

FORM NO. 4

( See Rule 42 )

# In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. CP. 40/98 OF 199

04.269/95

Applicant(s) B. B. Nath

Respondent(s) Ramesh Nath

Advocate for Applicant(s) Mr. R. Dutta

Advocate for Respondent(s)

Notes of the Registry	Date	Order of the Tribunal
<p>This contempt petition is filed by Mr. R. Dutta, for the applicant with a prayer for non-compliance of Tribunal Judgment &amp; order dtd. 8.1.98 in O.A. 259/95 passed by.</p> <p>Laid for favour of further orders.</p> <p><i>[Signature]</i> SECTION OFFICER</p> <p><i>[Signature]</i></p> <p><i>[Signature]</i></p> <p><i>[Signature]</i></p>	<p>6.1.99</p> <p>9.2.99</p> <p>pg</p> <p>9.1.99</p> <p>9.2.99</p> <p>pg</p> <p>10.2.99</p> <p>pg</p>	<p>Present : Hon'ble Justice Sri D.N. Baruah, Vice-Chairman and Hon'ble Sri G.L. Sanglyine, Administrative Member.</p> <p>Issue notice to the alleged contemner to show cause as to why a contempt proceeding shall not be initiated against him. Notice is returnable by four weeks.</p> <p>List on 9.2.99 for show cause and further order.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Mr B.K. Sharma, learned counsel has entered appearance on behalf of the alleged contemnners and prays for time to file objection. Two weeks time allowed for filing objection.</p> <p>List on 22.2.99 for order.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry      Date      Order of the Tribunal

22.2.99

Two weeks time allowed for filing of reply to the show cause on the prayer of Mr B.K.Sharma, learned counsel for the alleged contemner.

List on 9.3.99 for show cause and further order.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

pg

9.3.99

One week time allowed on the prayer of Mr B.K.Sharma, learned counsel for the alleged contemner for filing reply to the show cause.

List on 30.3.99 for order.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

pg

30-3-99

In view of the judgment and order passed by the Hon'ble Gauhati High Court against the O.A.No.269 of 95, Mr.R.Dutta learned counsel for the petitioner does not want to press the application. Mr.B.K.Sharma, learned counsel for the respondents has no objection. Accordingly application is disposed of as not pressed.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

lm

*[Signature]*  
11/4/99

12 - (10/10/99)

Service and notices prepared and sent to D/Section for issuing of the same to the respondents No- 1 to 4 through Regd, post A/D.

*[Signature]*  
12.1.99

8-2-99

- 1) Service reports are still awaited.
- 2) show cause by not been filed.

Notice duly served on R.No- 1, 2, 3 and 4.

*[Signature]*  
8/2/99

17.2.99

Vakalatnam has been filed by Mr. B.K. Sharma, Rly Advocate.

*[Signature]*

- (1) Notice duly served on R.No- 1, 2, 3 and 4.
- (2) objection has not been filed.

16.4.99 copies of the order have been sent to the D/Secy for issuing the order to the parties at date 27/4/99

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CP. 40198 (OA 269/95)

Notes of the Registry	Date	Order of the Tribunal
<p><u>8-3-99</u></p> <p>1) Notice duly served on R.Nos. 1-4.</p> <p>2) Show cause by not been filed.</p> <p>8/3/99</p>		}
<p><u>26-3-99</u></p> <p>Reply to not been filed.</p> <p>26/3</p>		

Notes of the Registry	Date	Order of the Tribunal

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

CONTEMPT PETITION NO. 40 / 199

IN THE MATTER OF :

O.A. No. 269/95

Shri Banka Bihari Nath (Applicant)

- Versus -

Union of India & Others (Respondents)

- AND -

IN THE MATTER OF :

Petition under Contempt of Court (C.A.T)  
Rules 1992.

- AND -

IN THE MATTER OF :

Shri Banka Bihari Nath, Son of Late  
Bongshi Nath, resident of Village -  
Sona Charra, P.O. Chandranathpur,  
District - Cachar (Assam)

..... Petitioner.

- VERSUS -

1. Shri Rajendra Nath, General Manager,  
N.F. Railway, Maligaon, Guwahati-781011.
2. Shri V. Subramanian, Divisional Railway  
Manager, N.F. Railway, Luming-782447.
3. Shri Amit Roy, Divisional Engineer/II,  
N.F. Railway, Luming-782447.

Cont ... 2.

Filed by: S

R. L. Datta  
D. Datta  
28/12/95  
D. Datta

4. Shri A.K. Bose, Asstt. Engineer/I,  
N.F. Railway, Badarpur, District -  
Karimganj (Assam)

..... Respondents/  
Opp. Parties.

MOST RESPECTFULLY SHEWETH :-

1. That, the Petitioner was a Gangman in Gang No. 34 under Assistant Engineer, N.F. Railway, Badarpur. The Petitioner was convicted along with other 7 persons under section 302/34, 325/34 and 323/34 IPC by the learned Session Judge, Cachar and was sentenced to under go life imprisonment with a fine of Rs.1,000/- under section 302/34 IPC and 2 years imprisonment with a fine of Rs.250/- under section 325/34 IPC and imprisonment for 3 months under section 323/34 IPC on 24.02.88. The Petitioner along with others co-accused preferred an appeal against the said conviction and sentenced by the learned session judge Cachar before the Hon'ble Gauhati High Court and also moved for bail. The Hon'ble Gauhati High Court vide order dated 22.07.88 released the Petitioner and another co-accused on bail. By a judgement and order dated 12.07.89 the Hon'ble Gauhati High Court set aside the conviction and sentenced of the Petitioner under section 302/34 and section 323/34 and modified his punishment under section 325/34 as the imprisonment for the period already under gone.

2. That, the Petitioner was removed from service by the Assistant Engineer, N.F. Railway, Badarpur on 5.10.88 on the allegation that he was sentenced with life imprisonment. The Petitioner preferred an appeal against the order

Cont ... 3.

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of removal but did not get any fruitful relief. Thereafter, the Petitioner challenged the Order of removal before this Hon'ble Tribunal by filing O.A. No. 110 of '93. This Hon'ble Tribunal by judgement and order dated 31.10.94 was pleased to set aside the Order of removal dt.05.10.88 and directed the disciplinary authority to pass a fresh order within a period of 3 months from the date of receipt of the Order. The disciplinary authority did not comply with the Order and the Petitioner filed a fresh O.A. No. 269 of 1995 on 05.12.95 before the Hon'ble Tribunal for payment of his retirement and other dues. After filing of O.A. No. 269 of 1995 on 23.12.95 the Petitioner received a notice dated 09.12.95 issued by the Assistant Engineer, N.F. Railway, Badarpur to show cause as to why he should not be removed from service. The Petitioner replied on 03.01.96 that the question of his removal from service does not arise as he stands retired from service after attaining the age of superannuation on 31.10.91.

3. That, this Hon'ble Tribunal by Orders dated 08.01.98 allowed the original application No. 269/95 and directed interalia as under :

" The applicant shall be deemed to be in service till the date he attains 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 gratuity etc. as if he was in service till the date of attained the age of superannuation. The respondents are further directed to make the payment within a period of three months from the date of receipt of this Order."

The aforesaid Order dated 08.01.98 was communicated by the Office of the Central Administrative Tribunal on 22.01.98.

A copy of the Hon'ble Tribunal's Order dated 08.01.98 is annexed herewith as ANNEXURE - P/1.

4. That, the Petitioner on 20.04.98 also submitted a copy of the Hon'ble Tribunal's Order dated 08.01.98 in O.A. No. 269/95 to all the respondents and requested for payment of arrear wages, pension, gratuity etc. as directed by the Hon'ble Tribunal.

5. That, the General Manager, N.F. Railway, Maligaon vide letter No. E/170/Legal Cell/422/95 dated 20.3.93 <sup>asked</sup> the Divisional Railway Manager, N.F. Railway, Lunding to implement ~~immediately~~ immediately the judgement and order of the Hon'ble Tribunal within 3 months from the date of its receipt i.e. within 22.04.98.

6. That, the Divisional Railway Manager, N.F. Railway, Lunding instead of implementing the Order dt. 08.01.98 in O.A. No. 269/95 of the Hon'ble Tribunal asked the Petitioner vide letter No. E/74/1/E(New)/LM-EE SCC dated 05.05.98 to submit all service records if available with him. The Petitioner vide letter dated 25.05.98 informed the Divisional Railway Manager, N.F. Railway, Lunding with copy to other respondents that his personal records were burnt along with his house. Besides, there cannot be any possibility of service records being available with him. He also pointed out that the particulars of service

of the Petitioner can be collected from the Original Application and the records submitted with written statement etc. in O.A. No. 269/95. But instead of connecting the records or reconstructing the same the Divisional Railway Manager, N.F. Railway, Lumding wrote to the Petitioner again vide letter No. E/74/1(E)(New)/LMG-EE (Loose) dated 15.06.98 for service particulars which the Petitioner submitted vide letter dated 21.07.98 addressed to the Divisional Railway Manager, N.F. Railway, Lumding with copy to other respondents/opposit parties. Since then the Petitioner has not heard anything from the respondents/opposite Parties.

7. That, the Petitioner also served a notice on all the respondents/opposite parties through his advocate on 28.08.98 requesting for payment of all his dues treating him as on service till the date of his attaining the age of superannuation and pension, gratuity etc. as directed by the Hon'ble Tribunal vide its Order dated 08.01.98. It was also pointed out the respondents/opposite parties that in case of failure to comply with the orders of the Hon'ble Tribunal dated 08.01.98 by 31st October '98 the Petitioner will have no alternative but to draw the matter to the notice of the Hon'ble Tribunal by way of Contempt Petition. No reply whatsoever was received from the respondents/opposite parties.

8. That, although the Hon'ble Tribunal has directed for payment of his wages, pension, gratuity etc. within a period of 3 months from the date of receipt of the Order of the Hon'ble Tribunal yet even after 11 months

of receipt of the Order dated 08.01.98 of the Hon'ble Tribunal, respondents/opposite parties have not complied with the Orders of the Hon'ble Tribunal.

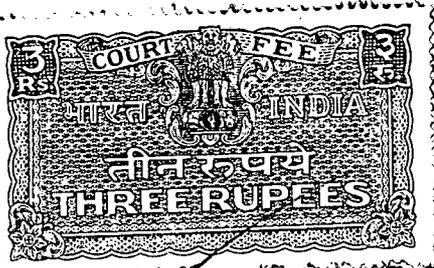
9. That, the respondents/opposite parties have wilfully disregarded the directions of the Hon'ble Tribunal and neglected to implement the Order dated 08.01.98 in O.A. No. 269/98 to pay the Petitioner the wages, pension, gratuity etc. even after furnishing of service particulars by the Petitioner.

10. That, the Petitioner begs to bring the fact of wilfull disregard of the direction of the Hon'ble Tribunal by the respondents/opposite parties and further begs to state that Hon'ble Tribunal may be pleased to invoke its power against such wilfull disobedience of the Hon'ble Tribunal's Order dated 08.01.98 by the respondents/Opposite parties and also may be pleased to take appropriate action against the opposite parties for such wilfull disobedience and issue such ~~orders~~ <sup>as</sup> deemed appropriate for immediate implementation of the direction of Hon'ble Tribunal of its order dated 08.01.98.

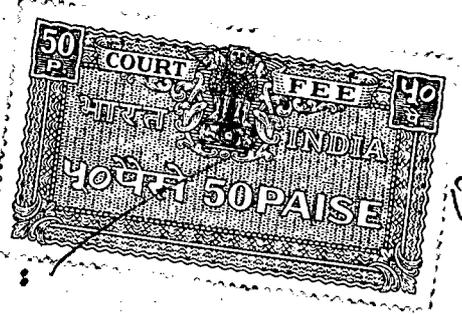
Under the circumstances stated above, the Petitioner prays that the Hon'ble Tribunal may be pleased to invoke its power to punish the Contemners and take appropriate action against the respondents/opposite parties for the wilfull disregard

of the Orders dated 08.01.98 passed by the Hon'ble Tribunal in O.A. No. 269 of 1995 and such other appropriate measures for immediate implementation of the Hon'ble Tribunal's direction in its Order dated 08.01.98 and for this act of kindness the Petitioner shall ever pray.

Affidavit.



8 :



A F F I D A V I T

I, Shri Banka Bihari Nath, Son of Late Bongshi Nath, aged about 65 years, resident of Village - Sona Charra, P.O. Chandranathpur, District - Cachar (Assam) do hereby solemnly affirm that I am the applicant of O.A. No. 269 of 1995 and 110 of 1993 and Petitioner of this Petition and therefore acquainted with the facts and circumstances of the case.

That, the statement made in paragraphs 1, 2 & 4 of the Petition are true to my knowledge and in paragraphs 3, 5, 6 & 7 of the Petition are true to my information which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this the 25<sup>th</sup> day of December 199 at Guwahati.

Signature of the Deponent.

Solemnly affirm and stated by the deponent who is identified by Shri Rasamay Dutta, Advocate on 25<sup>th</sup> day of December 1998 at Guwahati.

Identified by:

( Rasamay Dutta ) 25/12/98  
Advocate.

( Gargi Dutta )  
Advocate.

Cont .... 9

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DRAFT CHARGE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : GUWAHATI

CONTEMPT PETITION NO. \_\_\_\_\_/199

Shri Banka Bihari Nath : Petitioner

- Versus -

Shri Rajendra Nath & Ors : Respondents/  
Opp. Parties.

Central Administrative Tribunal, Guwahati  
Bench, hereby charges you \_\_\_\_\_ (Name of the  
alleged Contempner) as under :-

That, you were directed by ~~the~~ this Hon'ble  
Tribunal vide dated 08.01.98 in O.A. No. 269 of 1995 to pay  
the wages, pension and gratuity etc. of Shri Banka Bihari  
Nath, Ex. Gangman, Gang No.34 under Assistant Engineer, N.F.  
Railway, Badarpur after treatment ~~in~~ as if in service.  
It was further directed that payment shall be made within  
3 months from the date of receipt of the Order. However,  
inspite of passing of 11 months you have neglected to  
comply with the Order and to implement the direction and  
thereby committed the contempt of this Hon'ble Tribunal  
which is punishable under Section of the Contempt of  
Court at 1971 within our cognisance. You are hereby direct-  
ed to ~~be~~ be tried by this Hon'ble Tribunal for the afore-  
said charge.

\_\_\_\_\_  
Signature of the presiding  
Officer of the Bench.

10 - IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Annexure P/1

Original Application No.269 of 1995

Date of decision: This the 8<sup>th</sup> 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.

.....Applicant

By Advocate Mr R. Dutta.

-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.

ORDER

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:

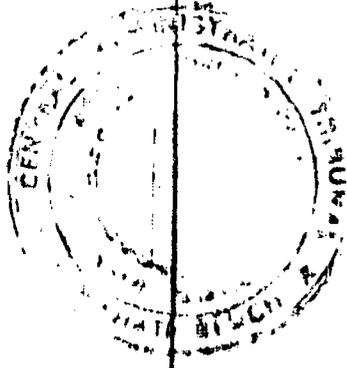
The applicant was initially appointed Casual Gangman in the year 1958. Thereafter, he was absorbed as regular Gangman under the Chief Permanent Way Inspector, N.F. Railway, Badarpur in the year 1963.

True copy  
R. Dutta  
25/1/98  
A. J. ...

5

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, inter alia, 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.P. 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.....



R2

*True copy*  
*20/1/88*  
*25/1/88*  
*R. Datta (Judge)*  
*Guwahati*

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.

True copy  
20/12/95  
25/1498

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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 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 K. 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.....

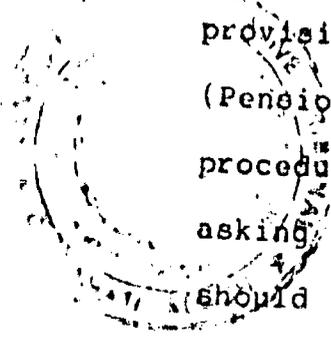


*True copy  
20/11/98  
25/11/98*

*K. Dutta. (Advocate)  
Mullapeta, Bangalore-781019.*

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 <sup>case</sup> 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



*Trm 6/7/98*  
*Pd/1/1/98*  
*25/1/98*

*1/1/1998*  
*1/1/1998*  
*1/1/1998*

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

True copy  
R Dutta  
25/1/98  
R. Dutta, 1st Secy, JCT  
Mumbai, Maharashtra



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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 Dutra 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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Time 6/17  
 2001/18  
 5/14/98

As per the order of the  
 Railway Board, New Delhi

-18-

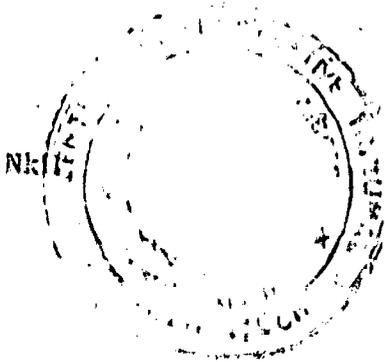
Annexure of (Contd)

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.

SC/- VICE CHAIRMAN

SO/- MEMBER (A)



TRUE COPY

प्रतिनिधि

*[Handwritten Signature]*

20/1/98

Section Officer (J)

राज्यपाल कार्यालय (अ) गुवाहाटी  
Central Administrative Tribunal  
अ.पी.ए. बंगला, गुवाहाटी-8  
Guwahati Bench, Guwahati-8  
अ.पी.ए. बंगला, गुवाहाटी-8

# 20/1

True copy  
20/1/98

R. Datta (Ad. Secy)  
Manager, Research & Eval.