.88 and RD the appellate authority issued under No. E/47/1-E(new) dtd. 04.02.93 and ordered ⁱⁿ in ^{alia} RD	4.9 Annx-A/3	5 & 6 14 - 34

Cont ... P/5.

<u>DATE</u>	<u>PARTICULARS</u>	<u>PARA</u>	<u>PAGE</u>
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" in the result both the impugned orders namely the order dated 05.10.88(Annexure-A/4) passed by the Assistant Engineer(Respondent No.4) and (appellate)order dated 04.02.93 (Annexure-A/7) passed by the Divisional Engineer II (Respondent No.3) are hereby set aside and the matter is remitted to the Assistant Engineer,(Respondent No.4) for passing an order a fresh in accordance with the law and the Rules in the light of this judgement. Such orders when passed shall be communicated to the applicant. The applicant shall be entitled to prefer an appeal departmentally against that order if he is aggrieved with the same and is advised to do so.

It will be open to the authorities concerned to impose the penalty of compulsory retirement instead of penalty of dismissed, removal or reduction in rank, as a special case, if they are satisfied that such a penalty may be imposed. In event it will not be treated as a precedent for other similar cases by virtue of this order. We hope this aspect will be sympathetically considered.

The question of monetary benefits and/or retirement benefits it would arise depending upon the nature of penalty imposed shall be dealt with by the authorities concerned in accordance with the law and the ~~RRB~~ Rules. In the event of penalty of removal from service or dismissal is eventually imposed then the respondent may sympathetically consider granting to the applicant compassionate Pension to the extent permissible under Railway Pension Rule.

The disciplinary authority (Respondent No.4) is directed to pass the fresh order within a period of 3 months from the date of communication of a copy of this order to him.

<u>DATE</u>	<u>PARTICULARS</u>	<u>PARA</u>	<u>PAGE</u>
5 th 1st week of Dec. 1995. 22	No Order was passed within the period of 3 months stipulated by the Hon'ble Tribunal. The applicant filed the present application on 1st Week of Dec. 1995.		
23.12.95.	The applicant received a notice at 9.12.95 under Regd. Written Post to show cause as to why he should not be removed from Annx- AA A. Service.	5th of the 3	7 -9
03.01.96.	The applicant replied the notice stating that as he has already supernuated on 31.10.91 and the period of 3 months stipulated by the Hon'ble Tribunal was also over, the Assistant Engineer N.F. Railway, Badarpur has no authority or jurisdiction to issue any notice or any punishment under the Railway Servant(Disciplinary & Appeal) Rules 1968 and prayed for cancel cancellation of the show cause notice.	5th of the 3 Written Statement. Annx- AB B	10

Ramay Joth
Adm 28/1/97

723 - 4 DEC 1995

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

File by applicant margin

723
4 DEC 1995

(An application under Section 19 of the Administrative Tribunal Act, 1985 (Act No. 13 of 1985)

Original Application No. 269 /1995.

Shri Banka Behari Nath. : Applicant.

- Versus -

The Union of India & Others : Respondents.

I N D E X

Sl. No.	Particulars.	Page.
1.	Application -	2 to 8.
2.	Verification -	9.
3.	Copy of the removal Order No. E/3(Loose)/154 dtd. 05.10.88. (Annexure A/1)	10 & 11
4.	Copy of the appellate authority's Order No. E/74/1-E(New) dtd. 04.02.93. (Annexure A/2)	12
5.	Copy of the Judgment of the Hon'ble Tribunal in OA.NO.110/93. (Annexure A/3)	13 to 34.
6.	W.S on behalf of Respondent.	35 to 44.
7.	Rejoinder	45-46.

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J. B. K. Sharm
723

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Original Application No. 269 /1995.

Shri Banka Behari Nath, Son of
Late Bangshi Nath, Village -
Sonacherra, P.O. Chandranathpur,
District - Cachar, Assam.

..... Applicant.

- Versus -

1. The Union of India represented by the General Manager, N.F. Railway, Maligaon, Guwahati - 781011, Assam.
2. Divisional Railway Manager, N.F. Railway, Lumding, P.O. Lumding, District - Nowgong, Assam.
3. Divisional Engineer/II, N.F. Railway, Lumding, P.O. Lumding, District - Nowgong, Assam.
4. Assistant Engineer, N.F. Railway, Badarpur Ghat, P.O. Badarpur, District - Karimganj, Assam.

..... Respondents.

1. Subject matter of the application :

Payment of Pension, Graduity and other ~~Exx~~

Cont 2.

retirement benefit and Arrear Salary from 24.02.88 to 31.10.91.

2. Jurisdiction of the Tribunal :

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

3. Limitation :

The applicant submits that the application is within limitation.

4. Facts of the Case :

4/1. That, the applicant is a citizen of India being a permanent resident of Village - Sonecherra, P.O. Chandranathpur, District - Cachar, Assam.

4/2. That, the applicant was appointed as a ~~Massak~~ Casual Labour Gangman sometime in the year 1958 and was absorbed as a regular Gangman on 05.10.63 and was serving as a Gangman under Chief Permanent Way Inspector, N.F. Railway, Badarpur and posted at Chandranathpur.

4/3. That, one Shri Sukumar Sutradhar lodged an F.I.R, to the Officer-in-charge, Borkhola Police Station on 23.08.84 that one Shri Krishna Pada Sutradhar and 7 others including the applicant, assaulted him and his

father Late Lakhi Chaman Sutradhar on 23.08.84 as a result of which his father succumbed to the injuries. The Police, on receipt of the F.I.R, registered a case and submitted chargesheet against the accused persons including the applicant under Section 147/148/149/302/323/325 IPC and accused persons including the applicant were tried by the learned Session Judge, Cachar, Silchar in Session Case No. 151 of 1985 and by judgment dated 24.02.88 the Learned Session Judge, Cachar, Silchar convicted all the accused including the applicant under Section 302/34, 325/34, 323/IPC, and convicted all the accused including the applicant, for all the three offences and sentenced them to R I for life with fine of Rs. 1,000/- under Section 302/34 IPC ; R I for two years with fine of Rs. 250/- under Section 325/34 IPC and also R I for three months under Section 323 IPC.

4/4. That, all the accused persons including the applicant preferred an appeal before the Hon'ble Gauhati High Court in Criminal Appeal No. 43/1988 and also moved for bail. The Hon'ble Gauhati High Court was pleased to grant bail to the applicant and another accused vide order dated 22.07.88 and the applicant was released on bail from Silchar Jail on 26.7.88.

4/5. That, their Lordships of the Gauhati High Court vide judgment dated 12.07.89 were kind to set aside the conviction and sentence of life imprisonment under Section 302/34 IPC of the applicant alongwith six other co-accused. The order of conviction and

sentence under Section 302/34 IPC against accused Shri Krishna Pada Sutradhar was altered to Section 304 part II of the IPC and he was sentenced to R I for 4 years. However, all the eight accused including the applicant were convicted under Section 325/34 IPC. But their sentence of imprisonment was modified to the period already undergone except of Shri Krishna Pada Sutradhar. The order of conviction and sentence under Section 323/34 IPC against all the accused including the applicant was set aside.

4/6. That, after being released on bail on 26.07.88 the applicant reported for duty but he was put under suspension with retrospective effect from 24.02.88 by the Assistant Engineer, N.F. Railway, Badarpur Ghat (Respondent No.4) vide order No. E/2 (Loose) 2580 dated 05.08.88.

4/7. That, vide order No. E/2(Loose)/154 dated 05.10.88 the Assistant Engineer, N.F. Railway, Badarpur Ghat (Respondent No.4) removed the applicant from service with retrospective effect from 24.02.88 (from the date of conviction) under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 on allegation that the applicant was convicted with life sentence by the Hon'ble Session Judge, Silchar without any notice to show cause or without considering the circumstances of the case.

A copy of the Order dated 05.10.88
is annexed herewith as ANNEXURE-A/1.

4/8. That, the applicant filed two appeals dated 11.10.88 and 25.09.89 to the Divisional Engineer II, N.F. Railway, Lumding (Respondent No.3) for his ~~xxxxxxxxxx~~ reinstatement in the service. The appeal dated 25.09.89 was disposed by the Divisional Engineer II, N.F. Railway, Lumding (Respondent No.3) vide order dated E/74/1-E(New) dated 04.02.93 regretting the appeal for reinstatement. However, the applicant was intimated that his case can be considered for reappointment as fresh entrant. But as the applicant attained the age of superannuation on 31.10.91, question of reappointment did not arise.

A copy of the order dated 4.2.93
is annexed herewith as ANNEXURE-A/2.

4/9. That, being aggrieved by the order of the appellate authority, the applicant filed an application before the Hon'ble Tribunal, which was numbered as OA. 110/93, for setting aside the order of removal issued under No. E/2(Loose)/154 dated 05.10.88 (ANNEXURE - A/1) and the order of the appellate authority issued under No. E/74/1-E(New) dt. 04.02.93 (ANNEXURE - A/2) and for payment of Pension etc. The said OA.No. 110/93 was partly allowed by the Hon'ble Tribunal vide order dated 31.10.94 setting aside the order of removal issued under No. E/2(Loose)/154 dated 05.10.88 and that of appellate authority issued under No. E/74/1-E(New) dt. 04.02.93 holding inter-alia.

In the result both the impugned orders namely the order dated 05.10.88 (Annexure - A/4) passed by the Assistant Engineer (Respondent No.4) and (appellate) order dated 04.02.93 (Annexure - A/7) passed by the Divisional Engineer II (Respondent No.3) are hereby set aside and the matter is remitted to the Assistant Engineer, (Respondent No.4) for passing an order a fresh in accordance with the law and the Rules in the light of this judgment. Such order when passed shall be communicated to the applicant. The applicant shall be entitled to prefer an appeal departmentally against that order if he is aggrieved with the same and is advised to do so.

It will be open to the authorities concerned to impose the penalty of compulsory retirement instead of penalty of dismissed, removal or reduction in rank, as a special case, if they are satisfied that such a penalty may be imposed. In that event it will be treated as a precedent for other similar cases by virtue of this order. We hope this aspect will be sympathetically considered.

The question of monetary benefits and/or retirement benefits if would arise depending upon the nature of penalty imposed shall be dealt with by the authorities concerned in accordance with the law and the Rules. In the event of penalty of removal from service or dismissal is eventually imposed then the respondent may sympathetically consider granting to the applicant compassionate Pension to the extent permissible under Railway Pension Rule.

The disciplinary authority (Respondent No.4) is directed to pass the fresh order within a period of 3 months from the date of communication of a copy of this Order to him. "

A copy of the said judgment dated 31.10.94 is annexed herewith as
ANNEXURE - A/3.

4/10. That, the said judgment of the Hon'ble Tribunal was communicated to the applicant by the

Cont ... 7.

Section Officer(J) of the Hon'ble Tribunal under despatch No. 5005 dated 09.12.94 under Regd. Post and it is expected that the copy judgment were communicated to the respondents simultaneously.

4/11. That, although the Hon'ble Tribunal directed respondent No. 4, the Assistant Engineer, N.F. Railway, Badarpur Ghat, to issue a fresh order within a period of 3 months from the date of communication of this order, no orders whatsoever has been passed within the stipulated period of 3 months or thereafter nor the applicant has been paid his retirement benefit.

4/12. That, the applicant attained the age of superannuation on 31.10.91.

5. Grounds for Relief :

5/1. That, as the order of the removal dated 05.10.88(ANNEXURE - A/1) and that of the appellate authority dated 04.02.93(ANNEXURE - A/2) have been set aside and no fresh punishment was imposed on the applicant within the stipulated period, the applicant is entitled to the wages for the period from 24.02.88 to 31.10.91 and pension alongwith gratuity and other retirement benefits on and from 01.11.91.

6. Details of remedies exhausted :

There is no ~~remedies~~ remedies provided in the situation other than moving the Hon'ble Tribunal.

7. That, prior to filing the OA.NO. 110/93, the applicant filed an application before the Hon'ble Tribunal which was registered under No. 162/91 which was rejected considering time barred. Therefore, the applicant filed the OA.NO. 110/93, after his appeal was disposed by the ~~supreme~~ appellate authority.

7/1. At present no Suit, Writ Petition or application is pending before any Court or Tribunal on the subject matter filed by the applicant.

8. Relief Sought :

On the facts and circumstances of the case the applicant humbly prayers for :-

Issue of direction on the respondent for Payment of his wages ~~from~~ from 24.02.88 to 31.10.91 and for Pension from 01.11.91 along with Gratuity, ^{with interest} other retirement benefits as he is entitled and for this act of kindness the applicant shall ever pray.

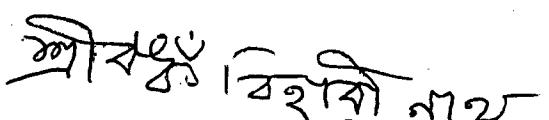
99

9. Particulars of application fees :

Indian Postal Order No. 524345
Dated - 30.11.95 for a Sum
of Rs. 50/- (Rupees Fifty) is
enclosed.

VERIFICATION

I, Shri Banka Behari Nath, Son of Late
Bangshi Nath, aged about 62 years, resident of
Village - Sonacherra, P.O. Chandranathpur, Dist-
rict - Cachar, Assam do hereby verify the contents
of paras 4, 7 and 9 are true to my knowledge and
belief and the rest are submission to the Hon'ble
Tribunal and that I have not supressed any material
fact.


Signature of the Applicant.

Dated : 26-22-78

Place : কাঞ্চনাথপুর

XXX

- 10 -

Annulment - 1975 A. 1

Copy of removal order No.
E/2(Locco)/154 dated 9/10/80.

No. F. Rly.

Notice of Imposition of penalty of removal from service.
(R.O. 8- Rule 14 of D.A.R.C.O published in 1975)

No. E/2(Locco)/154

dt. 9/10/80

Name - Sri Banka Bohari Nath

Father's Name - Bangshi Nath.

Date of birth - 3/10/03.

Station - CPWI/BPB.

There is Sri Banka Bohari Nath son of Bangshi Nath, Gangam gang No. 34, under CPWI/BPB who was ~~convicted~~ in 1980 contem by the Court of Session Judge/Almora in ~~accusation~~, case No. 191/87 (GR case No. 1749/84, 17/32, 323/83/84) L.P.C, the undersigned has carefully considered that the gravity of his offence is such as to warrant a ~~removal~~ from service by the court of law. Sri Banka Bohari Nath, Gangam is not a fit person to be retained in service.

The undersigned has passed the order as per Rule 14(1) D & A.R.C.O that Sri Banka Bohari Nath, Gangam has been removed from service with effect from 24-2-83 (from the date of suspension).

Signature Sd/-

Designation

Station.

A. Mehta
D. Comm. Officer
Mysore, dated 10.10.80.

contd...

Instruction

1. He will be/have been relieved from duties on 24/2/88.
2. Settlement dues. will be made at DRW(P)LNG
3. An appeal against the order lies to DEN/II/LNG.

Copy forwarded to DEN/II/LNG for information and necessary action please.

Copy forwarded to DRW(P)LNG for information and necessary action in reference to his letter No: E/74-1-LM(E) of 26/9/88.

Copy forwarded to CPWI/SPB for information and necessary action please.

Copy to P/case for records.

Sd/-

Asstt : Engineer

H.P.Rly. Badarpurghat.

A. Mehta

R. Duran. 1/1/88
Malgund, Dewasari-781011.

$A \sin x$ $A \overline{f_2}$ 44

W. F. R. L. Y.

OFFICE OF THE
DIVISIONAL RLY. MANAGER (W)
LUMDING.

NO. E/7.4/L-E(New).

DATED : : 1 -2-93.

To :
Shri Banka Behari Nath,
Ex. Gman

.(Thro : PWI/BPB).

Sub : Re-instatement in service

Ref : Your appeal dt. 25-9-88.

Your appeal dt. 25-9-89 was carefully been examined, relied upon the courts verdict and clearification thereon from G.M(Law) on which it was felt clear that, it is not a ~~clear~~ acquittal case and as such no benefit is extendable to you as applicable in case of clear acquittal is here by regratated.

Further, it may be stated that, your case can only be considered for re-appointment as fresh entrant, provided you apply for the same with clear consent.

Divl. Engineer (II)
for Divisional Rly. Manager (W)
Munding.

الله يحيي الموتى

Alle Rkt
R. Datta (Advocate)
Malgudi, Bangalore-781011.

- 13 -
Registered with A/D

Order
Applicant
us

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

Anax A/B

DESPATCH NO. 5005

DATED GUWAHATI, THE 9/12/94

ORIGINAL APPLICATION NO. : 110/93
MISC. APPLICATION NO. : 112/94
CONTEMPT PETITION NO. :
REVIEW APPLICATION NO. :
TRANSFER APPLICATION NO. :

Shri Bambha Bokari Nath APPLICANT (S)/
PETITIONER (S)

VERSUS

Union of India RESPONDENT (S)

To,

Shri Bambha Bokari Nath,
S/o. late Bongrahi Nath,
Vill. Sonachorra,
P.O. - Chanderathpur,
Dist. - Cachar, Assam.

Sir,

I am directed to forward herewith a copy of Judgment/Order dated 4.10.94 respectively,
31.10.94 as passed by the Bench of this Tribunal comprising of Hon'ble
Justice Shri M. G. Chaudhuri Vice-Chairman and Hon'ble
Shri G. L. Sangaline Member, Administrative in
the above noted case, for information and necessary action, if any.

Please acknowledge receipt.

Yours faithfully,

SECTION OFFICER (J)

Enclo. : As above.

(Fifteen sheet)

18/10/94

18/10/94
M. G. Chaudhuri

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI PENCH

Original Application No. 110/1993

Date of Order: This the 31st day of October 1994.

Justice Shri M.G.Chaudhari, Vice-Chairman

Shri G.L.Sanglyine, Member (Administrative)

1. Shri Banya Behari Nath, Son of
Late Bapashri Nath,
Village-Sonachorra, P.O.Chandranathpur,
Dist-Cachar,
Assam. Applicant.

By Advocate Shri R. Dutta

-Versus-

1. The Union of India represented by the General Manager, N.F.Railway, Naligaon, Guwahati-781011, Assam.
2. Divisional Railway Manager, N.F.Railway Manager, N.F.Railway, Lumding, P.O.Lumding, District-Nowgong, Assam
3. Divisional Engineer/II, N.F.Railway, Lumding, P.O.Lumding, District-Nowgong, Assam
4. Assistant Engineer, N.F.Railway, Bedarpur Ghat, P.O.Bedarpur, District-Kerimganj, Assam.

Respondents.

By Advocate Shri B. K. Sharma.

ORDER.

CHAUDHARI J. (V.C.)

The applicant who was working as Gangman, Gang No.34 under CPWI/BPB-N.F.Railway was removed from service with effect from 24-2-88 (on which date he had been put on suspension) vide Notice of Imposition of penalty and removal from service issued by Asstt.

Engineer, N.F.Railway B. Barpurhat, dated 5-10-88

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(Annexure A-4). It appears that he had preferred an appeal against the said order on 11-10-93 but copy of that appeal has not been produced. The applicant however has produced a copy of what may be described as further particulars submitted by him before the Divisional Engineer (II), N.F.Railway, Lumding on 25-9-93 (Annexure A/6) in which he prayed for reinstatement. It appears that while his appeal was pending the applicant challenged the removal notice dated 5-10-88 (and an earlier suspension order) in O.A. No.162/91 in this Tribunal. That came to be rejected at the admission stage on the ground that it was time barred on 8-1-92 vide Annexure V/n. The learned advocate for the applicant had not chosen to remain present on that day. The Divisional Engineer II, respondent No.3 refused the prayer for reinstatement and in substance confirmed the penalty of removal imposed upon the applicant, by his order (in the shape of a communication) dated 4-2-93 (Annexure A.7). The applicant then filed O.A. 78/93 against both the orders in May 93 but withdrew the same on 4-6-93 with leave to file a fresh application and thereafter filed the present application on 21-6-93 challenging the orders dated 5-10-88 and 4-2-93. Although what was issued on 5-10-88 was titled as notice and what was issued on 4-2-93 is in the nature of communication we shall refer to these as orders for the sake of convenience. The O.A. was earlier heard and disposed of by the Bench (Hague J, Vice-Chairman and Learned Administrative Member) by order dated 1-3-94. The application was allowed and the removal order dated 5-10-88 was quashed and the respondents were directed to impose penalty of compulsory

reliement upon the applicant and to extend to him all service and retiral benefits. The respondents however, applied for setting aside that order it having been passed ex parte. We have allowed that application being M.P.No. 112/94 by our order dated 4-10-94 and have re-heard the application on merits on 6-10-94.

2. The relevant facts giving rise to the impugned orders are as follows:-

(a) The applicant was employed as casual labour Gangman in 1958 and was absorbed as a regular Gangman on 5-10-63. He was attached to Gang No.34 and was working as such at the material time.

(b) He was involved in a murder case along with 7 others and was convicted for committing offences punishable under sections 302/34, 325/34 and 323 IPC by the Sessions Court, Cachar in Sessions Case No.151 of 1985, on 24-2-88. He was sentenced to suffer imprisonment for life for the offence of murder and to lesser terms of imprisonment for the other offences. The applicant was released on Bail by the High Court on 22-7-88. In view of the conviction the respondent No.4 firstly placed the applicant on suspension by order dated 5-8-88 with retrospective effect from 24-2-88 i.e. the date of conviction and thereafter passed the removal order on 5-10-88. That



life sentence in the criminal case. The respondent No.1 took the view that having regard to the gravity of the offence the applicant was not a fit person to be retained in service. Subsequently by judgment and order in the appeal against the conviction the High Court was pleased to acquit the applicant of the offences under sections 302/34 and 323/34 IPC but maintained the conviction for the offence under Section 325 r.w. 34 IPC. The sentence for that offence however was reduced to the period already undergone in custody. That order was passed in criminal Appeal No.43/1988 on 12-7-89.

(c) In view of his acquittal under Section 302/34 IPC the applicant submitted a replication in the appeal to the Divisional Engineer dated 25-9-89 pointing out that fact and submitting that since the order of removal was based on imprisonment for life that needed to be set aside in as much there was no ground for sustaining the punishment imposed upon him and prayed for his reinstatement. The Divisional Engineer however rejected the plea vide impugned order dated 4-2-93 wherein he has stated that the applicants appeal was carefully examined and that looking to the verdict of the courts and opinion of GM(Law) it was not a case of clear acquittal and therefore no relief can be granted. He however made it clear that his case can be considered for re-appointment as fresh entrant.

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Order Appeal

The applicant feeling aggrieved by this order has approached the Tribunal.

3. The grievance of the applicant is that the circumstance of his acquittal for offence under Section 302/34 IPC has not been duly taken into account by the appellate authority and there has been violation of Rule 14 (1) of the Railway Servant (Discipline and Appeal) Rules 1968 and also principles of natural justice in as much he was not given notice or opportunity to show cause against the proposed penalty before it was imposed or confirmed. Thus according to him the impugned orders are bad in law and illegal and require to be quashed. It is also his contention that the punishment awarded is disproportionate to the ~~grave~~ misconduct and is excessive and harsh.

4. The respondents have resisted the application. They inter alia contend that the application is barred by res-judicata, that the contentions now sought to be raised were not raised in the departmental appeal and cannot therefore be agitated now, that the involvement of the applicant in a heinous crime and his conviction by trial court rendered the punishment of removal from service proper and there is no infirmity in the impugned orders. They further contend that the orders have been rightly passed in terms of Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules 1968. They point out that although dismissal from service would have been justified the competent authority had however taken a lenient view and imposed the penalty of removal which

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had enabled the appellate authority to give an opportunity of re-appointment as fresh entrant to the applicant. The respondents submit in these premises that the application is liable to be dismissed.

In the above noted background following points arise for consideration:

1. Whether the application is barred by res-judicata ? (No)
2. Whether the application is barred by limitation ? (No)
3. Whether the impugned orders are vitiated (i) for breach of Rule 14 (i) or (ii) for violation of principles of natural justice? (Yes-for breach of Rule 14(i))
4. Whether the penalty imposed is excessive and harsh ? (Does not survive)
5. Whether applicant is entitled to be granted any relief ? (Impugned orders set aside - matter remitted for fresh order)

Mr. R. Dutta, learned counsel for the applicant made an impassioned plea that the applicant who is an extremely poor person and has already retired on 31-10-91 needs to be saved from the vigour of the illegal and harsh punishment based on reasons extraneous to his duty and driving him as a consequence to penury and miserable existence in old age. He submitted that if the removal is set aside then the applicant can hope to get monetary benefits of pension which will enable him to meet both ends meet and survive. We must record here that Mr. Dutta who seems

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to have made his services available almost gratis to the applicant has put his heart and soul in arguing the matter so much so that it instantly evokes sympathy. However, we can only decide the matter according to law and not on sympathy. We now proceed to deal with the points enumerated above.

Point No.1.

It is clearly seen from the order on earlier O.A. (162/91) dated 8-1-92 that the application was not dismissed for default but was rejected as time barred. The respondents contend that it is a conclusion on merits and thus operates as res-judicata and bars the present O.A. We do not however agree. The observation cannot be read as a conclusive finding as parties were ^{not} ~~not~~ at that stage. Hence we hold that no bar of res-judicata arises and answer the point in the negative.

Point No.2.

We feel it necessary to examine the question of limitation since the earlier application was rejected and since the order dated 5-10-88 impugned in the instant application was also the subject matter of that O.A. It appears to us that the applicant had approached the Tribunal on the earlier occasion when his appeal before the respondent No. 4 had not been disposed of, otherwise the present assume, because the appellate order would have mentioned about its disposal. It does not so record. The appeal was disposed of on 4-2-93. The earlier application at the

K. Srinivas, Advocate
M.A. (Engg.) M.A. (Hons.) LL.B. (Hons.)

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most could be said to be premature by filed. In any event the order of removal dated 5-10-88 having merged in the appellate order dated 4-2-93 the present application filed on 21-6-93 is clearly within limitation under Section 21 of the Administrative Tribunals Act. We hold accordingly and answer point No.2 in the negative.

Point Nos 3 & 4.

Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968 lays down special procedure in certain cases of disciplinary action. It inter-alia provides that where any penalty is imposed on a Railway Servant on the ground of conduct which has led to his conviction on a criminal charge the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. This rule operates notwithstanding anything contained in Rules 9 to 13 which prescribe the procedure for imposition of penalties. The penalty imposed upon the applicant by the impugned order dated 5-10-88 of removal is a major penalty under Rule 6 (viii). It states that the order has been passed as per Rule 14(1) of D & AR-68. A plain reading of Rule 14 shows that the disciplinary authority may pass such orders as he deems fit after considering the circumstances of the case. The authority who passed the order dated 5-10-88 recorded that the conviction of the applicant on a grave criminal charges and the sentence of life imprisonment imposed upon him by the court of Sessions has been carefully considered by him and that the

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gravity of the offence is such as to warrant a severe form of punishment by the court of law and (therefore) the applicant is not a fit person to be retained in service. It is quite clear that the sole basis on which the removal of applicant is based was his conviction for criminal offences.

5. Mr. Dutta however submits that the order is vitiated for two reasons. Firstly, because what is contemplated by Rule 14 is that the disciplinary authority has to consider the circumstances of the case which in the submission of the learned counsel implies consideration of facts of the case leading to the conviction and it has to come to its own conclusion either that any grave misconduct during the course of service with the Railways was committed or the delinquent was found guilty of moral turpitude so as to render his further retention in service undesirable or contrary to public interest. Such an exercise has not been done by respondent No. 4 by reference to the facts of the case and he has simply relied on the circumstance of conviction by the criminal Court and that is wrong. The submission of the counsel in other words is that mere conviction of a Railway servant on a criminal charge is not enough to warrant imposition of the penalty but there has to be subjective satisfaction of the disciplinary authority independently upon the facts of the criminal case to conclude that a penalty was called for. The Railway Board's letter No. E 50 RG 6-6 dated 4-2-1950 and E 56 RG 6-6 dated 31-5-56 are called in aid by the learned counsel in support of this proposition. A gist of

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these circulars is to be found at PP 54 and 55 in Brochure on Railway servants (D & A) Rules 1963 issued by Ministry of Railways, 1976 edition. Mr. Dutta also relies upon the decision of the Supreme Court in Union of India Vs. Abdul Hamid, 1976 AISLJ SC P.8 wherein it is held that the word 'consider' (in contra-distinction with word 'determine') (merely) connotes that there should be active application of mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. Referring to another decision of the Supreme Court in Union of India Vs. Tulsiram Patel 1985 (2) AISLJ SC 145 Mr. Dutta submitted that it is not mandatory in all cases of conviction that major penalty of removal should be imposed and a lesser penalty can be imposed depending upon the facts and circumstances of the case. Lastly, the learned counsel relies upon the decision of the Kerala High Court in the case of Krishna Kutty Vs. Senior Superintendent of Post Offices reported in 1975 AISLJ Kev P 749 wherein it is held that a conduct which is not in course of employment cannot be a misconduct and cannot be a subject matter of a disciplinary action and that the conviction on criminal charge for a conduct which is not misconduct cannot be a reason for taking action against a Govt servant. The learned counsel submits that the respondent No. 4 has not acted in consonance with these principles and he not having actively applied his mind to the facts and circumstances of the case which had led to the conviction of the applicant his order is rendered illegal. Learned counsel submits that such had such

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an exercise — done by the Respondent No.4. It is possible that he may have been inclined to award a lesser penalty.

6. Mr. Sharma, the learned Railway counsel however submits in answer to the above argument that a conviction on a criminal charge whether relating to an offence committed during the course of employment or otherwise is sufficient to attract penalty under Rule 14 (1). He submits that the Respondent No.4 had taken into account the fact of conviction and the gravity of the offence and he was not required to consider anything more. Mr. Sharma further submits that in the circumstances a regular disciplinary inquiry was not called for and the order dated 5-10-88 was passed according to the rules and is perfectly legal. The counsel submits that as on the day when the order was passed the applicant was suffering the capital sentence and the respondent No.4 was justified in taking that circumstance into account.

7. In order to appreciate the above submissions of the counsels we may at this stage itself refer to the decision of the Railway Board in this respect the gist of which is to be found at P 53 of the Brochure (Supra). It is stated:

"while action to dismiss, remove or reduce an employee or impose on him any penalty on the basis of a conviction on criminal charge, is to be taken on the merits of the case, it is not necessary to observe the usual disciplinary procedure before taking action

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to dismiss, remove etc. In such cases, it is not even necessary to serve a charge-sheet on any employee and the departmental penalty may be imposed straightaway on the ground of conduct which has led to his conviction on a criminal charge." (underlines supplied)

The underlined portion above rather suggests that while acting under rule 14 the authority has to look to the merits of the case and has to take into account the conduct which led to the conviction independently of the finding recorded by the criminal Court. The rational behind this exercise clearly is to find out the impact of that conduct on the suitability of the delinquent to perform his duties normally for judging whether he must be dismissed or removed or only reduced in rank. For instance in a given case the conduct leading to the involvement in the offence may be relating purely to a private matter and may not involve moral turpitude or any element which is likely to affect the suitability of the servant in the discharge of his duties with the Railways. If punishment other than dismissal or removal is to be considered. The involvement may be direct or indirect. All these factors have therefore to be weighed for determining the nature of the penalty to be imposed. Mere circumstance of conviction would not therefore be the sole criteria.

In this view of the policy guideline issued by the Railway Board would rather support Mr. Dutta's argument than of Mr. Sharma. There is substance in the argument of Mr. Dutta that while undertaking such a consideration the authority would be required to see whether the conduct that led to the conviction was any way concerned or

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relevant to the employment or was entirely outside it and/or whether it involved moral turpitude and in the light of that conclusion the authority has to decide upon the proper quantum of punishment and is not to be guided by the quantum of punishment imposed by the Criminal Court even though on the same set of facts. It is obvious that if this test is applied then the impugned order dated 5-10-88 must be held to be ~~bad~~ for want of such an exercise as it is not reflected in the order. Mr. Dutta precisely wants us to so hold. Mr. Sharma however submits that this would not be the correct position in law. He relies upon the second proviso to Article 311(2) of the constitution of India and contends that applicant is not entitled to any enquiry or hearing and the subjective satisfaction of the Respondents No.4 cannot be challenged by him.

9. We are however inclined to accept the submission of Mr. Dutta having regard to the language of 2nd proviso to Article 311 (2) itself which refers to "on the ground of conduct which has led to his conviction on a criminal charge". The words used are not merely "the conviction on a criminal charge" and therefore what has to be considered by the disciplinary authority is 'conduct which has led to the conviction'. That implies application of mind to the facts of the case leading to conviction and conduct of the delinquent revealed therefrom and the light of that the quantum of punishment is to be decided. Although that may be his unilateral decision but such an exercise is necessary. A reference to the relevant case law could be apt to be made here. The Supreme Court was pleased to

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hold in Union of India Vs. Tulsiram Patel (AIR 1985 SC 1416)
(already mentioned earlier) 1985 AISLJ SC 145 as follows:

"Where a disciplinary authority comes to know that a government servant has been convicted ^{as} ~~as~~ a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and if so, what the penalty should be. For that purpose it will have to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case and various factors.. This, however, has to be done by it ~~ex parte~~ and by itself. Once the disciplinary authority reaches the conclusion that the Govt. servants' conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned Govt. servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Govt servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order."

R. Dutt, Advocate
Malgund, Guwahati-781011.

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10. The impugned order gives the impression that the Respondent No.4 has imposed the penalty of removal upon the applicant by way of automatic entailment of that penalty as a consequence of his conviction. What the authority has considered is the gravity of the offence as he was convicted for offence of murder and the sentence imposed upon him of life imprisonment. To the extent that the offences for which the applicant was convicted were indeed ^{heinous and grave} ~~not contentious dispute~~ but that by itself is not sufficient to attract the second proviso of Article 311(2). Since the authority has not acted within the parameters laid down by the Supreme Court (in Tulsirams') case the order of imposition of penalty will have to be held as ~~bad~~ read in law.

11. In the case of R.N. Gulanath Vs. Union of India & Ors. AISLJ 1987(4) (CAT) P.601 Guwahati Bench (as then constituted) reference was made to the decision of the Supreme Court in Satyavir Singh V. Union of India, 1986(I) ASLJ 1 SC wherein the summation of the principles laid down in Tulsirams' case (Supra) was made and conclusion No.52 was reproduction of the passage quoted above by us from Tulsirams' case. We are therefore unable to agree with the submission of Mr. Sharma based on second proviso to Article 311(2) to the extent of the consideration of the matter by the disciplinary authority.

12. Turning now to the appellate order that also suffers from the same defects as we have found in the order of the disciplinary authority. Worse still is the fact that by that time there was a material change in the situation. The applicant was acquitted on appeal by the

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High Court of the offences under section 325/34 and 327/4 11C. The sentence of imprisonment for life which was the basis of the order of the disciplinary authority had been set aside. The view of the appellate authority that there was no clear acquittal as the conviction under Section 325/34 was maintained by itself was not sufficient to maintain the penalty of removal if ^{it is} to ~~is~~ be ~~done~~ and the appellate authority was required to ~~undertake~~ by himself on committing the matter to the disciplinary authority the exercise required to be done as laid down by the Supreme Court in Tulsiram's case and then decide whether the penalty of removal was called for or it was a case for lesser punishment. For these reasons we hold that the appellate order is also infirm and bad in law and cannot be sustained.

13. That brings us to the second leg of the argument of Mr. Dutta. He submits that penalty imposed upon the applicant is illegal in as much as no opportunity to show cause against the proposed punishment was given to the applicant and that is violative of relevant rules as well as principles of natural justice. He relies upon the Railway Servants (Discipline and Appeal) Amendment Rules, 1987 made by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution by which amendments were made to original Rules of 1968. Amended Rule 2 provides:

"In rule 14 of the Railway Servants (Discipline & Appeal) Rules 1968, for the proviso, the following provisos shall be substituted namely;

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Provided that the Railway Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case following under clause (i)

Provided further

The amended rules came into force on 21-11-87. Provision of Rule 14 of the parent Rules reading "The disciplinary authority may consider the circumstances of the case and make such orders therein as it deems fit" must now be read alongwith the aforesaid proviso which leads to the position that after the disciplinary authority reaches a conclusion about the penalty to be imposed after considering the circumstances of the case that he may give an opportunity to the Railway servant of making representation on the penalty proposed to be imposed before any order is made in a case following under clause (i) of Rule 14 (which is applicable in the instant case). It is pertinent to note that the ~~Amendment~~ Rules have been made under Article 309 of the constitution and relate to Railway Servants.

Mr. Sharma submits that the proviso to Rule 14(i) added by the amendment rules is directory in nature and having regard to the decision of the Supreme Court in Tulsiram's case explaining the scope of the second Proviso to Article 311(2) of the Constitution, the applicant was not entitled to be given any opportunity to show cause against the proposed penalty as a matter of right and failure to do so therefore does not

14. The In rival submissions of the counsel led to a seemingly conflicting situation. In our view however when the amended rule is read harmoniously with the ratio in Tulsirams' case the resultant position would be as follows:-

In a case where a Railway servant has been convicted on a criminal charge the disciplinary authority will in the first instance peruse the judgment of the criminal Court (including judgment of appellate Court) if any, and shall consider all the facts and circumstances of the case and various other factors. Thereafter it will consider whether the conduct of the delinquent servant which led to his conviction was such as warrants the imposition of penalty. It shall then decide what penalty should be imposed. All the above steps will be taken by the disciplinary authority by ex-parte and by itself without hearing concerned railway servant.

15. After the decision is so reached and penalty is proposed the disciplinary authority will consider whether looking to the totality of the circumstances the delinquent servant may be given an opportunity of making a representation on the penalty proposed to be imposed. Whether to give such opportunity or not shall be within the discretion of the Disciplinary authority. The discretion however shall be exercised reasonably. The authority may in his discretion in a case falling under CL i of Rule 14 permit a written representation to be filed or may hear the applicant orally. After duly considering the representation the disciplinary authority

will make the final order imposing the appropriate penalty.

16. The delinquent servant concerned however is not entitled to make a representation or of being heard on the question of penalty as a matter of right by reason of the exclusionary effect of the 2nd proviso to Article 311(2) of the Constitution.

17. In our opinion the amended provision is directory in nature and all that it does is to confer a discretion upon the disciplinary authority to give an opportunity in a case falling under Rule 14(i) of Railway Servants (Discipline & Appeal) Rules of making representation on the penalty proposed. It will however be desirable and in keeping with the ~~spirit~~^{spirit} behind the amended rules to afford an opportunity to the concerned Railway servant to make a representation where drastic penalty of dismissal or removal from service is proposed.

18. It is needless to repeat that in the instant case both the impugned orders have not been passed in conformity with the procedure envisaged by law as detailed above and can not be sustained.

In this connection it was sought to be contended by Mr. Sharma that in the appeal to the appellate authority, the applicant had not raised all the contentions he has now urged and therefore those may not be entertained. We are not impressed by this submission. We think that as the Tribunal is enjoined with the duty to do substantial justice to the aggrieved party we ought not to shut out the applicant from urging all the contentions relevant to carry forward his case particularly on questions of law.

We thus hold that the impugned orders cannot be sustained in law. Point No.3 is accordingly answered in the

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affirmative on 1st part. But it does not arise. Point No.4 does not survive.

Point No.5:

We now advert to the question as to what relief ought to be granted. Obviously even after the orders are set aside the question of reinstatement of the applicant does not now survive as he has since retired. Only notionally he could be deemed to have continued in service from the date since when his removal became effective and ~~up till~~ the date of his retirement. That will be material only for the purpose of availment of monetary benefits. We cannot however shut our eyes to the fact that the applicant has been convicted ~~of~~ ^{on} a criminal charge and that entails a penalty necessarily. The question of his reinstatement thus cannot arise. All that is required therefore to be done is to require the authorities concerned to impose an appropriate penalty after conforming with the procedure laid down under the law. The matter has therefore to be remitted for doing so. In the circumstances, we feel that interests of justice will be better served if we direct the disciplinary authority i.e. Respondent No.4 to reexamine the case and pass a fresh order in accordance with the law. That will leave open one more opportunity of appeal to the applicant.

In the result both the impugned orders namely the order dated 5-10-1988 (Annexure A/4) passed by the Assistant Engineer (Respondent No.4) and the (appellate) order dated 4-2-1993 (Annexure A/7) passed by the Divisional Engineer (ii) (Respondent No.3) are hereby set aside and the matter is remitted to the Assistant Engineer, (Respondent No.4) for passing an order afresh in accordance with the

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law and the Rules in the light of this judgment. Such order when passed shall be communicated to the applicant. The applicant shall be entitled to prefer an appeal departmentally against that order if he is aggrieved with the same and is advised to do so.

It will be open to the authorities concerned to impose the penalty of compulsory retirement instead of penalty of dismissed, removal or reduction in rank, as a special case, if they are satisfied that such a penalty may be imposed. In that event it will not be treated as a precedent for other similar cases by virtue of this order. We hope this aspect will be sympathetically considered.

The question of monetary benefits and/or retirement benefits if would arise depending upon the nature of penalty imposed shall be dealt with by the authorities concerned in accordance with the law and the Rules. In the event of penalty of removal from service or dismissal is eventually imposed then the respondents may sympathetically consider granting to the applicant compassionate Pension to the extent permissible under Railway Pension Rules.

✓ The disciplinary authority (Respondent No.4) is directed to pass the fresh order within a period of 3 months from the date of communication of a copy of this order to him.

Application is partly allowed in above terms. As questions of law were involved there will be no order as to costs.

Copy be sent to the Respondents as early as practicable.

TRUE COPY

प्राप्तिक्रिया

Sd/- M.G.CHAUDHARI
VICE CHAIRMAN

Sd/- G.L.SANDLYINE
MEMBER (ADMIN)

Section Officer (J)

आनुसन्धान अधिकारी (प्राप्तिक्रिया)
Central Administrative Tribunal

काशी विहारी अधिकारी

Central Administrative Tribunal

O.A. No. 269/95

Shri B.B. Nath

- Vs -

U.O.I. & Others

WRITTEN STATEMENT ON BEHALF OF THE
RESPONDENTS

The answering respondents beg to state as follows :

1. That the answering respondents have gone through a copy of the O.A. and have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the O.A. are categorically denied. Further the statements which are not borne on records are also denied and the applicant is put to the strictest proof thereof.
2. That before dealing with the various contentions made in the instant O.A., the answering respondents beg to state that the instant O.A. is totally misconcieved and there being suppression of material fact, same is not maintainable. The instant O.A. is also prematured and thus liable to be dismissed.
3. That with regard to the statements made in paragraphs 4. 1 to 4.9 of the O.A., the answering respondents do not admit anything contrary to the relevant records.
4. That with regard to the statements made in paragraph 4.10 of the O.A., the answering respondents do not admit

Information for the petition
is not available for which
copy could not be served
from and when it will
be available (copy will
be served).

③. Mehta
Advocate
31.5.96.

anything contrary to the relevant records. Copy of the Judgment was received in the office through official process some time in January 1995.

5. That with regard to the statements made in paragraph 4.11 of the application, it is stated that by the Judgment in question, the competent authority was directed to pass a fresh order within a period of three months from the date of receipt of the copy of the order thereof. It will be pertinent to mention here that before passing the Judgment dated 31.10.94, the O.A. was earlier heard and disposed of by the Hon'ble Tribunal by an order dated 1.8.94. The O.A. was allowed. The respondents, however, applied for setting aside that order ~~same~~ having been passed ex-parte. The prayer of the respondents made vide application being M.P. No. 112/94 was allowed by an order dated 4.10.94 and the O.A. was re-heard on merit on 6.10.94 and eventually, the Judgment dated 31.10.94 was passed directing the respondent to pass a fresh order on the basis of the observation made in the Judgment and materials on record. This part of the story has been suppressed by the applicant. Be that as it may, the records pertaining to the case was sent to the Headquarter for the purpose of filing M.P. No. 112/94. Although the Judgment was delivered on 31.10.94 with the direction to pass a fresh order within three months from the date of receipt of the copy of the Judgment, in absence of ^{matter} record, the ~~order~~ could not be processed. The records were somehow misplaced and after making correspondences in this regard and after tracing of the record, process was already started towards passing the final order in terms of Judgment. To that effect, a show cause notice was issued

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to the applicant on 9.12.95 which he duly acknowledged. E.C.
E.D.
The applicant has also submitted his reply on 3.1.96 to the
said show cause notice. The instant O.A. was admitted on
19.1.96 on which date the Standing Counsel for the Railway
could not attend the Hon'ble Tribunal and accordingly,
Leave Note was also given. However, the application was
admitted on the basis of the submission made on behalf of
the applicant. Much before this date of admission i.e.
19.1.96, the applicant duly received the show cause notice
dated 9.12.95 and also filed his reply dated 3.1.96.
Both these aspects of the matter more particularly submission
of reply dated 3.1.96 was suppressed by the applicant but
for which perhaps the O.A. would not have been admitted ~~same~~
being prematured. Thus the applicant is guilty of suppression
of material fact on which score alone, the instant O.A.
is liable to be dismissed.

Copies of the show cause notice dated 9.12.95
and the reply of the applicant dated 3.1.96 are
annexed herewith as ANNEXURES-A and B respectively.

6. That with regard to the statements made in paragraph
4.12 of the application, it is denied that the applicant
had attained the age of superannuation on 31.10.91 inasmuch
as before he could attain~~ed~~ the age of superannuation on
31.10.91, he was removed from service pursuant to his
conviction in a criminal case. Although the Hon'ble Tribunal
has set aside the orders passed by the disciplinary as well
as appellate authority, but having regard to the facts
and circumstances of the case and more particularly in view
of the criminal conviction of the applicant was not pleased

to direct reinstatement of the applicant in service. Thus in deciding the matter in point No. 5, the Hon'ble Tribunal passed the following order - "We cannot however, shut our eyes to the fact that the applicant was convicted on a criminal charge and that entails a penalty. Necessarily the question of his reinstatement ~~xxxx~~ thus cannot arise. All that is required, ~~xxxx~~ therefore, to be done is to require the authorities concerned to impose an appropriate penalty after conforming with the procedure laid down under the law. The matter ~~has~~, therefore, to be remedied for doing so. In the circumstances, we feel that the interest of justice will be better served if we direct the disciplinary authority i.e. the respondent No. 4 to examine the case and pass the fresh order in accordance with law. That will leave open ~~one~~ more opportunity of appeal to the applicant."

7. That with regard to the grounds raised for relief the answering respondents beg to state that due to the circumstances beyond ~~xxxxxx~~ the control of the respondent the final order afresh could not be passed within the prescribed period of three months for which they tender sincere apology before the Hon'ble Tribunal. It is sincere regretted that the order as was directed to be passed within a period of three months from the date of receipt of the Judgment has not been able to be passed and there has been a delay of a few months. Such delay is totally unintentional and accordingly they tender unconditional apology before the Hon'ble Tribunal. After issuance of the show cause notice, the applicant ^{replied to} ~~xx~~ ^{xx} the same vide his letter dated 3.1.96 but before any action could be taken, he has approached this Hon'ble Tribunal by filing the instant O.A. and the

same has been admitted on 19.1.96. Thus in view of the such admission, the respondents have not been able to pass any final order. Accordingly, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to accord necessary permission to the respondents to pass the final order with the direction that the pendency of the instant O.A. shall not be a bar towards passing of such a final order.

8. That the respondents beg to state that the instant O.A. is totally misconcieved and has been filed solely on the ground that since no final order is passed within three months as was directed by this Hon'ble Tribunal, the applicant is automatically entitled to his back wages and that he should be deemed to be retired from services attaining the age of superannuation on 31.10.91. Such a plea is wholly untenable firstly because of the fact that this Hon'ble Tribunal has not passed any such order so as to give such effect as has been contemplated by the applicant and secondly, the inability of the respondents towards passing the final order within a period of three months as was directed by the Hon'ble Tribunal does not by itself absolve the applicant from the criminal conviction warranting passing of an order in accordance with law as has been directed by this Hon'ble Tribunal in the impugned judgment at point No. 5. The Hon'ble Tribunal has never ordered that on failure to pass an order within three months, the applicant will be automatically entitled to reinstatement in service with all consequential benefits. It may be a question of irregularity but not illegality. For the delay on the part of the ~~xxxxxxx~~ competent authority,

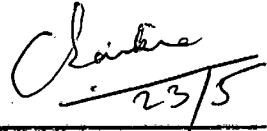
to pass the final order, the respondents have already tendered unconditional apology in acceptance of which and as has been prayed for, an order may kindly be passed permitting the respondents to pass the final order in accordance with law which the competent authority has not been able to do in view of the pendency of the instant O.A.

9. That in view of the pendency of the facts and circumstances stated above, the instant O.A. is not liable to be dismissed with cost.

VERIFICATION

I, Shri C. Sankia aged about 31 years, by occupation Railway service, working as Dy. Chief Personnel Officer (N.G) of the N.F. Railway Administration, do hereby verify and state that the statements made in paragraphs 1 and 2 are true to my knowledge ; those made in paragraphs 3 to 8 are matters of records maintained in the office of the Railway and the rest are my humble submissions before this Hon'ble Tribunal, and I have not suppressed any material facts.

And I sign this verification on this the 23rd day of May 1996 at Guwahati.


23/5

(C. Sankia)

उप मुख्य कार्मिक अधिकारी (राज०)
Dy. Chief Personnel Officer (G)
पू० स०० रेलवे, गुवाहाटी-781011.
N.F. Ry., Guwahati-781011.

N.F. RAILWAY
(SHOW CAUSE NOTICE)
(Reference Rule - 14 of DAR-68 Published in 1976)

No. E/2/Lease/156

Dated : 09.12.95.

To
Shri Banka Bihari Nath,
Son of Late Bangshi Nath,
village Sonacherra,
P.O. Chandranathpur,
Dist. Cachar, Assam,
Ex. G/Man, G/No. 34
Under PWI/Badarpur.

Pursuant to your conviction in a criminal case, you were removed from service in exercise of the power under Rule 14(1) of the RS(D&A) Rules vide order No.E/2/Losse/154 dt. 5.10.88. The order of removal was confirmed vide order No.E/74/1-E(New) dated 4.2.93 by the DEN/II/LMG/ holding inter alia that the order passed on criminal appeal was not a case of acquittal and as such, no benefit was extendable to you.

2. The aforesaid 2 orders were challenged by you before the Hon'ble CAT/GHY by filing OA No.110/93. The Hon'ble Tribunal was pleased to set aside both the aforesaid orders on technical ground and the matter was remitted back to the AEN for passing an order afresh in accordance with law and the rules in the light of the judgment passed by the Hon'ble Tribunal. Hence, this order after carefully going through the said judgment of the Hon'ble Tribunal.

3. You alongwith 7 others were convicted under section 302/34, & 325/34 and 323/34 IPC passed by the learned Sessions Judge, Cachar, Silchar in session's Case No. 151/85 arising out of GR Case No. 1742/84. On perusal of the said order of conviction, it transpires that you were involved in a most heinous crimes of murder. Your conduct led to your conviction on a criminal charge as stated above. However, on appeal before the Hon'ble Guwahati High Court (Criminal Appeal No. 43/1988) your conviction U/S 302/34 & 323/34 were set aside but your conviction U/S 325/34 was upheld modifying the sentence of imprisonment & to the period already undergone and set aside the sentence of fine imposed.

Contd...P/2.

4. On perusal of both the judgments passed by the learned sessions Judge and the Guwahati High Court, it appears that you were involved in a most ^{heinous} crimes involving death of a person. Although in the appellate order passed by the Hon'ble High Court, your sentence U/S 302/34 and 323/34 IPC were set aside. The Hon'ble Court was pleased to uphold your conviction U/S 325/34 with the clear finding that the prosecution had proved beyond reasonable doubt that you along with 7 others had committed offence U/S 325/34 I.P.C. In this connection, some of the findings recorded by the appellate Court are note-worthy. In para 6 of the judgment it has been held that you along with 7 others were involved in assaulting one Lakhi Charan and his son Sukumar with deadly weapon and that they were attacked at a lonely place. It is also the finding of the appellate court that all the accused persons (including you) took active participation in assaulting Sukumar and Lakhi Charan. In para 7 of the judgment it has been mentioned that it was established that the common intention of the accused party was to assault both Lakhi Charan and Sukumar and in furtherance of their common intention they did assault on both of them and accused grievous injury. Thus the appellant court held that all the 8 accused persons had committed offence u/s. 325/34 IPC.

5. With the above finding, the appellate court although set aside your conviction u/s 302/34 and 323/34 nonetheless upheld your conviction u/s 325/34 IPC. The findings recorded by the appellate court reflected your conduct which led to your aforesaid conviction. Your such conduct is ^{unbecoming} of a Railway servant.

6. Having regard to the over-all circumstances of the case and your conduct leading to your conviction in a most ^{heinous} crimes, and on careful perusal of the aforesaid judgment, I am of the opinion that you are not a fit person to be retained in a Railway service and that your conduct leading to your aforesaid criminal conviction is such that the penalty of removal should be imposed upon you in exercise of power under Rule 14(1) of the RS(D&A) Rules.

7. Accordingly, you are hereby given an opportunity of making representations on the penalty proposed to be imposed. Your such explanation against the penalty proposed should reach the undersigned within 15 days from the date of receipt of this order by you. On your failure to make any representation against the proposed penalty, it will be presumed that you have got nothing to say against the proposed penalty and necessary order will be passed in accordance with law and the rules.

Signature

Designation

Station

Copy to :

1. DEN/II/LMG for information and necessary action please.
2. DRM(P)/LMG for information and necessary action in reference to his letter No. E/74-1-LM(E) dt. 28.9.88.
3. CPW1/BPB for information and necessary action please.
4. Copy to P/Case for records.

Assistant Engineer,
N.F. Rly, Badarpurghat.

...

After 1st
Chancery
Parv. Calcutta
31.5.96

To

The Assistant Engineer,
N.F. Rly, Badarpurghat,
P.O. Badarpurghat.
District Karimganj, Assam.

Respected sir,

Sub : Show Cause notice.

Ref : Your No.E/2/Loose/156 dt. 9.12.95.

With reference to your aforementioned letter, which was despatched on 18.12.95 under Regd. Letter No. 5319, I beg to state the following for information and necessary action.

That sir, I attained the age of superannuation on 31.10.91 and therefore, retired from service on that date and is not a Railway servant with effect from 1.11.91. As such your consideration that I am not a fit person to be retained in a Railway service does not arise, as I am no more in Railway service since 1.11.91.

That sir, the Railway servants (Discipline and Appeal) Rules, 1968 applies only to the Railway servants and as I have ceased to be a Railway servant, the said rules have no application on me.

That sir, as I am not a Railway servants as you yourself have admitted by describing me "Ex-Gangman, G/No. 34" the relationship of master and servant is not there any more. Hence the question of imposing any punishment does not arise.

That sir, temporary authority created by the judgment and order dated 31.10.94 of the Hon'ble Central Administrative Tribunal for a period of 3 months lapsed on expiry of the period of 3 months. As such, the proposed action has no authority either under any rules or any judgment of any court/tribunal and is, therefore, illegal, void and without any jurisdiction.

That sir, what has been said above would indicate that your honour have neither any authority nor any jurisdiction to issue any show cause notice or any punishment under the Railway servants (Discipline and Appeal) Rules, 1968.

I would therefore request you to cancell the above show cause notice issued under No.E/2/Loose/156 dated 9.12.95 (received by me on 23.12.95) and oblige.

With regards,

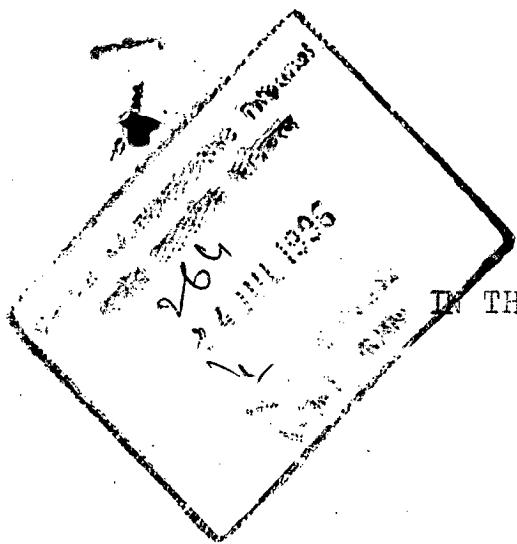
Yours faithfully,

Sd/-

Date : 3.1.96.

(Banka Behari Nath)
Retired Gangman
Vill - Sonacherra,
P.O. Chandranathpur,
Dist. Cachar, Assam.

Attended
(G. N. B.)
31.5.96



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

IN THE MATTER OF

O.A.No 269 of 1995.

-AND-

IN THE MATTER OF

- Versus -

Union of India & others Respondents.

- AND -

IN THE MATTER OF

Rejoinder by the counsel of the applicant
in response to written statement submitted
by the respondents.

The counsel of the applicant begs to submit as under:-

1. That in response to para 5 of the written statement it is stated that a notice to show cause dated 09.12.95 was served on the applicant to show cause as to why the penalty of removal should not be imposed on him and the applicant replied the same on 03.01.96. This notice was produced on behalf of the respondents on 09.01.96 and was discussed in the court. As the

Copy served on
Eric M. Strane
Pattie, 24

24/1/96

(as the) notice was not a final order the counsel to the applicant submitted that the case may be adjourned so that if a final order is passed he can amend the application. Accordingly the case was ^{adjourned} to 19.2.96 when it was admitted as no final ^{order} was passed and produced. As such question of any suppression does not arise.

2. That the O.A. was filed on 5.12.96 serving copy to the Standing counsel for the respondents and after that the respondents issued the notice dated 9.12.95 and as such question of mentioning of the notice in the application also does not arise

dated, 22.7.96.


R. Butta, 22/7/96
counsel of the applicant.

R. Butta, (Advocate)
Malligaon, Guwahati-781011.

.....

General Administrative Tribunal Guwahati Bench	IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
316	GUWAHATI BENCH : GUWAHATI
1 SEP 1997	

IN THE MATTER OF

O.A. No. 269 of 1995

-AND-

IN THE MATTER OF

Shri B.B. Nath ... APPLICANT

- Vs. -

Union of India & Ors. ... RESPONDENTS

IN THE MATTER OF

Additional rejoinder in response to the
written statement submitted by the respondents.

1. That a notice dated 9.12.95 (Annexure-A) to the written statement) issued by Assistant Engineer, N.F. Railway, Badarpur Ghat (Respondent No.4), to the applicant under Registered letter No.5319 of 18.12.95 stating that the applicant is not a fit person to be retained in the railway service and proposing to impose the penalty of removal from service on the applicant. The applicant was asked to submit representation, if any, on the penalty proposed to be imposed within 15 days. The applicant vide his letter dated 3.1.96(Annexure-B to the written statement) submitted that as he had attained the age of superannuation and ceased to be railway servant, no punishment can be imposed on him.

A copy of the Notice dated 9.12.95 and the applicant's reply dated 3-1-96 are annexed as Annexures-A/4 and A/5 respectively.

2. That the notice dated 9.12.95 which was served on the applicant, is illegal and void inasmuch as the applicant ceased to be railway servant after attaining the age of superannuation on 31.10.95. As such, under the Railway Servant (Disciplinary & Appeal) Rule no punishment can be imposed on him by the Assistant Engineer, N.F. Railway Badarpur Ghat (Respondent No.4) as the master and servant relation ceased with effect from 31.10.91 when the applicant attained the age of superannuation.

3. Under the circumstances, applicant craves the leave of the Hon'ble Tribunal to add the following before the words "Issue of direction" in para 8 of page 9 of the application.

"Setting aside the illegal and void show cause notice dated 9.12.96 (Annexure-A/4) and".

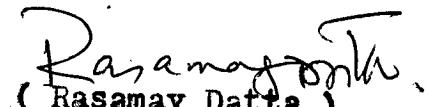
It is, therefore, humbly submitted that the Hon'ble Tribunal may be kind to allow the amendment and to quash the notice dated 9.12.95 (Annexure-A/4), issued without any authority or jurisdiction and direct the respondents to pay the retirement benefits and the back wages (from the date of removal to the date of superannuation) for which act of kindness the applicant and his counsel shall ever pray.

Verification.....

VERIFICATION

I, Shri Rasamay Datta, son of late Ratan Gobinda Datta, aged 65 years, resident of Maligaon, do hereby verify that I am Counsel of the applicant and therefore is in possession of the records. That the statement made in paragraph 1 and ~~xxx~~ is true to my information derived from the records which I believe to be true and rest are submission to the Hon'ble Tribunal.

Dated, Guwahati,
the 17th Sept./97


(Rasamay Datta)
Advocate

N.F.RAILWAY
 (SHOW CAUSE NOTICE)
 (Reference Rule -14 of DAR-68 published in 1976)

No E/2/Loose/156

Dated: 09.12.95.

To

Shri Banka Behari Nath
 Son of late Bangshi Nath
 Village :Sonacherra,
 PO: Chandranathpur,
 Dist: Cachar, Assam
 Ex. G/Man, G.No.34
under PWI/Badarpur.

Pursuant to your conviction in a criminal case, you were removed from service in exercise of the power under Rule 14(1) of the RS(D&A) Rules vide order No E/2/Loose/156 dated 05.10.88. The order of removal was confirmed vide order No. E/74/1-E(New) dated 4.2.93 by the DEN(III)/LMG holding inter-alia that the order passed on criminal appeal was not a case of acquital and as such, no benefit can be extended to you.

2. The aforesaid 2 orders were challenged by you before the Hon'ble CAT/GHY by filing OA No. 110/93. The Hon'ble Tribunal was pleased to set aside both the aforesaid orders on technical ground and the matter was remitted back to the AEN for passing and order afresh in accordance with law and the rules in the light of the judgement passed by the Hon'ble Tribunal. Hence, this order after carefully going through the said judgement of the Hon'ble Tribunal.

3. You along with 7 others were convicted under section 302/34, 325/34 and 323/34 IPC passed by the learned Session Judge, Cachar, Silchar in session's case No 151/85 arising out of GR Case No 1742/84. On perusal of the said order of conviction, it transpires that you were involved in a most heinous crimes of murder. Your conduct led to your conviction on a criminal charge as stated above. However, an appeal before the Hon'ble Guwahati High Court (Criminal Appeal No. 43/1988) your conviction u/s 302/34 and 323/34 were set aside but your conviction u/s 325/34 was upheld modifying the sentence of

A. K. M.
 R. D. 17/9/97
 A. V. L.

.....2....

imprisonment to the period already undergone and set aside the sentence of fine imposed.

4. On perusal of both the judgements passed by the learned Session Judge and the Guwahati High Court, it appears that you were involved in a most heinous crimes involving death of a person. Although in the appellate ~~sum~~ order passed by the Hon'ble High Court, your sentence u/s 302/34 and 323/34 IPC were set aside. The Hon'ble Court was pleased to uphold your conviction u/s 325/34 with the clear finding that the prosecution had proved beyond reasonable doubt that you along with 7 others had committed offence u/s 325/34 IPC. In this connection some of the findings recorded by the appellate court are note-worthy. In para 6 of the judgement it has been held that you along with 7 others were involved in assaulting one Lakhi Charan and his son Sukumar with ^{that} deadly weapon and they were attacked at a lonely place. It is also the finding of the appellate court that all the accused persons (including you) took active participation in assaulting Sukumar and Lakhi Charan. In para 7 of the judgement it has been mentioned that it was established that the common intention of the accused party was assault both Lakhi Charan and Sukumar and in furtherance of their common intention they did assault on both of them and caused gravious injury. Thus the appellate court held that all the 8 accused persons had committed offence u/s 325/34 IPC.

5. With the above findings, the appellate court although set aside your conviction u/s 302/34 and 323/34 nonetheless upheld your conviction u/s 325/34 IPC. The findings recorded by the appellate court reflected your conduct which led to your aforesaid conviction. Your such conduct is unbecoming of a Railway servant.

6. Having regard to the over-all circumstances of the case and your conduct leading to your conviction in a most heinous crimes, and on careful perusal of the aforesaid judgement,

...3....

A. N. S.
R.D. T.
17/9/97

Parashuram A/PY Contd.
64

- 6 -

I am of the opinion that you are not a fit person to be retained in a railway service and that your conduct leading to your aforesaid criminal conviction is such that the penalty of removal should be imposed upon you in exercise of power under Rule 14(1) of the RS (D&A) Rules.

7. Accordingly, you are hereby given an opportunity of making representation on the penalty proposed to be imposed. Your such explanation against the penalty proposed should reach the undersigned within 15 days from the date of receipt of this order by you. On your failure to make any representation against the proposed penalty, it will be presumed that you have got nothing to say against the proposed penalty and necessary order will be passed in accordance with law and the rules.

Signature Sd:

Designation AEN/BPG

Station Badarpur Ghat

Copy to:

1. DEN-II/Lumding for information and necessary action please.
2. DRM(P)/Lumding for information and necessary action in reference to his letter No. E/74-1-LM(E) of 28-09-88.
3. CPWI/BPB for information and necessary action please.
4. Copy to P.Case for records.

Attn: [Signature]

Sd:
Asstt. Engineer/Badarpur Ghat
N.F.Railway, Badarpur Ghat

*20/12/97
Advise*

ANNEXURE A/5

To
 The Assistant Engineer,
 N.F.Rly., Badarpurghat,
 P.O. Badarpurghat
 District-Karimganj, Assam.

Respected sir,

Sub:- Show-cause Notice.

Ref:- Your No E/2/Loose/156 dt. 9.12.95.

With reference to your aforementioned letter, which was despatched on 18.12.95 under Regd. letter No 5319, I beg to state the following for your information and necessary action.

That sir, I attained the age of superannuation on 31.10.91 and therefore retired from service on that date and is not a railway servant with effect from 1.11.91. As such your consideration that I am not a fit person to be retained in service does not arise as I am ^{more} no _{in} railway service since 1.11.91.

That sir, the Railway Servants(Discipline and Appeal) Rules, 1968 applies only to the railway servants and as I have ceased to be a railway servant, the said rules have no application on me.

That sir, as I am not a railway servant, as you yourself have admitted by describing me "Ex Gangman, G.No.34", the relationship of master and servant is not there anymore. Hence the question of imposing any punishment does not arise.

That sir, temporary authority created by the judgement and order dated 31.10.94 of the Hon'ble Central Administrative Tribunal for a period of 3 months lapsed on expiry of the period of 3 months. As such the proposed action has no authority either under any rules or any judgement of any court/tribunal and is therefore illegal, void and without any jurisdiction.

That sir, what has been said above would indicate that your honour have neither any authority nor any jurisdiction to issue any show cause notice or any punishment under the Railway Servants (discipline and Appeal) Rules, 1968.

I would therefore request you to cancel the above show cause notice issued under No. E/2/Loose/156 dated 9.12.95 (received by me on 23.12.95) and oblige.

With regards,

yours faithfully,

Sd/-

Dated, 3.1.96.

(Banka Behari Nath)
 Retired Gangman
 Village Sonacherra,
 P.O. Chandranathpur
 District-Cachar
 Assam.

.....

Alle M
 D.D. 10/9/97
 Adv. C. C.