

5/600

or

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 227/96

R.A/C.P No.

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SECTION OFFICER (Judl.)

OP No. 227/96

Sr P. K. Bagchi Applicant(s)

vs Union of India & or Respondent(s)

Mr. M. Chanda Advocates for the applicant(s)

Mr. J. L. Sarkar, RL Advocates for the Respondent(s)

Office Notes | Date | Courts' Orders

8-10-96

This application is in form and within time (C. Sec. 30) General side No. 3468/2 Dated 27.8.96

By Registrar. [Signature]

This app was defective & now removed in some

[Signature]

J. L. Sarkar 7/10/96

lm m/9/10

15-10-96

Notice has been prepared and issue vide no ckt.

22-11-96

Learned counsel Mr. M. Chanda for the applicant. None for the respondents. Written statement has not been submitted. List for written statement and further order on 19-12-96.

14.11.96

Notice duly served on respondent No. 3, 1, 2

lm m/22/10

By [Signature] w/statement has not been submitted. 1) Notice duly served on Respt. No - 1, 2 & 3. 2) w/statement has not been

[Signature] Member

[Signature] Member

10-1-97

1) Notice duly served 19.12.96 on Respondent No- 1, 2, & 3.

2) Written statement has not been filed.

Mr M.Chanda for the applicant.
Mr J.L.Sarkar for the respondents.
Written statement has not been submitted.

List for written statement and further orders on 15.1.97.

24/10-1

ba
Member

13-2-97

1) Notice duly served on Respondent No- 1 to 3.

2) w/statement has not been filed.

pg
19/12

15.1.97

Mr. M.Chanda for the applicant
Mr. J.L.Sarkar for the respondents seeks 4 weeks time to submit written statement.

List for written statement and further orders on 14.2.1997.

24/13.2

ba
Member

trd
15/1

14.2.97

Mr J.L.Sarkar, learned Railway counsel prays for further extension of time to file written statement. Several adjournments have been granted. He is not inclined to grant any further extension of time.
Let this case be listed for hearing without written statement on the risk of the respondents.

List on 8.4.97 for hearing.

20-3-97

1) s filed on b/k of Repts.

ba
Member

JB
Vice-Chairman

pg
10/3

2) notice duly served on R. 1-3.
3) w/statement has been filed.

24/14

3

8.4.97

On the prayer of Mr M. Chanda, learned counsel for the applicant, let this case be listed on 23.5.97 for hearing.

ba
Member

SB
Vice-Chairman

w/s. has been filed.

nkm

9/19

8/2/5

23.5.97

On the prayer of Mr. J.L.Sarkar hearing is adjourned till 9.7.1997.

ba
Member

SB
Vice-Chairman

w/s. has been filed.

trd

9/15

8/19

9.7.97

On behalf of Mr. M. Chanda, learned counsel for the applicant, a mention has been made by learned counsel Mr. R.Dutta that Mr. Chanda is unable to attend court today as his mother is seriously ill. Mr. J.L.Sarkar has no objection. Accordingly the case is adjourned till 29.8.97.

List on 29.8.97 for hearing.

ba
Member

SB
Vice-Chairman

w/s. has been filed.

29-8-97

Rejoinder filed on behalf of the applicant, at page 29 to 62.

trd

23/7

29.8.97

Division Bench is not available. List on 12.11.97 for hearing.

ba
Member

*11.11.97
Case is ready for hearing.*

pg

12.11.97

Division Bench is not available. List it for hearing on 30.1.1998.

ba
Member

nkm

12/11

5.2.98

Let this case be listed for hearing on 18.5.98.

29-1-98

Due to non-availability of Holiday list, this case was listed on 30.1.98 (Holiday). Hence, it is placed before the Honble court for fixing date of hearing.

Member

Vice-Chairman

pg
20/8
6/2

18.5.98

Adj'd to 29.7.98.

By order
1/8

15.5.98

Written statement and rejoinder has been filed.

29.7.98

Mr J.L.Sarkar, learned counsel for the respondents is unable to attend the Tribunal due to his personal difficulty. Mr B.K.Sharma has made a mention on his behalf.

List on 28.8.98 for hearing.

Member

Vice-Chairman

pg

25/8
30/7

28.8.98

Leftover. Adj'd to 18-9-98.

By order
1/8

18-9-98

Case is adjourned to 22-10-98.

22.10.98

On the prayer made on behalf of Mr J.L. Sarkar, by learned Railway Counsel, the case is adjourned till 11.11.98. Mr M. Chanda, learned counsel for the applicant has no objection.

Member

Vice-Chairman

trd
11.11.98

Division Bench is not available. List for hearing on 10.12.98.

By Order

pg

10/12

W/S at Rejoinder has been filed.

W/S at Rejoinder has been filed.

W/S and Rejoinder has been filed.

The case is ready for hearing and regard services.

W/S and Rejoinder has been filed.


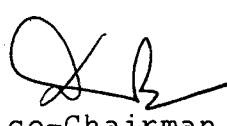


Written statement and Rejoinder has been filed.

12/12/98

4-

Notes of the Registry	Date	Order of the Tribunal
<p><u>18-1-99</u> Written statement and Rejoinder has been filed.</p>	10.12.98	<p>On the prayer of the counsel for the parties the case is adjourned to 19.1.99.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>11/99</p>	<p>pg NS 28/12/98</p>	<p><u>20.1.99</u></p> <p>Parson in the day. 3/0 la.</p>
	<p><u>21.1.99</u></p>	<p>Parson.</p> <p>3/0 la.</p>
	<p><u>22.1.99</u></p>	<p>Adjourn to 27-1-99.</p> <p>3/0 la.</p>
	<p><u>27.1.99</u></p>	<p>Adjourn to 1.2.99.</p> <p>3/0 la.</p>
<p><u>8-2-99</u> Written statement & Rejoinder has been filed.</p>	1.2.99	<p>Division Bench is not available. List on 9-2-99 for hearing.</p> <p><i>[Signature]</i> Member</p>
<p>11/99</p>	<p>pg NS 11/2/99</p>	<p><u>17-2-99</u></p> <p>The case is ready for hearing.</p> <p>9-2-99</p> <p>There was a reference adjourn to 18-2-99.</p> <p>3/0 la.</p>
<p>12/99</p>		

Notes of the Registry	Date	Order of the Tribunal
<p><u>25-2-99</u> The case is ready for hearing.</p> <p>9/2/99</p>	<p>18.2.99</p> <p>nkm</p>	<p>On the prayer of Mr M. Chanda, learned counsel for the applicant the case is adjourned till 26.2.99.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
	<p>19/2/99</p> <p>26.2.99</p>	<p>Adjourned to 5.3.99 By order <i>[Signature]</i></p>
	<p>5.3.99</p>	<p>Adjourned to 8.3.99 By order <i>[Signature]</i></p>
	<p>8.3.99</p>	<p>There is no division Bench. Adjourned to 12.3.99. By order <i>[Signature]</i></p>
<p><u>24-3-99</u> The case is ready for hearing.</p>	<p>12-3-99</p>	<p>Adjourned to 25.3.99. By order <i>[Signature]</i></p>
<p><u>30-3-99</u> The case is ready for hearing.</p>	<p>25.3.99</p> <p>nkm</p>	<p>Mr J.L. Sarkar, learned Railwa Counsel is not present. Mr M. Chanda learned counsel for the applicant also is not keeping well. He prays for a short adjournment. Accordingly the case is adjourned till 31.3.99.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><u>6.4.99</u> Case is ready for hearing.</p>	<p>31.3.99</p>	<p>On the pra-yer of Mr.M.Chanda, learned counsel for the applicant the case is adjourned to 7.4.99.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
	7.4.99	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment reserved.</p> <p> Member</p> <p> Vice-Chairman</p>
<p><u>25.5.99</u></p> <p>Copies of the Judgment have been sent to the D/Sec. for issuing the same to the parties.</p> <p>MS vide Dispatch NO. 1836 to 1839 dated 27-5-99.</p>	<p>26-4-99</p> <p>lm</p>	<p>Judgment delivered in open Court. Kept in separate sheets. Application is disposed of as indicated in the order. No order as to costs.</p> <p> Member</p> <p> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
A		

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

10

O.A.No. 227 of 1996

DATE OF DECISION..... 26-4-1999.

Shri P.K. Bagchi

(PETITIONER(S))

Mr.M. Chanda

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mr.J.L.Sarkar

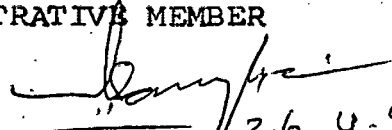
ADVOCATE FOR THE
RESPONDENTS.

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 ?
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 ADMINISTRATIVE MEMBER


26.4.99

initial date of appointment in the provincialised school. After retirement the applicant submitted representation dated 23-12-1988 to the respondents for counting of his past services from 8-3-1948 to 29-1-1962 for the purpose of Pension and Gratuity. The respondents intimated rejection of the prayer by letter No.E/252/57/436(W) dated 31-8-95. Hence this application.

In this application the applicant submitted that the respondents may be directed to count his past services from 8-3-1948 to 29-1-62 towards Pensionary benefits and to pay him arrear monthly benefits for the period consequently and to quash the impugned order dated 31-8-95 mentioned above.

We have heard counsel of both sides. The applicant was in service as Assistant Teacher in the Bengali Higher Secondary School, Paltan Bazar, Guwahati, from 8-3-1948 to 29-1-1962. On 30-1-1962 he joined the service in Netaji Bidyapity, N.F.Railway Higher Secondary School. According to the respondents, the lien of the applicant in the old institution expired on 31-7-1963. The applicant claims the above benefits of counting his past services from 8-3-1948 to 29-1-62 towards pensionary benefits with arrear monthly pay for the period on the ground that the Bengali Higher Secondary School was provincialised by the Government of Assam bringing the services of the school employees under its direct control with Pensionary Benefits counting the period of services from their initial date of appointment in the school. Mr.Chanda has relied on various instances of railway School employees mentioned in the Original Application and in the rejoinder in support of his contention that the aforesaid period of past services of the applicant is liable to be counted for the purpose of pensionary benefits. Some of the

instances are however not comparable as they relate to Government employees who later on joined railway service. In some other instances full facts are not available for consideration. However, two of the instances require mention here. Sri Gopal Krishna Sarkar was a teacher in Dhing Public School, Dhing from 1-3-1962 to 24-9-1967 before he joined Railway School service. This period of his past service in the old school was counted for the purpose of pensionary benefits. The respondents contended that this was a wrong decision. However, it is not disputed that this benefit granted to Shri Sarkar has not been cancelled or withdrawn. The question therefore is why the applicant should not be treated alike. Sri M.M. Patowary was the Headmaster of a Private school which was taken over by the Railway with effect from 1-4-1977 and it became known as Railway High School, Maligaon (Assamese Medium). Shri Patowary was appointed by the Railway authorities in the School after its taking over. He accepted the appointment and continued till on 13-7-1990. he served a notice for voluntary retirement with effect from 31-10-1990 on the ground that he had completed 30 years service counting from the date of his joining in the service of the erstwhile school. The Railway authority refused to take into consideration the past service of Sri Patowary. He submitted O.A.No.174 of 1992. He contended that under the provisions of the Assam Secondary Education(Provincialisation) Act, 1977 his past service was to be counted as the school was a Government Aided school before it was taken over by the railway.

- While disposing of the O.A. the Tribunal had, among others,

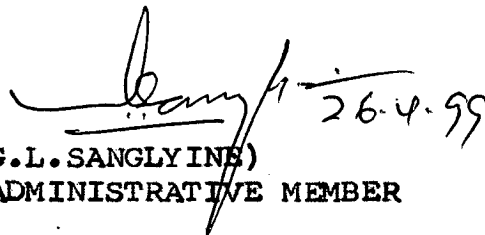
contd/-

directed the respondents in the order dated 16-1-1996 to consider the contention of the applicant by taking into account the object and provisions of the said Act. In the present O.A. before us, after due consideration, we are of the view that the respondents had not considered all relevant aspects of the case of the applicant. They had unreasonably confined themselves to the issue of loss of lien while rejecting his prayer. We therefore set aside the impugned order dated 31-8-1995, Assexure 4. We direct the respondents to consider the contention of the applicant afresh by taking into consideration all aspects including the instances of similar employees cited by him and the object and relevant provisions of the Assam Secondary Education (Provincialisation) Act, 1977. The respondents shall communicate their order with reasons in detail to the applicant within 60(sixty) days from the date of receipt of this order.

The application is disposed of. No order as to costs.



(D.N.BARUAH)
VICE-CHAIRMAN



(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

An Application under Section 19 of the Administrative
Tribunals Act, 1985.

O.A. No. 227/96

Sri Pabitra Kumar Bagchi

-versus-

Union of India & Ors.

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1	-	Application	1-11
2	-	Verification	12
3	1	Copy of representa- tion dt. 23.12.88	13
4	2	Copy of representa- tion dt.	14
5	3	Copy of the circular dated 24.3.86	15-17
6	4	Copy of letter dt. 31.8.95	18
7	5	Copy of letter dt. 2.6.95	19
8	6	Copy of Memorandum dt. 17.3.93	20
9	7		21

Date : 28.8.96.

Filed By :

(Signature)
Advocate

Pabitra Kumar Bagchi

*Raw JLP
Adv.
28/8/96.*

*Filed by the applicant
through...*

1. Particulars of the Applicant

Shri Pabitra Kumar Bagchi
Son of late Nani Gopal Bagchi
Ex.Asstt. Teacher Gr. II,
Ulubari Chariali
Guwahati-781007

..... Applicant

2. Particulars of the Respondents

1. Union of India

(Through General Manager,
N.F.Railway, Maligaon,
Guwahati-781011)

2. Railway Board,

(Through Secretary, Railway Board,
New Delhi)

3. The Chief Personnel Officer,

N.F.Railway,
Maligaon,
Guwahati

..... Respondents

3. Particulars for which this application is made.

This application is made praying for counting of past services of teaching in the Bengali Higher Secondary School, Paltanbazar, Guwahati-8 for the purpose of retirement benefit and for quashing the General Manager (P), N.F.Rly. letter No. E/252/57/436 (W) dated 31.8.1995.

Contd....P/3

Pabitra Kumar Bagchi

4. Jurisdiction

That the applicant declares that the subject matter of the order against which the applicant seeks redressal is within the jurisdiction of the Hon'ble Tribunal.

5. Limitation

That the applicant further declares that the application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the Case

6.1 The applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed by the Constitution of India.

6.2 That the applicant joined to the Netaji Vidyapith N.F. Railway H.S. School, Maligaon on 31.1.1962 as Asstt. Teacher and retired from service on superannuation on 31.7.1987 from the same school.

6.3 That the applicant states that prior to his appointment as Asstt. Teacher in the Netaji Vidyapith Rly. H.S. School, Maligaon on 30.1.1962 he served as Asstt. Teacher in the Bengali Higher Secondary School, Paltanbazar, Guwahati from 8th March, 1948 to 29th January, 1962.

6.4 That your applicant while serving in the Silver Jubilee Bengali High School at Paltonbazar where the applicant was initially appointed on 8.3.1948, The name of the School was subsequently changed as Bengali H.S. School.

Contd..

17
All stated
@ 10/10/10

The said Bengali H.S. School was recognised in 1936 and by the Govt. of Assam in the said school was under Calcutta University and subsequently the said school is brought under Gauhati University in the year 1948 and the said Bengali H.S. School was at the relevant time in the year 1948 was Government aided School under the Assam Government. The applicant while serving in the said Bengali H.S. School, the N.F. Railway authority issued an advertisement for filling up of vacancies of Asstt. Teacher in Railway School in the year 1960, the applicant accordingly submitted an application offering his candidature and accordingly N.F. Railway after being satisfied called the applicant for interview and the applicant came out successfully in the said interview and the Railway Authorities was pleased to appoint the applicant in the Netaji Vidyapith Rly H.S. School as Asstt. Teacher and the applicant joined in the said school on 30.1.1962. The applicant thereafter continuously served as Asstt. Teacher with full satisfaction to all concerned and retired on superannuation with effect from 31.7.1987. The applicant was under firm belief that his services for about 14 years with effect from 8.3.1948 to 29.1.1962 would be counted towards his pensionary benefits and also for the purpose of gratuity as the same benefit of past service rendered in the Govt. aided School under Assam Government was earlier counted in the case of similarly circumstanced teacher such as namely Sri Gopal Sarkar, Sri Subhash Bhattacharjee etc. were granted, Pensionary benefit and gratuity counting their past service rendered in the aided

Attested
Dhaka
ADV

school, under the State Government. But surprisingly in the instant case of the applicant the past service rendered in the Bengali H.S. School, Paltan Bazar not counted for the purpose of pension as well as for the purpose of gratuity and the present applicant had come to know after fixation of his pensionary benefit where the service period of Railway School is counted for pension purpose.

6.5 That the applicant being highly aggrieved in the compelling circumstances with the decision of non-counting of past service submitted a representation dated 23.12.1988 requesting the Railway Authorities for counting his past services rendered in the Bengali H.S. School for the purpose of pension and gratuity for the period from 8.3.1948 to 29.1.1962 prior to joining Netaji Vidyapith Railway H.S. School Maligaon on 30.1.1962.

A copy of the representation dated 23.12.1988 is annexed hereto and the same is marked as Annexure 1.

6.6. That the applicant submitted another representation dated NIL to the Chief Personnel Officer, N.F.Railway, Maligaon enclosing a certificate of service rendered from the Inspector of Schools and Railway Boards Circular No.P(E) III/1/4 dated 24.3.1986 requesting to refix the pension, gratuity etc. and to pay his leave salary.

Copy of the representation is annexed hereto and the same is marked as Annexure-2.

6.7 That the applicant states that as Railway Board's circular No. F(E) III/84 PN-1/4 dated 24.3.86 his period of service from 83.1988 to 29.1.62 is to be counted for fixation of his pension. The relevant portion of the Circular dated 24.3.1986 is quoted below :

"Sir,
I am directed to say that in August, 1984, Central Government had issued orders that where a Central Government employee borne on pensionable

Attested
Chhuli
ASV

29

establishment is allowed to be absorbed in a Central Autonomous Body having a pension scheme of its own, the service rendered by him under the Government shall be allowed to be counted towards pension under the Autonomous body irrespective of whether the employees was temporary or permanent in Government, subject to certain conditions. The same procedure will apply in the case of employees of the Autonomous Bodies who are permanently absorbed under the Central Government. Certain employees of the State Governments and State Autonomous Bodies who joined the Central Autonomous Bodies/Statutory Bodies, have also represented that their service under the State Government/State Autonomous Body may be allowed to be counted towards pension under Central and Autonomous Body where they are presently working. Similarly certain central Government servants and employees of the Central Autonomous/Bodies/Statutory Bodies might have joined Autonomous Bodies/Statutory Bodies (excluding public Undertakings) of the State Governments and may be desirous of getting the benefit of counting of service under Central Government/Autonomous Bodies towards pension in the organisations where they are presently working.

2. In the circumstances explained above, it was felt that reciprocal arrangement may be entered that where employees of the State Governments to the effect that where employees of the State Governments/State Autonomous Bodies/State Statutory Bodies, have been absorbed in the Central Autonomous

Rabindra Kumar Baghel

they may be allowed the such benefits as have been extended to the Central Government servants and vice-versa.

3. The question of extension of various benefits like counting of service etc. in the cases of (i) employees of the Central Government absorbed in State Autonomous Bodies, (ii) employees of Central Autonomous bodies absorbed in State Governments and State Autonomous Bodies; and vice-versa, has been considered in consultation with the State Governments. After careful consideration, the president has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms O.M. No. 28(10)/84-Pension Unit dated 29.8.84 (copy enclosed). The cases of Central Government servants appointed in State Governments and vice-versa will continue to be decided as hitherto."

Copy of the circular dated 24.3.86 is annexed hereto and the same is marked as Annexure-3.

6.8 That most surprisingly the office of the General Manager(P), N.F.Railway under letter No.E/252/57/436(W) dated 31.8.95 intimated the applicant that his service from 8.3.1948 to 29.1.62 cannot be treated as pensionable, as the applicant was not existing employee of the State Government of Assam on 1.10.1977 after leaving Bengali Higher Secondary School on 30.1.1962 and as his lien was expired on 31.7.1963.

Copy of letter dated 31.8.95 is annexed hereto and the same is marked as Annexure-4.

Pabi Kumar Bazar

6.9 That the applicant states that he submitted to the Rly. authorities a letter dated 2.6.95 issued by the Principal, Bengali Higher Secondary School, Paltan Bazar, Guwahati-8 regarding counting the period of service with effect from 8.3.48 i.e. from the date of ~~original date of joining~~ initial appointment towards pensionary benefits.

Copy of the letter dated 2.6.95 is annexed hereto and the same is marked as Annexure-5.

6.10 That the applicant submits that it is clear from the contents of the letter dated 2.6.95 that the entire service of the applicant under the Govt. in aid system was pensionable although the same was notified in a subsequent date with effect from 1.10.1977 by the Govt. of Assam. The denial of pensionary benefit of the past services of the applicant is highly illegal, discriminatory and unfair.

6.11 That the applicant states that he has come to learn that, the Inspector of Schools, Guwahati under his letter Dated 5.2.91 intimated the General Manager (P), N.F.Railway in reply to letter No. 10E/1/134(0) dated 6.12.90 that the Assam Govt. provincialised all the schools under deficit system of grants-in-aid with effect from 1977 bringing services of the employees under its direct control with pensionary benefits counting the period of service from their initial date

Contd..P/7

Paloko Kumar Bora

of appointment of both teaching and non-teaching staff.

Therefore, it is clear from the communication of the Education Department of Assam that the applicant is entitled to all the pensionary benefits including his past services rendered in the Bengali Higher Secondary School, Paltan Bazar, Guwahati. Be it stated that Railway have given the pensionary benefits to Shri Suhash Chandra Bhattacharjee who was working in a West Bengal Board Control School and the service was not pensionable at the relevant time and Shri Bhattacharjee joined in Railway after resigning from the past service. Past service benefit also granted to Shri Gopal Krishna Sarma, Ex-teacher Gr. I (Bengali) of Railway Higher Secondary School, Lumding, who earlier served in Dhing Public High School, Dhing, with effect from 1.3.1962 to 24.9.67 also counted towards pensionary benefits by the N.F. Railway Authorities by Memorandum No. RSP/154 dated 17.3.1993.

Copy of the Memorandum dated 17.3.93 is annexed hereto and the same is marked as Annexure-6.

6.12 That the applicant begs to state that even in Bank past services of Bank employees during the pre-nationalisation period have been counted for pensionary benefits after nationalisation of the bank and after introduction of pension system in the nationalised banks. As for example, employees of Allahabad Bank who were initially appointed in Private Bank before nationalisation of the Bank and now after nationalisation their entire past services is counted towards pensionary benefits.

Contd...P/8

Pabohā Kumar Bagel

6.12(a) That your applicant is similarly and equally circumstanced like that of Shri Gopal Sarkar retired as Assistant Teacher whereas the past service of Sri Gopal Sarkar which was rendered by Shri Sarkar in the Dhing Public School while the school was under deficit grant system~~s~~ under the Govt. of Assam was taken into consideration for the purpose of pension and gratuity and ultimately the same was counted for the purpose of pensionary benefit therefore now denial of the same benefit to the present applicant is hostile discriminatory and the same is violative of Article 14 and 16 of the Constitution of India. Therefore the impugned letter dated 31.8.95 is liable to be set aside and quashed and the respondents be directed to count the past service of the applicant rendered in the Bengali Higher Secondary School, Paltan Bazar with effect from 8.3.1948 to 29.1.1962 and further be pleased to direct the respondents to refix the pensionary benefit counting the entire past service of the applicant since 8.3.1948 till his retirement on superannuation i.e. on 31.7.87 and also be pleased to direct the respondents to pay arrear monetary benefit after refixing the pensionary benefit. The same procedure is also adopted by the Nationalised Banks, the banks which were early running privately and were subsequently regularised by the Govt. of India and now the authority had agreed to count the entire past service of all Bank employees which were rendered prior to nationalisation of the different banking Institutions and the applicant deserves the similar treatment in the matter of counting of his past service.

Pooja Kumar Bagel

6.13 That the applicant begs to state that he has entered into and chose this noble profession of teaching in the beginning of his service career, with the object to discharge his duties towards the Nation and if the Railways rewarded him in this way as regard his past service, it will cause irreparable loss and injury to him. Therefore it is prayed before the Hon'ble Tribunal to direct the respondents to count his past services towards pensionary benefits, with effect from 8.3.48 to 29.1.62.

6.14 That this application is made bonafide and for the ends of justice.

7. Reliefs sought for

Under the facts and circumstances, the applicant prays for the following reliefs :-

1. That the respondents be directed to count the past services of the applicant with effect from 8.3.1948 to 29.1.1962, towards pensionary benefits.
2. That the letter No. E/252/57/436 (W) dated 31.8.95 (Annexure-4) be set aside and quashed.
3. That the respondents also be directed to pay the arrear monthly benefits in terms of prayer No. 1 of this application in relief column to the applicant.
4. To pass any other order or orders as deemed fit and proper under the facts and circumstances stated above.

Contd...P/9

Palvhi Kumar Bege

These above reliefs are prayed on the following amongst other -

- G R O U N D S -

1. For that the services of the teaching and non-teaching staff was brought under direct control with pensionary benefits counting the period of service from the date of initial appointment in the school of the provincialisation of the school from 1977 by the Govt. of Assam.
2. For that the entire service of the applicant was without break with effect from 8.3.1948 to 29.1.1962 in the Bengali Higher Secondary School and with effect from 30.1.1962 to till his retirement on superannuation in the Netaji Vidyapith Higher Secondary School.
3. For that the past service with effect from 8.3.1948 to 29.1.1962 is sensible and liable to be counted towards pensionary benefits.
4. For that the school was not privately managed but under the deficit system of grant-in-aid having Govt. status managed by the Govt. of Assam.
5. For that the decision of non-counting of past service of the applicant by the Railways after

Contd...P/10

Rabohi Kumar Bajor

receipt of the clarification from the State Education Department is highly illegal, arbitrary and unfair practice.

6. For that the pensionary benefit has been given to Shri Suhash Chandra Bhattacharjee, who resigned from the State service which was not pensionable at the relevant time and also past service benefit granted to Shri Gopal Krishna Sarkar, Ex-teacher Grade.I (Bengali) of Railway Higher Secondary School, Lumding who earlier served in Dhing Public High School, Dhing under the similar circumstances like the present applicant.
7. For that the Railway authorities policy of non-counting the past service of the applicant is opposed to public policy and welfare.
8. For that the order of non-counting of past services of the applicant passed by the Railway authorities without fairness and the same is violative of Article 14 of the Constitution of India.

~~22~~ ~~TKK~~

8. Interim Relief prayed for :

During the pendency of this application the applicant does not pray for any interim relief but wants early disposal as the applicant has already been retired from service on superannuation on 31.7.87.

B.

Paloke Kumar Bagel

9. That the applicant declares that he has exhausted all the remedies available to him.

10. Particulars of the Postal Order

I.P.O. No. : 246812
Date of Issue : 27.8.96.
Issued from : G.P.O., Guwahati
Payable at : G.P.O., Guwahati

11. That the applicant declares that the matter is not pending before any other court/Tribunal.

12. List of enclosures

As stated in the Index.

P. Be'he Kumar Bage

V E R I F I C A T I O N

I, Sri Pabitra Kumar Bagchi, son of late Nani Gopal Bagchi, aged about 69 years, retired as Asstt. Teacher, Netaji Vidyapath Higher Secondary School, Maligaon, resident of Dr. B.Barua Road, Ulubari Chariali, Guwahati-7, applicant in this application do hereby declare that the statements made in this application are true to my knowledge and belief. I have not suppressed any material facts.

And I sign this verification on this the 28th day of August, 1996 at Guwahati.

Pabitra Kumar Bagchi
28.8.96

Signature

Annexure-1

To

The Chief Personnel Officer,
N.F.Rly. Maligaon

(Through Proper Channel)

Sub : Counting of Post service for the purpose of Pension
and gratuity etc.

Ref : Rly. Board's letter No. F(E) 111/84 PN1/4 dt. 24.3.86
P.S. No. 8955.

Sir,

In response to the above mentioned letter of the Rly Bd. I have the honour to state that prior to my appointment as an Asstt. Teacher in Netaji Vidyapith Rly.H.S. School on 31.1.1962, I served as an Asstt. Teacher in Bengali H.S.School, Guwahati from the 8th March 1968 to the 29th January '62. At that time the School was Govt. aided one and now it has become a purely State Govt. School of Assam, where my entire service period would have been counted towards my pension and gratuity.

Therefore, I hope you would be kind enough to count my past service towards my pension and gratuity in terms of the Rly. Bd's circular cited above and obleg thereby.

I, further beg have to mention that a quick decision will be highly beneficial for me as I am going retired on 31.7.1987. I enclose herewith a Xeros copy of the circular for ready reference to show the length of my service there.

With regards,

Yours faithfully,

Sd/-

(Pabitra Kumar Bagchi)

Retd. Teacher, N.F.Rly. H.S.School
Pandu

. Dated Maligaon
The 23rd Dec '88

*AA est-cc
Pabitra
Sd/-*

To
The Chief Personnel Officer
N.F. Railway
Maligaon

(Through Controlling Officer, Netaji Vidyapith
Railway H.S. School, Maligaon).

Sir,

Subject : Counting of past service for pensionery benefits
and payment of leave salary, gratuity, etc.

Kindly refer to my appeal to you dated 23.12.88, in
which I prayed for counting of my pre-Railway service as an
Assistant Teacher at Bengali H.S. School, Guwahati, where
I served for 14 years from 8.3.48 to 29.1.62. As per
Railway Bd's Circular No. F(E)III/84 PN-1/4 dated 24.3.86
this period of my service is to be counted for fixation
of my pension. Moreover, my pension as has been fixed by
your office has not been done properly since the calculation
was done taking my last pay to be Rs. 2675.00 which actual
was Rs. 2750.00.

I also have not been paid any leave-salary although
I had a good number days of L.A.P. to my credit.

So, I request you to kindly re-fix my pension,
gratuity, etc. and arrange for payment of the leave salary.
It is sad that after almost 8 years of my retirement also
nothing has been done to redress my grievance. So, an action
from your end is solicited.

With regards,

Yours faithfully,

Enclosure :

1. Certificate of
Service from I/S
2. Railway Bd's circular
cited above.

Sd/- Pabitra Kumar Bagchi
Ex-Teacher N.Vidyapith
" Bengali H.S. School, Guwahati.

*Assessed
Dhula
A.V.*

Copy of Railway Board's letter No. F(E)III/84/PN-1/4 dated 24.3.86 from Deputy Director Finance (E) III, Railway Board.

P.S. No.8955

.....

Sub : Counting of service for purposes of Pension of Railway employees and Central Autonomous Bodies seeking absorption in Autonomous Bodies under the State Governments and vice-versa.

.....

A copy of the DOP RB's O.M. No. 28(10)84-P&PW-Vol-III dated 2.2.86 is forwarded herewith. The orders containing therein apply on the Railways.

2. corresponding to DOP and P A' R O.M. No. 28/10/84-Pension Unit dated 29.6.84 referred in para 3 of the above O.M. were issued under Board's letter of even number dated 8.4.85.

3. Please acknowledge receipt,

.....

Copy of Railway Boards' letter No. 28(10)/84-P&PW-Vol-II dated 7.2.86 from the Deputy Secretary to the Govt. of India to the Chief Secretaries of all the State Government.

Sub : Counting of service for purposes of pension of employees of Central Government and Central Autonomous Bodies seeking absorption in Authnomous bodies under the State Governments and vice-versa.

.....

Sir,

I am directed to say that in August, 1984, Central Government had issued orders that where a Central Government employee borne on pensionable establishment is allowed to be absorbed in a Central Autonomous Body having a pension scheme of its won, the service rendered by him under the Government shall be allowed to be counted towards pension under the Autonomous body irrespective of whether the employee was temporary or permanent in Govern- ment, subject to certain conditions. The same procedure, will apply in the case of employees of the Autonomous

*AAsted
Chhala*

4. Similar orders regarding counting of service of the Central Government employees in the event of their-absorption in the State Autonomous Bodies and employees of the Central Autonomous Bodies in the State Governments, and State Autonomous Bodies as well as orders regarding acceptance of pension liability etc., in respect of State Government and state Autonomous Bodies, employees absorbed in Central Autonomous Bodies and employees of State Autonomous Bodies absorbed in Central Government will be issued by the respective State Governments.

5. These orders shall apply to employees of the State Government and State Autonomous Bodies moving to Central Government, Central Government Autonomous Bodies in respect of the State Governments listed below :

- | | |
|--------------------|------------------------|
| i. Karnataka | viii. Uttar Pradesh |
| ii. Madhya Pradesh | ix. Bihar |
| iii. Punjab | x. Gujrat |
| iv. Rajasthan | xi. Meghalaya |
| v. Sikkim | xii. Assam |
| vi. Tripura | xiii. Himachal Pradesh |
| vii. West Bengal | |

These orders shall be extended to the employees of other state governments as and when they agree to similar reciprocal arrangements.

6. These orders will apply to the employees of the Central Government moving to State Autonomous Bodies and employees of Central Autonomous Bodies to the State Governments and their Autonomous Bodies mentioned in para 5 above and vice-versa who are in service on the date of issue of these orders irrespective of the date of their appointment.

7. So far as person serving in the Indian Audits and Accounts Department are concerned, these orders ^{issue} after consultation with the Comptroller and Auditor General of India.

Attested
Order
A.V.

Office of the General Manager (P),
Northeast Frontier Railway,
Maligaon, Guwahati-781011

No. E/252/57/436 (W)

Maligaon, dated 31.8.95

To

Shri Pabitra Kr. Bagchi
Ex. Asstt. Teacher Gr. II
Netaji Vidyapith Rly. H.S. School,
Pandu

Through : Asstt. Secy. to AGM.

Sub : Counting of Past Service for the purpose of Pension
and gratuity etc.

Ref : Your letter Nil dated 23.12.88

Reference to your letter quoted above, it is for your information that you were not existing employee of the State Govt. of Assam on 1.10.1977 after leaving Bengali H.S. School/Guwahati on 30.1.62 as your lien was expired on 31.7.63. Hence your claim for counting of Past Service from 8.3.48 to 29.1.62 cannot be treated as pensionable.

Further, as regards calculation of last pay and payment of leave salary, matter has been referred to Principal, Netaji Vidyapith Railway H.S. School, Maligaon, for verification.

Sd/- Illegible

(J. Rabidas)
Asstt. Personnel Officer (W)
For General Manager (P).

*AH. [unclear]
[unclear]
[unclear]*

OFFICE OF THE PRINCIPAL & SECRETARY

BENGALI HIGHER



SECONDARY SCHOOL

PALTAN BAZAR

GUWAHATI-781008 (Assam)

Ref. No.

Date 2.6.95

This is to certify that Sri Pabitra Kumar Bagchi, B.A.B.T., assistant teacher of Bengali H.S. School joined on 8.3.48 and worked till 29.1.62 as against permanent substantive post in the scale of 100-5-200/-.

He left this school on 29.1.62 on lien and joined Netaji Vidapeeth Railway H.S. School, Maligaon on 30.1.62 Had Sri P.K. Bagchi returned to this school on expiry of the lien period, he would have been eligible for all the benefits accruing from & consequent on the provincialisation of the services of teachers on 1.10.1977.

That Sri P.K. Bagchi having retired from his service on superannuation, he might have entitled himself to the full pensionary benefits.

So, Sri P.K. Bagchi's service in this school for the period from 8.3.48 to 29.1.62 be counted for allowing him pensionary benefits.

I wish him well in life.

Sd/- 2/6/95

PRINCIPAL
Bengali H.S. School,
Guwahati-8

*Attested
Chhale
Advocate.*

Annexure-6

N.F.RAILWAY

Office of the Controlling Officer,
Railway Higher Secondary School,
Lumding, dated 17.3.93

M E M O R A N D U M

In terms of the Para 2433 (b) B-II and Railway Board's letter No. F(E)III/84-FN-1/4 dated 12.4.86 forwarded under CPO/Maligon's Circular No. FS/726 dated 30.5.88 and E/252/243-Pt-I(W) dated 19.2.89 the previous services rendered by Shri Gopal Krishna Sarkar, Teacher Gr.I (Bengali) of Railway Higher Secondary School, Lumding under State Govt. of Assam (Dhing Public School, Dhing) w.e.f. 1.3.62 to 24.9.67 is counted towards pensionary benefits which is duly vetted by DAO/LMG vide his letter No. LMG/ESTT/NG/Counting Service dated 9.2.93.

Sd/-

Controlling Officer
Railway Higher Secondary School
Lumding

No. RSP/154

Dated 17/30.3.93

Copy to :-

1. CPO/Maligaon for information and perusal please.
2. Staff concerned.
3. Spare copy for P/case.
4. DAO/LMG for information please

Sd/- 30.3.93

Controlling Officer,
Railway Higher Secondary School
Lumding

*Attested
Duly
Av.*

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OMAR 1997
Guwahati Bench
গুৱাহাটী বেঞ্চ

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

অসম চাকরি অফিসারী (সি.এ.
Dr. Omid Personnel Officer (10)
প.ও. অফিস, গুৱাহাটী-781011.
N. P. Bldg., Guwahati-781011

O.A. NO.227/96

Shri P.K. Bagchi

-Vs.-

Union of India & Ors.

filed by the respondent
Shri P.K. Bagchi
Adv.
19/3/97

In the matter of :-

Written Statement filed on behalf
of the Respondent Nos.1, 2 & 3.

The respondents most respectfully
begs to state as under :-

1. That in the outset the answering respondent beg to state that the above application ^{has been} filed by the ~~above~~ applicant on wrong notion ^{is} and has no cause of action. The applicant was appointed as Assistant Teacher in Railway and joined in the Netaji Vidyapith N.F. Railway High School, Maligaon on 30.1.1962. He worked as Assistant Teacher in different grade and retired from service on superannuation on age limit on 31.7.1987.

Dismissed
@haha
Adv.
18-3-97

After getting all retirement benefit and pension as per Railway rules he is now agitating before Hon'ble Tribunal to count his past services from 8.3.1948 to 29.1.1962 rendered in Bengali Higher Secondary School, Guwahati a privately managed Govt. aided School under Govt. of Assam deficit grant scheme, at the relevant time which is not at all admissible at par Railway rules for granting pensionary benefit as laid down in the manual of Railway Pension Rules 1950 and Indian Railway Establishment Code Vol. II 1971 edition as amended from time to time.

2. That in reply to statements in Paragraph 6.4 of the application it is stated that the applicant is not entitled to the reliefs as per extant rules. He cannot derive any benefits from the examples of Shri Subhash Bhattacharjee and Shri Gopal Sarkar. Shri Subhash Bhattacharjee has been correctly given pension, and the case of Shri Gopal Sarkar is already under examination of department. It has already been detected that there was some mistake in fixing pension in case of Shri Sarkar and the case is under examination for rectification as per rules and procedure.

For the information of the Hon'ble Tribunal facts are placed below :-

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Office of the Personnel Officer
No. 100, Jangalpara, Guwahati-781011.
S. P. RIV., Guwahati-781011.

(i) Regarding the case of Shri Subhash Ch. Bhattacharjee, ex.Assistant Teacher, Netaji Vidyapith Railway HS School, Maligaon, it is ^{stated} mentioned that Shri Bhattacharjee had served as Assistant Teacher under West Bengal ^{Govt.} from 7.4.53 to 14.7.59 and subsequently he had applied through proper channel for appointment as Assistant Teacher in Railways and joined as Asstt. Teacher in the Railways on 22.7.59. Thus, it is very clear that Shri Bhattacharjee was working in a State Govt. School prior to his joining in the Railways and he was borne on a pensionable establishment before joining the Railways. His past services rendered in the State Govt. School has been taken into account correctly.

(ii) As far as the case of Shri G.K. Sarkar, ex.Teacher/I, Lunding is concerned, it is seen that his service under Dhing Public High School had been counted towards qualifying service and the period involved is 1.3.62 to 24.9.67. In this connection, it is mentioned that as per the Assam

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Chief Personnel Officer (R) (A)
BY. Chief Personnel Officer (R) (A)
No. 10, Railway, Guwahati-781011.
N. F. Riv., Guwahati-781011.

- 4 -

Secondary Education (Provincialis-
sation Act) '77 all employees of
the Secondary Schools in the State
of Assam shall be deemed to have
become employees of State Govt.
of Assam with effect from 1.10.77
or thereafter. Shri G.K. Sarkar
had worked in the Dhing Public High
School upto 1967 and as such he was
not a State Govt. employee when he
joined in the Railways. Thus, it
is clear that Shri G.K. Sarkar's
case has been dealt wrongly by
the Railways.

From the above facts it is evident that
Shri Bhattacharjee got the benefit correctly as per
rule, but the benefit given to Shri Sarkar was
erroneous. As such the case of Shri Sarkar cannot
be taken as precedent to give similar benefit to
the applicant who left his previous institution,
Bengali Higher Secondary School on 29.1.62 to
join the Railway. It is obvious that the applicant
during January '62 was not a State Govt. employee.
The instruction for counting of past service would
apply on such cases where at the time of leaving
of the previous organisation the same was under
the State Government and the services of the
employee ^{was} pensionable. Consequent on enactment ^{of} the
the

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Signature
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डा. मुख्य कार्यालय अधिकारी (राज.)
By. Chief Personnel Officer (R)
पू. सी. रेलवे, गुवाहाटी-781011
N. F. Rly., Guwahati-781011

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[Signature]
डा. मुखर्जी कार्तिक अधिकारी (राज.)
Dy. Chief Personnel Officer (RA)
ए. सी. रोड, गुवाहाटी-781011.
N. F. Riv., Guwahati-781011

"Assam Secondary Education Provincialisation Act 1977" all the Secondary School Teacher in the State of Assam had become a State Govt. employee under the Govt. of Assam with effect from 1.10.1977. The applicant will not come under the purview of the said Act as he left the said school before the enactment.

3. That in reply to statements in paragraph 6.7, it is stated that the Board's Circular dated 24.3.86 as annexed as Annexure-3 of the application is not relevant to his case. The said Circular is for the Railway employees and Central autonomous bodies seeking ^{absorption} ~~observation~~ in autonomous bodies under State Govt. and vice versa. The applicant was neither a staff under Central/State Government nor a staff of autonomous bodies under State/Central Government before appointment in Railways. So he cannot claim the benefit of counting of past services by dint of that Circular.

4. That in reply to statements made in paragraphs, 6,8, 6.9, 6.10, 6.11, 6.12, 6.12(a) ^(it is stated) that the applicant is not entitled to the reliefs sought for.

The letter dated 2.6.1995 issued by the Principal Bengali Higher Secondary School, Guwahati annexed as Annexure-5 of the application itself speaks that had the application ^{not} ~~application~~ returned to that

school on expiry of the lien period, he would have been eligible for all the benefit accruing from and consequent on the provincialisation of the service of teacher on 1.10.77 the applicant was appointed in Railway on 30.1.62 and acquired lien on Railway service as Assistant Teacher consequent on confirmation to his post on 23.2.63 and enjoyed all the rights and privileges entitled to a Railway servant since then. When the applicant ^{left} leaving the previous service, the service was not provincialised i.e. the State Govt. had not taken over the school. The applicant cannot claim the past services to be counted had he been absorbed in this Railway on and after 1.10.77 his past services would have been counted.

It is a fact that some of the Aided High Schools in Assam were provincialised with effect from 1.10.77 bringing services of the employees under direct control of the Govt. of Assam with pensionary benefits counting the period of service from their initial date of appointment or from the date of the concerned schools came under deficit system of grant-in-aid whichever is latter. Since, Shri Bagchi was not in service of Bengali H.S. School/Paltan Bazar on 1.10.77 i.e. on the date of Provincialisation of the school and as such his services from the initial date of appointment cannot be taken into account for pensionary benefits. Moreover he left the said school on 29.1.62 and his lien was expired on 31.7.63 and as such he cannot claim to be State Govt.

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N. F. Rly., Guwahati-781011.
BY. Chief Person... cer(1/2)
10.10.77

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K. F. R. M.

employee on 1.10.77 and thus there is no question of taking the period of his past services from 8.3.48 to 29.1.62 for pensionary benefits. So far examples given by the applicants, it is mentioned that Shri Subhash Ch. Bhattacharjee was appointed by the District School, Jalpaiguri (W.B.) not by a particular school and as such he was transferable Govt. employee. As regards Shri Gopal Krishna Sarkar of Railway Higher Secondary School, Lumding the matter has been examined and found that the case was not properly scrutinised by the Divisional Railway Authority at Lumding as his past services were not countable and action is being taken to set right the matter as per rules and procedure.

As the applicant was a Railway employee, he was guided by Railway rules applicable to a Railway employee. No other rules or instructions are relevant to his case.

It has been stated in the forgoing paras that the benefit given to Shri Sarkar was erroneous. This wrong doesnot confer any legal right to the applicant to agitate the matter which is not admissible as per rules. The applicant has not been able to furnish any rules or instruction on the basis of which his past service in non-Railway school could be accounted for. The applicant got all the pensionary benefit as per rule. So he should not have any grievance on this matter.

डा. सुब्रह्मण्यम अहिकारी (रा.)
Dy. Chief Personnel Officer (RA)
पू. सो. रेलवे, गुवाहाटी-781011.
N. F. Ry., Guwahati-781011.

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A. K. Borah

उप मुख्य कार्मिक अधिकारी (राज.)
Dy. Chief Personnel Officer (R),
पू० सी० रेल्वे, गुवाहाटी-781011.
N. F. Rly., Guwahati-781011.

5. That in reply to statements in para 6.13 and 6.14, it is stated that the application is misconceived and deserved to be dismissed with cost.

VERIFICATION

I, Shri Amit Kumar Borah aged about 37 years by occupation Railway Service working as Deputy Chief Personnel Officer of the N.F. Railway, do hereby verify that the statements made in paragraphs 1 to 5 are true to my knowledge.

I sign this verification on this 14 th day of March, 1997.

A. K. Borah

Deputy Chief Personnel Officer,
N.F. Railway.

उप मुख्य कार्मिक अधिकारी (राज.)
Dy. Chief Personnel Officer (R)
पू० सी० रेल्वे, गुवाहाटी-781011.
N. F. Rly., Guwahati-781011.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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Filed by the applicant
through Mr. K. Chandra.
Advocate.
25.8.97.

1252
28 AUG 1997
General Bench
GUWAHATI

O.A. No. 227 of 1996

Sri P.K. Bagchi

-versus-

Union of India & Ors.

In the matter of :

Rejoinder submitted by the applicant.

The applicant above named most humbly and respectfully begs to state as under :

1. That the applicant categorically denies the statement made in paragraphs 1, 2 (1) and 2(ii) and 3 of the written statement and further begs to state that the applicant of the instant case is also similarly circumstanced like Shri Subhash Chandra Bhattacharjee since the applicant also applied for Railway Service through proper channel and his lien was maintained for three years which have been agreed by the Railway. In this connection it is stated that the service of Sri Subhash Chandra Bhattacharjee was not pensionable at the relevant time when he had applied for Railway service. The position and status of the School in which Sri Subhash Chandra Bhattacharjee was serving earlier is exactly similar with that of Bengali Higher Secondary School. Be it stated that ~~the Railway benefit~~ to Shri Subhash Chandra Bhattacharjee ^{was serving in before joining in the Rly school.} in a West Bengal Board controlled School and the service was not pensionable at the relevant

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28/8/97
RA

28/8/97

Contd...

time as claimed in the written statement. Shri Bhattacharjee joined in the Railway School after resigning from his past service and the case for pensionary benefit of Shri Bhattacharjee counting past service was approved by the Office of the F & C.A.O., Maligaon, Guwahati. Therefore there is no justifiable reason to deny the benefit of past service to the present applicant.

It is further stated that the Bengali Higher Secondary School in which the applicant was serving earlier prior to his joining in the Railway High School was under the deficit Grant in-aid system by the Govt. of Assam. The Bengali Higher Secondary School was not a privately managed school but it was a Govt. aided school. Be it stated that all the schools which were running under the deficit grant in aid system within the State of Assam have been provincialised with effect from 1.10.1977 following promulgation of Assam Secondary Education (Provincialised Act) 1977, with effect from 1.10.1977, bringing services of the employees under its direct control with pensionary benefit counting the period of service from the date of their joining in the school. Therefore the service of the petitioner was declared pensionable after his joining in the Railway School through proper channel.

In paragraph 2 (11) the respondents have agreed, that the services of Shri G.K.Sarkar, has been counted for the period from 1.3.1962 to 24.9.67 but now when the applicant has referred the name of Shri G. K.S_arkar, the respondents have changed their stands

and it is stated that the case of Sri G.K.Sarkar has been wrongly dealt with by the Railways with the sole intention to frustrate the claim of the present applicant.

The affirmation of the Railway 'wrongly dealt' is nothing but to deprive the applicant in getting his legitimate claim of pensionary benefit. It is ~~best~~ known to the Railway as to how many cases they have 'wrongly dealt' and the Railway is to review their decision after a long back which is nothing but 'absurd'. The applicant begs to refer some more examples of counting of past service of the following officers and staff -

1. The past service of Mrs. Sarna Ojha, Asstt. Teacher has been counted towards her pensionary benefits.
2. The past service of Mrs. Punya Rajknow, Asstt. Teacher has been counted for her pensionary benefit.
3. The past service of Shri K.Laloo, IRTS has been counted for his pensionary benefit.

Therefore the Hon'ble Tribunal would be pleased to direct the respondents to produce the relevant papers of the aforesaid cases for perusal where it will be crystal clear that the Railway Administration dealt with such cases as per their desire and ~~extended~~ extended the pensionary benefits to them. In the written statement, it is stated that the Railway Administration has wrongly interpreted the "Assam Secondary Education (Provincialisation) Act,

1977 only to deprive some Teachers who had joined in Railway Schools before enactment of the Act. On careful consideration of the contents of the Act, it will be evident that all the Teachers who were appointed in the Assam Govt. Aided Schools before the enactment of the Act, have been brought under the purview of 'Pensionary benefit' i.e. their services are treated as pensionable from the date of appointment of the concerned Teachers. Therefore, the services of all the Teachers of erstwhile Assam Govt. Aided School, who have joined in the Railway Schools or other Govt. Educational Institutions, have automatically come under the purview of pensionable service. This decision of the Govt. of Assam cannot be denied by the Railway.

Unfortunately the Railway Respondents have inhumanly interpreted the ACT of 1977 with a view to deprive a few Teachers who had joined the Railway with high aspiration but for the wrong interpretation of the ACT the poor paid Teachers are being deprived from their legitimate dues in the shape of Pension and Gratuity which are calculated on the basis of Basic Pay at the time of retirement and number of years of qualifying service.

That the pension and gratuity of the applicant has been fixed on the basis of number of years of service rendered in the Railway i.e. for the period from 30.01.62 to 31.07.82 i.e. 25 years 6 months. If the past services of the applicant for the period from 08.03.48 to 29.01.62 i.e. about 14 years is counted, his total qualifying

2. That your applicant categorically deny the statement made in paragraphs 4 and 5 of the written statement and further begs to state that Respondents have also amply proved their misinterpretation on the letter dated 02.06.95 of the ~~Principally,xxx~~ Principal, Bengali Higher Secondary School, Guwahati (Annexure-5 to the application) in para 4 of their written statement of defence; stating that "itself speaks that had the applicant returned to that School on expiry of the lien period, he would have been eligible for all the benefits accruing from and consequent on the provincialisation of the service of Teacher on 1.10.1977." Again the Respondents stated that "when the applicant leaving the previous service, the service was not provincialised i.e. Govt. had not taken over the School." Again they have stated "The applicant cannot claim the past services to be counted had he been absorbed in this Railway on and after 01.10.1977, his past services would have been counted."

It is quite clear from above, that the Railway Respondents have already made-up their minds to deprive the applicant by making wrong interpretation of the very idea of the Govt. of Assam that all the Teachers are to be brought under the purview of pensionable service from their respective date of appointment by enacting the Assam Secondary Education (Provincialisation) Act, 1977. Since all the Teachers of erstwhile Govt. aided School have been brought under this Act from the retrospective date of appointment, the demarcation ~~of the xxxxxxxxx~~ made by the Railway to the effect that "had he been absorbed in this Railway on and after 01.10.1977, his

Past services would have been counted." This confession of the Railway Respondents has confirmed that they are having a wrong idea on the enactment of the Act for which they have demarcated the date of enforcement of the Act; but did not like to go into the depth that the services of the Teachers of all the Assam Govt. Aided School have been brought under the purview of pensionary benefit from the retrospective effect of their date of appointment by the enactment of the Act enforced from 01.10.1977.

3. The applicant further begs to state that in a similar case of Sri Madan Mohan Patowary, who was the founder Headmaster of Maligaon Govt. Aided High School, Now Railway High School, Maligaon also worked in the Aided School for the period from 2.2.1959-31-3-77 and the said school was under the deficit grant in aid system by the Govt. of Assam, the said School was taken over by the N.F.Railway with effect from 1.4.1977, then Sri Pathak approached the Railway authorities for counting his past service rendered as Head Master of Maligaon Govt. Aided High School. The Railway Authorities thereafter made correspondences under their letter No. 18E/I/134 (0) dated 6.12.90 with the director of Secondary Education (Assam) requesting to furnish following information :

- "1. That was the status of Maligaon High School as on 31.3.1977 whether it was a privately managed school or a Govt. Aided School.
- 2. Whether the teaching and non-teaching staff of the erstwhile Maligaon High School was the State Govt. Servant as on 31.3.1977 or all

the employees of the private managed body.

3. If the employees of the school as on 31.3.1977, were the Govt. employees, whether their services were pensionable and also whether any retirement benefits have been paid to such employees after the school was taken over by the N.F. Railway Administration with effect from 1.4.1977 and renamed as Maligaon Rly. High School.

An early reply on the above 3 points is earnestly solicited."

After receipt of reply from the Railway Board rejecting the claim of his past service. Sri Patowary approached the Hon'ble Central Administrative Tribunal Guwahati Bench through O.A. No. 174 of 1992, the authority of the railway also contested the case of Sri Patowary. However the Hon'ble Tribunal after hearing the argument of the parties the application was disposed of with the following direction and observations :

"Consequently we direct the respondents to decide that question if request for retirement is reiterated by the applicant on or after 1.4.1997 by ignoring the orders impugned in this O.A. and the view taken by them at this stage. In otherwords the respondents will decide the question afresh according to then prevailing rules and duly taking into account following factors :

1. The old School was under deficit grant in aid scheme.
2. It was taken over by the Railways with assets and liabilities
3. The terms and conditions of take over of the School particularly referring to the existing staff (if there was any such provision made therein) and whether applicant was member of staff or a member of management and how he has to be treated if he was founder member and part of management.
4. Opinion of FA & CAO (set out in Annexure J).
5. Annexures E, F, G and I herein.
6. The object and provisions of the Assam Secondary Education (Provincialisation) Act 1977, read with Rules 1982 made thereunder and The Assam Aided Higher Secondary High and Middle Schools Management Rules, 1976.
7. Railway Services (Pension) Rules, 1993.
8. The relevant guidelines issued by the Railway Administration/Board on the point till then applicable.
9. The rulings mentioned earlier and as may be rendered hereafter till then
10. Such other material, record of circumstances as may be found relevant.

11. Policy of Government of India in regard to other departments such as nationalised Banks etc.

It is made clear that the contentions raised by both the parties in this O.S. will not bar the reconsideration of the question but these will be open to be taken into account.

18. The applicant is granted leave to reiterate his request for retirement on or after 1.4.1997 if he would desire to retire earlier to the date of superannuation under the Raulway Rules - Notwithstanding that his request made in July 1990 has not been granted.

In the result the O.A. is disposed of in terms of the observations and directions given above."

However, in the instant case, the position is almost similar of the applicant like that of Sri M.M.Patowary. But in the instant case the applicant has already retired from railway service. Therefore Hon'ble Tribunal be pleased to pass orders directing the respondents counting of past service of the applicant and to make payment of his full pension benefit and gratuity since the applicant has rendered uninterrupted service for more than 39 years from 8.3.48 to 31.7.87, Both in Govt aided provinsialised school and railway school.

In the circumstances stated above the application deserves to be allowed with costs.

Contd...

A copy of the letter dated 6.12.90 issued by the General Manager (P) addressed to Director of Secondary School Govt. of Assam and a copy of letter dated 5.2.91 issued by Inspector of School R.D.C., Guwahati addressed to General Manager (P) and a copy of letter dated 10.6.91 issued by the Deputy Chief Personnel Officer, Maligaon addressed to Joint Director, Railway Board, New Delhi and also a copy of letter dated 21.2.92 issued by the Chief Personnel Officer and a copy of the Judgement and Order dated 16.1.95 passed in O.A. No.174 of 1992 are enclosed as Annexures 7,8,9,10,11 & 12 respectively.

4. That your applicant further begs to state that a similar dispute was arises regarding counting of past service of Shri Chandra Nath Sarma, Asstt. Teacher, Railway High School Maligaon in the year 1989 and at the relevant time the then General Manager Sri Nikhilesh Mitra addressed a letter to Dinesh Goswami, the then Member of Parliament, New Delhi quoting the reference of letter dated 19.7.89 and 31.8.89. It was stated that the counting of post services in provincialised schools for the purpose of pensionary benefits and pay protection has been examined carefully and it is found that counting of past services for the purpose of pensionary benefits is admissible but there is no specific rule to grant pay protection in such cases, and it is also stated that the case of Sri Chandra Nath Sarma has been referred to Railway Board for their decision in the matter, the applicant also came to know that the Railway Board has approved for counting of past service of Sri Chandra Nath Sarma. Therefore the present applicant

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is also entitled to the benefit for counting of past services rendered.

A copy of the letter bearing No. E/252/61/124 (W) is annexed herewith and marked as Annexure-12.

5. That your applicant further begs to state that in the similar facts and circumstances one Smt. Amita Bhattacharjee, Assistant Teacher of Netaji Vidyapith Railway Higher Secondary School, Maligaon also approached the Railway authorities for counting of her past services which she had rendered under the Directorate of Education, Government of Tripura with effect from 17.02.65 to 26.01.74 and the Railway authorities after being satisfied decided to count the past services of Smt. Amita Bhattacharjee with effect from 17.02.65 to 26.01.74 for pensionary benefits and the above mentioned period of past service was added with her present service under the Railways with effect from 04.10.1977 for the purpose of pensionary benefits vide Memorandum No. E/252/16/387(W) Maligaon, Dt. 04.07.97. Since the benefit of past service has been allowed for the purpose of pensionary benefit to Smt. Amita Bhattacharjee there is no justification to deny the same benefit to the present applicant who is similarly situated like that of Smt. Amita Bhattacharjee, therefore the action of the respondents is discriminatory, arbitrary, illegal and violative of Article 14 of the Constitution of India. Be it stated that the status of the school where Smt. Amita Bhattacharjee had rendered his service under the department of Directorate Education, Govt. of Tripura is similar to the school in which the present applicant had rendered his past services and it is categorically stated that the school

where Smt. Amita Bhattacharjee had rendered her past services ~~under the~~ was at the relevant time was Govt. ~~aided~~ aided school. Therefore there is no justification to deny the similar benefit to the present applicant for counting of his past services. Therefore the Hon'ble Tribunal be pleased to direct the respondents to produce the relevant records regarding counting of past services of Smt. Amita Bhattacharjee as well as Mr. Chandranath Sharma Assistant Teacher, Railway High School, Maligaon before this Hon'ble Tribunal for perusal.

A copy of the Memorandum dated 4.7.97 is enclosed as Annexure-13.

V E R I F I C A T I O N

I, Sri Pabitra Kumar Bagchi, son of late Nani Gopal Bagchi, aged about 72 years, retired as Asstt. Teacher, Netaji Vidyapith Higher Secondary School, Maligaon, resident of Dr. B. Baruah Road, Ulubari Chariali, Guwahati-7 applicant in the Original Application No. ~~174x08~~ 227 of 1996 do hereby verify and declare that the statements made in this Rejoinder in paragraphs 1 to 4 are true to my knowledge and belief. I have not suppressed any material facts.

And I sign this verification on this the 25th day of August, 1997.

P. K. Bagchi
Signature

Pabitra Kumar Bagchi

Annexure-7

N.F. RAILWAY

OFFICE OF THE GENERAL AMANAGER (P)
MALIGAON, GUWAHATI-11

No. 18E/1/134 (O) -

Dated 6.12.1990

To
The Director of Secondary School
Government of Assam
Dispur, Guwahati-781009

Dear Sir,

Sub : Maligaon Railway High School
Maligaon, Guwahati-11.

Your attention is drawn to the fact that the then Maligaon High School, Maligaon, Guwahati-11 was taken over by the N.F. Railway Administration with effect from 1.4.1977 with all the assets and liabilities including the teaching and non-teaching staff who were employed in that school upto 21.3.1977.

Now the question of counting of service of the employees of erstwhile Maligaon High School has arisen and required to be decided as per normal application of rules in this respect.

It is, therefore, requested that the following information may please be furnished to this office for finalising the issue.

1. What was the status of Maligaon High School as on 31.3.1977 whether it was a privately managed school or a Govt. Aided School.

*Attended
C. Adv.*

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2. Whether the teaching and non-teaching staff of the erstwhile Maligaon High School was the State Govt. Servant as on 31.3.1977 or all were the employees of the private managed body.
3. If the employees of the School as on 31.3.1977, were the Govt. employees, whether their services were pensionable and also whether any retirement benefits have been paid to such employees after the School was taken over by the N.F. Railway Administration with effect from 1.4.1977 and renamed as Maligaon Rly. High School.

An early reply on the above 3 points is earnestly solicited.

Thanking you,

Yours faithfully,

Sd/-Illegible.

(A. Chaturvedi),

Dy. C.P.O. (G),

for General Manager (P)

Attested
@
Adv

GOVERNMENT OF ASSAM
OFFICE OF THE INSPECTOR OF SCHOOLS, KAMRUP DISTRICT CIRCLE
GUWAHATI

No. G/9/91/101186

Dt. Guwahati, the 5th Feb/91

From
Md. M.Ali, M.Sc.
Inspector of Schools, K.D.C.
Guwahati

To
The General Manager (P),
N.F. Railway, Maligaon,
Guwahati-11

Sub : Maligaon Railway High School, Guwahati-11

Ref : Letter No. 16E/1/134(O) dt. 27.12.90 ... with
D.S.E's letter No. GE-EST/A, 91/2-A dt. 29.1.91.

Sir,

In respect of your above correspondence, I have the honour to state that the Maligaon High School at the relevant time was under deficit system of grant-in-aid from the Govt. of Assam. Since Assam Govt. provincialised all the Schools under deficit system on grant-in-aid from 1977 bringing services of the employees under its direct control with pensionary benefit counting the period of service from the date of appointment, and as such the services of all the teaching and non-teaching staff of Maligaon High School were pensionable from the date of their joining the school.

Now, as the Railway Authorities have taken over the school with all its assets and liabilities, it is their responsibility to count past services of the employees towards pensionary benefits. The question of Assam Govt. paying retirement benefits to the personnel of the institution (Maligaon High School) after it was taken over by the Central Govt. administration, i.e. N.F. Railway does not arise.

Yours faithfully,

Sd/- Illegible

Inspector of Schools, K.D.C., Guwahati

Memo No. S/9/91/

Dt. Guwahati, the the Feb/91

Copy to-

1. The Director of Secondary Education, Assam, Kahilipara for information with reference to his letter No. GE-Est/APIT/9/91/2 dt. 29.1.91.

Inspector of Schools, K.D.C. Guwahati

AHESTED
Wm
ADV.

Annexure-9

N.F.RAILWAY

Dy. Chief Personnel Officer (IR),
Northeast Frontier Railway,
Maligaon, Guwahati-781011

K.BRAHMA.

Office of the General Manager (P)

No. No. 18E/1/134 (O)

Dated : 10.6.1991

My dear Singh,

Sub: Counting of past service of teaching and non-teaching staff of Railway H.S. School, Maligaon (Assamese Medium)

The Railway H.S. School, Maligaon, (Assamese Medium) was taken over by the N.F.Railway with effect from 1.4.1977 with all existing teaching and non-teaching staff when the School was running by a private body under the deficit grant-in-aid granted by the Govt. of Assam. While taking over of the School by the N.F.Railway Administration, it was stipulated that their services will be counted for Rây. service from the date of taking over of the School by the Railway.

The Head Master of the School. who was subsequently promoted to the post of Principãã, has now applied for counting of his past services and also submitted a notice for voluntary retirement.

On a reference to the Inspector of Schools, Govt. of Assam, Guwahati, and also on personal contract, it is understood that all the Scholls within the State of Assam, have been provincialised with effect from 1.10.1977 after taking over the school by the N.F.Railway with effect from 1.4.1977. The Govt. of Assam has also granted the benefit of counting of services of the teaching and non-teaching staff of all the schools from the date of their

Approved
On
Adv

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original date of appointment in the respective schools. The Inspector of Schools, Govt. of Assam has also clarified that the services of teaching and non-teaching staff of the then Maligaon High School were pensionable from the date of their joining in the School. Shri M.N. Patwari, the then Head Master, was appointed on 2.2.1959 as Head Master of the School. A copy of the letter of Inspector of Schools, Govt. of Assam, is enclosed for perusal.

The case was referred to the FA & CAO of this Rly. whose observations are quoted herein below :

"In view of the categorical certificate from the Inspector of Schools, Govt. of Assam, Kamrup District Circle, vide his letter No. S/9/91/17186 dated 5.2.91 that the Maligaon High School at the relevant time was under deficit system of grant-in-aid from the Govt. of Assam, the Govt. had provincialised all the Schools under deficit system of grant-in-aid, from 1977, bringing services of the employees under its direct control with pensionary benefit counting the period of service from the date of appointment, and as such the services of all the teaching and non-teaching staff of Maligaon High School were pensionable from the date of their joining the school, as such the service rendered by Shri Patwari, Head Master, during the period from 2.2.1959 to 31.2.1977 in Govt. Aided High

Attested
M. N. Patwari

School, Maligaon, is countable toward pensionary benefits subject to the GM's approval in terms of Ministry of Finance O.M. No.14 (5)/86/TA/1029 dated 9.10.1986.

Further, the amount of PF and gratuity, if any, received while working in Govt. Aided High School Maligaon will have to be deposited with Railways and amalgamated with Railway P!F Account of the Officer."

The Railway Board vide ther letter No.E (P&A) I-77/RT/46 dated 9.11.77 have laid down inter-alia that a Railway servant can give notice of voluntary retirement to the appropriate Administration authority, if he had completed 20 years of qualifying service for the purpose of pensionary benefit. But the actual service rendered by Shri Patwari on Railway falls short of 20 years if the service is counted from the date of taking over the School by the N.F.Railway with effect from 1.4.1977. If the past services rendered by Shri Patwari in the deficit grant School is taken into consideration, he completes more than 30 years of service and will be eligible to the pension and pensionary benefit of a great extent.

Since the above case is different and does not come under the purview of the Board's instructions communicated from time to time on the point of counting of past service, Board's considered decision is solicited whether the service rendered by the teaching and non-teaching staff of the said school can be counted for

Attested
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Adv.

Annexure-9 (Contd.)

the purpose of pensionary benefit on the consideration that the Govt. of Assam has already counted the services of such staff of all other similar Schools from the date of their appointment even though the Schools have been brought under the provincialised scheme from the subsequent date.

You are, therefore, requested to examine the issue and communicate Board's decision at an early date.

With regards,

Yours Sincerely,

Sd/-

(A.K.Brahma).

To

Shri Joginder Singh,
Joint Director (E) (W),
Railway Board,
New Delhi.

Attested
@
Adv.

N.F.RAILWAY

No.18E/1/134 (O)

Maligaon, dated 21.2.92

To
Shri M.M.Patwari,
Netaji Vidyapeeth
Maligaon

Sub : Counting of past services rendered in
Private Schools for the purpose of
retirement benefit.

Ref : This letter No. Nil dated 6.1.92.

The Railway Board vide their letter No. E(W)91SC/28
dated 29.10.91 have communicated that the services
rendered in Private Schools prior to their taken over
by the Railways cannot be allowed to be counted along
with the services rendered in the Railways for the
purpose of retirement benefit as per clarification given
by the DOP & PN.

In view of the above your request for voluntary
retirement as applied for cannot be accepted as you
have not yet completed the qualifying service prescribed
for the purpose of voluntary retirement.

Sd/- Illegible

for Chief Personnel Officer

Copy to :

SPC(W)/HQ, for information.

CC.20/2

Sd/- Illegible

for Chief Personnel Officer

Attended
D.V.
J.V.

Annexure-11

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 174/92

Date of Order : This the 16th Day of January 1996.

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

SHRI G.L.SANGLYINE, MEMBER (A)

Shri Madan Mohan Patowary,
Son of Late Upendra Nath Patowary
resident of Gotanagar, Maligaon,
Guwahati.

.... Applicant

By Advocate Mr. B.Banerjee with Mr. M.Chand and
Mr. A.Rashid.

-versus-

1. Union of India (Through General Manager,
N.F.Railway, Maligaon,
Guwahati.
2. Railway Board,
(Through Secretary,
Railway Board, New Delhi).
3. Chief Personal Officer,
N.F.Railway, Maligaon,
Guwahati

.... Respondents.

By Advocate Mr. B.K.Sharma.

O R D E R

CHAUDHARI J (VC):

1. Maligaon Assamese medium High School was a Private High School in Assamese Medium founded in Maligaon. The applicant was appointed the first (founder) Head Master on 2.2.1959 and continued to work in that capacity till 31.3.77.
2. It appears that the School ran into financial difficulties and at the relevant time was covered by deficit system of grant-in-aid of the Government of Assam.
3. The School was taken over by the North Frontier Railway together with its assets and liabilities w.e.f.1.4.77 and is being run as a Railway School since then and is known

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D/W
D/W

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as the 'Railway High School, Maligaon, (Assamese Medium)."
It is governed by the Indian Railway Establishment Code and Manual.

4. The terms and conditions of take over of the School by the Railways have not been produced. Neither the bye laws of the School applicable prior to its take over nor any other materials have been produced. Consequently in the light of Annexure A it has to be presumed that the services of the members of the staff of the School stood terminated on the preceding day of take over and they were not absorbed and continued as 'Railway Servants' after the take over automatically.

5. The N.F. Railway however offered temporary appointment to the applicant in the school as Head Master Class II post on terms and conditions mentioned in the letter of offer dated 8.5.77 (Annexure-A) in the scale of Rs.650-810-EB-880-1200 (RS) p.m. The applicant accepted the offer and joined the service (Vide Annexure I to the written statement). Thus he became a 'Railway servant'. He continued in that post since then. Subsequently on 7.10.86 he was promoted as Principal which is a senior scale gazetted post and on the date of filing the O.A. he was working in that capacity at Netaji Vidyapith Railway High School, Pandu.

6. On 13.7.90 the applicant served a notice of retirement (Annexure B) upon the respondents addressed to the General Manager N.F. Railway. He intimated that he would like to retire w.e.f. 31.10.90 and he accordingly retired. The retirement was sought on completion of 30 years of service. In computing that period he had included the period of service rendered in the then aided school prior to its take over.

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- 7. By letter dated 28.8.1990 he was informed by the Chief Personnel Officer (Annexure C) that as he had not yet completed 20 years Railway Service from the date of appointment to Railway Service since 1.4.1977 his request for voluntary retirement could not be agreed. Hence the request was refused.
- 8. Applicant submitted a representation against the above decision on 31.8.90 to C.P.O. disputing its correctness. In reply he was informed by the CPO on 15.10.90 (Annexure F) that the FA & CAO has not agreed to counting his past service but a fresh proposal was being submitted to the FA & CAO in the matter.
- 9. Finally by letter dated 21.2.92 (No.18E/1/134 (O)- Annexure K) the CPO informed the applicant that his request for voluntary retirement could not be accepted in view of the letter of Railway Board No.E(W)91SC/28 dated 29.10.91 since he had not completed the qualifying service prescribed for the purpose of voluntary retirement.
- 10. The applicant thereafter filed the instant O.A. on 8.9.92 interalia praying that the letters of the respondents dated 21.2.92 and 29.10.91 may be quashed and set aside and the respondents be directed to count his past services w.e.f. 2.2.59 towards pensionary benefits.
- 11. The nature of reliefs sought as above is confusing. The applicant has not sought any relief for grant of retirement and without doing so he has however sought relief in respect of pensionary benefit. Obviously until he is allowed to retire the question of fixation of pension would not arise. There is thus some lacuna in the framing the application. Mr. Chanda, learned counsel for the applicant submitted that the application in substance being to

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 (initials)
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Annexure-11 (Contd.)

challenge the action of the respondents in refusing his request for retirement this lacuna may be overlooked. We think we can accept that submission.

12. There is however no escape from the situation that two different questions have been raised namely :

- 1. Whether the applicant could retire w.e.f. 31.10.90?

and

- 2. Whether he is entitled to get full pensionary benefit as if he has retired on superannuation on completion of qualifying service of 30 years?

Both these aspects involve the question as to whether the past service of the applicant in the School before its take over can be tagged with the service under the Railways from 1.4.1977 till the date of application for retirement to count the prescribed qualifying service for both the purpose under the Railway Rules.

13. The respondents resist the application. They inter alia contend that the past service of the applicant cannot be taken into account particularly in view of the terms and conditions of appointment (Annexure-A) which ~~Railways~~ were ~~xxxx~~ accepted by the applicant and as under the rules of the Railways the applicant had not put in the prescribed qualifying service his request could not be accepted. They state that on his superannuation after completing the qualifying service from Railway service he will be entitled to get the pensionary benefits as per the rules then applicable. Thus contending that the application for retirement was prematurely made and has been rightly

Attested
Cm
Adm.

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rejected they submit the application is liable to be dismissed. They have treated the request of the applicant as being for voluntary retirement as he has not reached the age of superannuation and there is no other type of retirement possible. Mr. B.K.Sharma learned counsel for the respondents submits that for the aforesaid reasons the action of the respondents is in accordance with the law.

14. The applicant has filed a rejoinder explaining the various aspects dealt with in the W.S. The respondents have filed additional written statement.

15. We have heard Mr. Chanda appearing on behalf of the applicant at length. We have also examined the provisions of 'The Assam Secondary Education (Provincialisation) Act 1977 and 'The Assam Aided Higher Secondary, High and Middle Schools, Management Rules 1976' made by the Govt. of Assam on which he has placed heavy reliance. We have also considered the below mentioned rulings cited by him.

1. AIR 1994 SC p 972
Chander Sain V. State of Haryana & Ors.
2. 1995 (4) SLR P & H (High Court) p.160
Surinder Paul Sharma V. State of P & H.
3. 1986 (3) SCC 156
Central Inland Water Transport Corporation
V. Brojo Nath Ganguly.
4. 1988 (4) SC 478
Kanpur Suraksha Karmachari V. U O I
5. 1995 (5) SLR P 566 P & H (HC) Loka Ram
V. Haryana Electricity Board.

Attested
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16. The submissions of Mr. Chanda are as follows :
- (a) The School (before take over) was a Govt. Aided School. It was covered by deficit grant in-aid system. It was therefore covered by the Provincialisation Act 1977 and Aided School Management Rules 1976. The rights and benefits earned under the terms and conditions of service with the Aided School therefore continued and the period of that service must be taken into account for calculating the qualifying service for retirement and pensionary benefits. The decision of the respondents to the contrary is therefore erroneous and contrary to law.
 - (b) Since the take over of the School by the Railways was subject to statutory provisions the conditions and terms contrary thereto contained in Annexure ^A are unenforceable and stand superseded.
 - (c) ^AAlternatively the terms and conditions in Annexure ^A relied upon by the respondents amount to unconscionable contract and therefore are void.
 - (d) The take over was of all assets and liabilities. Therefore when the staff was reappointed its earlier rights and benefits were protected and cannot be denied under the guise that there was fresh appointment.
 - (e) The opinion of FA and CAO that the applicant was qualified to get pension has been ignored without any justification.

Accepted
Wm.

Annexure-11 (Contd.)

- (f) The instances relating to similarly placed persons who have been given benefit of past service as shown in annexure 'O' and explained in rejoinder also have not been satisfactorily explained by the respondents and thus differential treatment has been given to the applicant which is bad in law.
- (g) It is highly unjust and unfair to deprive the applicant the benefit of long past service of nearly 18 years i.e. from 2.2.1959 to 31.3.1977.
- (h) The request of the applicant for retirement and full pensionary benefit on fulfilling the requirement of qualifying service taking into account the past service has therefore been illegally refused by the respondents.

17. The points raised by Mr. Chanda undoubtedly need detailed scrutiny. We are however of the opinion that since today is not the proper stage to decide these questions these may be left open to be decided at a future date on appropriate occasion. We take this view in the following circumstances :

The respondents do not dispute the right of applicant to retire or for pensionary benefits available after retirement. They have however rejected the request made by the applicant for retirement from 31.10.90 on the ground that he has not completed the qualifying service of 20 years till then as required under provisions of IRE Code and rules made thereunder (as were applicable on the material date i.e. 31.10.90. Now chapters III & VI of Railway Services (Pension) Rules, 1993). In adopteing this stand the respondents are excluding the past service of the

*Attended
Adv*

Annexure-11 (Contd.)

applicant in the School. If that is to be taken into account then the applicant could be said to have completed the full qualifying period of 30 years and with weightage of 3 years which according to Mr. Chanda would be available to the applicant under the rules, he would be qualified to get full pensionary benefits. Even going by the stand of the respondents the applicant would be qualifying for voluntary retirement on completion of 20 years of Railway service on 1.4.1997 (from 1.4.1997). Since a period of nearly $5\frac{1}{2}$ years has elapsed since the date when retirement was requested (w.e.f. 31.10.90) it has lost its value. Surely having waited so long the applicant can and should want for another $14\frac{1}{2}$ months when he may choose to reiterate his request for retirement for which the respondents could not have any legal objection. It will only be thereafter the question would arise as to whether the applicant would be entitled to get full pensionary benefit on the basis of his past service being taken into account or not. Therefore we think it proper at this stage to leave it open to the applicant to agitate that question at that stage.

18. Consequently we direct the respondents to decide that question if request for retirement is reiterated by the applicant on or after 1.4.1997 by ignoring the orders impugned in this O.A. and the view taken by them at this stage. In other words the respondents will decide the question afresh according to the then prevailing rules and duly taking into account following factors :

1. The old School was under deficit grant-in-aid scheme.
2. It was taken over by the Railways with assets and liabilities.

*Attested
By
PDU*

Annexure-11 (Contd.)

3. The terms and conditions of take over of the School particularly referring to the existing staff (if there was any such provision made therein) and whether applicant was member of staff or a member of management and how he has to be treated if he was founder member and part of management.
4. Opinion of FA & CAO (set out in Annexure J).
5. Annexures E, F, G and I herein.
6. The object and provisions of the Assam Secondary Education (Provincialisation) Act 1977, read with Rules 1982 made thereunder and The Assam Aided Higher Secondary High and Middle Schools Management Rules, 1976.
7. Railway Services (Pension) Rules, 1993.
8. The relevant guidelines issued by the Railway Administration/Board on the point till then applicable.
9. The rulings mentioned earlier and as may be rendered hereafter till then
10. Such other material, record or circumstances as may be found relevant.
11. Policy of Government of India in regard to other departments such as Nationalised Banks etc.

It is made clear that the contentions raised by both the parties in this O.A. will not bar the reconsideration of the question but these will be open to be taken into account.

Contd...

Attested
(Signature)
Date

Annexure-11 (Contd.)

18. The applicant is granted leave to reiterate his request for retirement on or after 1.4.1997 if he would desire to retire earlier to the date of superannuation under the Railway Rules-Notwithstanding that his request made in July 1990 has not been granted.

In the result the O.A. is disposed of in terms of the observations and directions given above.

O.A. disposed of. No order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMN)

*Attested
On
ADW.*

Annexure-12

NIKHILESH MITRA
GENERAL MANAGER

N.F.RAILWAY
Maligaon, Guwahati-781011
Assam

No. E/252/61/124 (W)

Dated : 9.89

To
Shri Dinesh Goswami
Member of Parliament,
C-1 M.S.Flat,
Baba Kharak Singh Marg,
New Delhi-110001

Respected Sir,

Sub : Appeal of Shri Chandra Nath Sarma, Asstt. Teacher, Rly. High School, Maligaon for counting of his past services for the purpose of pensionary benefits and pay protection.

Ref : (i) Your letter dated 19.7.89.
(ii) My letter No. Z/Pivot/MP/88/89
dt. 31.8.89.

In continuation to my letter quoted above it is stated that the appeal of Shri Chandra Natha Sarma, Asstt. Teacher Railway High School, Maligaon received through your letter under reference for counting his past services in provincialised school for the purpose of pensionary benefits and pay protection, has been examined carefully. It is found that counting of past services for the purpose of pensionary benefits is admissible in this case but there is no rule to grant pay protection in such cases. However, the case has been referred to Railway Board for their decision in the matter.

With regards,

Yours Sincerely,

Sd/-

(Nikhilesh Mitra)
General Manager

*Attended
@m
Adv*

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Annexure-13

NORTH EAST FRONTIER RAILWAY

MEMORANDUM

In accordance with the Ministry of Finance (Department of Expenditure)'s Office Memorandum No.14 (5) 86/TA/112 dated 05.12.89 and Railway Board's letter No.F(E) III/89/PN-1 dated 11.8.1989, Dy. CPO/IR has accorded his sanction towards counting of past service with effect from 17.02.65 to 03.10.77 in favour of Smt. Amita Buattacharjee Asstt. Teacher of Netaji Vidyapith Rly. H.S. School, Maligaon. Smt. Bhattacharjee has rendered her past service as Asstt. Teacher under the Directorate of Education, Govt. of Tripura, with effect from 17.02.65 to 26.01.74 and this period will be added with her present service with effect from 04.10.77 for pensionery benefits treating the intervening period ~~with her present service with effect from 04.10.77 for pensionery benefits treating the intervening period~~ from 26.01.74 to 03.10.77 as "Dies non."

This has the concurrence of F & CAO/N.F.Railway, Maligaon vide U.O. No. FN(R)F/S-Pt.II dated 27.04.95.

(J. RABIDAS)
Asstt. Personnel Officer (W)
for GENERAL MANAGER (P)

- No.E/252/16/387 (W) Maligaon, dt. 04.07.97
Copy forwarded for information and necessary action to :
1. Controlling officer, Netaji Vidyapith Rly. H.S.School/MLG.
 2. Principal, Netaji Vidyapith Rly. H.S.chool/MLG.Cy.CEE/MLG.
 3. F & CAO (FNGA) in duplicate.
 4. Smt. Amita Bhattacharjee, Asstt. Teacher, Netaji Vidyapith Rly. H.S. School, Maligaon.
 5. Inspector of Schools, Sadar 'A' Agartala, Tripura.

Sd/- Illegible 4.7.97
(J.RABIDAS)
Asstt. Personnel Officer (W)
for GENERAL MANAGER (P)

Accepted
Wm
Adv