

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, AHMEDABAD**

Present - Sunil Kumar Singh-I,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Date: 28th March, 2023

Reference (CGITA) No. : 94/2011

1. The Divisional Railway Manager,
Western Railway, Pratap Nagar,
Baroda – 390004
2. The Asstt. Divisional Mechanical Engineer (C & W),
Western Railway, Karchiya Yard,
BarodaFirst Party / Employer

V

The Divisional Secretary,
Paschim Railway Karamchari Parishad,
Shastri Pole, Kothi,
Vadodara (Gujarat) – 390001
(For the workman Shri Noor Alam Khan)

.....Second Party / Union / Workman

Advocate for the First Party / Employer: Shri Rajesh Singh Thakur

Advocate for the Second Party / Union / Workman: Shri R. S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/66/2011-IR(B-I) dated 09.12.2011 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad in respect of the matter specified in the Schedule.

THE SCHEDULE

“Whether the demand of the Union, Paschim Railway Karamchari Parishad, Vadodara, for not to get vacated the Railway Quarter No. 694/H from Shri Noor Alam Khan who was dismissed from service w.e.f. 07/03/2006, payment of settlement dues with 12% interest from 2006, payment of family pension with arrears from 2006, cancellation of recovery of Rs. 184644/- for damage rent of the quarter, recovering Railway quarter rent at normal rates and the workman be given compulsory retirement, is legal and justified? To what relief the workman / union is entitled?”

1. The second party / workman's union submitted the statement of claim at Ex. 8, stating therein that the workman Shri Noor Alam Khan was serving as Khalasi-cum-Helper with the first party / employer. He has completed 20 years of continuous service with 240 days in every calendar year. His entire service was blotless and he was not served any notice or memo from the first party / employer. During the vacation in the month of May, the workman was at his village / home town. Scuffle took place between the two groups. The workman tried to calm

situation. On account of said scuffle, one person died. The name of the workman was also given in the criminal complaint. He got bail in the said criminal complaint and reported for duty. He was convicted u/s 302 IPC by Additional Sessions Court, Etah which has led his dismissal. Division Bench of Hon'ble High Court of Allahabad, vide order dated 21.07.2006 suspended the sentence imposed by Sessions Court. The second party / workman has been illegally and arbitrarily terminated by the first party / employer on 07.03.2006 without waiting for the outcome of the criminal appeal. He continued to occupy the government quarter after his termination due to unemployment and financial crisis. Recovery of Rs. 184644/- was initiated by the first party / employer for unauthorised occupation of said government quarter. There is master servant relationship between the parties. The workman prays to treat his case as compulsory retirement. He has further prayed for the payment of all pensionary benefits with 12 % interest and to set aside the order of said recovery of Rs. 184644/-.

2. The first party / employer has submitted its written statement at Ex. 10 stating therein that the second party / workman worked as Khalasi Helper in railway service w.e.f. 31.08.1986 for 19 years, 06 months and 23 days and was terminated on 07.03.2006. Out of this total service, after deducting non-qualifying service of 05 years, 01 month and 07 days, his qualifying service is 14.5 years. He is therefore, not entitled for retiral and pensionary benefits. The second party / workman had never intimated about the said criminal case. On receipt of intimation of judgement dated 24.01.2004 of conviction passed by the Hon'ble Sessions Court / Fast Track Court No. – 5, Etah (UP) in Session Trial No.

247/2001 (correct S. T. No. is 697/2001 as per Ex. 9 / M-9/3), he was dismissed from service as per provisions of DAR Rules vide NIP dated 07.03.2006 after issuing show-cause notice to him. All admissible dues have been paid to him. The second party / workman has no legal right to occupy the railway quarter after his dismissal. He had illegally occupied the railway quarter from 23.03.2006 to 22.03.2011, therefore, damage / rent was required to be recovered as per existing rules. The workman is not entitled for the claimed relief.

3. The second party / union / workman has filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Serialim of Document	Type / Remarks
1	Charter of demand raised by the union before Assistant Labour Commissioner (Central), Vadodara	13.10.2010	Ex. 9 / M-9/1	Xerox
2	Office Memorandum No. E/BJW/5278 issued by DRM (E) BRC, Divisional Office, Baroda	17.06.2009	Ex. 9 / M-9/2	Xerox
3	Letter written by DRM (E) BRC, Divisional Office, Vadodara to Shri Noor Alam Khan N.	29.03.2010	Ex. 9 / M-9/3	Xerox
4	Letter written by DRM (E) BRC, Divisional Office, Baroda to Shri Noor Alam Khan N.	16.09.2010	Ex. 9 / M-9/4	Xerox
5	Application written by Shri Noor Alam Khan N. To The Additional Divisional Railway Manager, Western Railway, Pratapnagar, Vadodara	02.08.2010	Ex. 9 / M-9/5	Xerox
6	Order of dismissal from service of Shri Noor Alam Khan N. by the Railway	07.03.2006	Ex. 9 / M-9/6/1	Xerox
7	Letter written by AA & Sr. DME-BRC to Shri Noor Alam Khan N.	16.05.2007	Ex. 9 / M-9/6/2	Xerox

8	Application / representation from Shri Noor Alam Khan N. to The Assistant Divisional Railway Manager, Western Railway, Pratapnagar, Baroda	10.05.2008	Ex. 9 / M-9/7	Xerox
9	Application / representation from Shri Noor Alam Khan N. to Union of India through The General Manager, Western Railway, Church Gate, Mumbai and The Divisional Railway Manager, Western Railway, Pratapnagar, Vadodara	10.01.2011	Ex. 9 / M-9/8	Xerox
10	Order passed by Hon'ble High Court of Judicature at Allahabad in Criminal Appeal No. 543/2004	21.07.2006	Ex. 9 / M-9/9	Xerox
11	Letter written by Dy. Director / MSR (N) Sectt., Ministry of Railways, Railway Board, New Delhi to Shri Noor Alam Khan	16.05.2006	Ex. 12 / M-12/1	Xerox
12	Order passed by CGIT, Ahmedabad in Complaint No. 04/2006	17.03.2006	Ex. 12 / M-12/2	Xerox
13	Letter written by Shri Noor Alam Khan N. to DRM (E) BRC	12.04.2010	Ex. 12 / M-12/3	Xerox
14	Letter written by Minister of State for Railways, Government of India, New Delhi to Divisional Railway Manager, Vadodara Division (WR), Pratapnagar, Vadodara	18.06.2008	Ex. 12 / M-12/5	Xerox
15	Complaint No. 04/2006 filed by Shri Noor Alam Khan before CGIT, Ahmedabad along with application for interim relief	17.03.2006	Ex. 16 / M-16/1 & M-16/2	Xerox
16	Representation from Shri Noor Alam Khan N. to The Asst. D.M.E. (C&W), Western Railway, Bajwa, Vadodara	01.02.2006	Ex. 16 / M-16/3	Xerox
17	Office Memorandum issued by Asstt. Divisional Mech. Engineer, Bajwa, Western Railway addressed to Shri Noor Alam Khan	17.01.2006	Ex. 16 / M-16/4	Xerox

18	Notice issued by the Secretary, CGIT-cum-Labour Court, Ahmedabad in Complaint (CGITA) No. 04/2006 to all parties for hearing on 24.04.2006	Not mentioned	Ex. 16 / M-16/5	Xerox
19	Page No. 566 of Railway Establishment Rules	Not mentioned	Not mentioned	Xerox
20	Page No. 711 & 715 of Discipline and Appeal Rules	Not mentioned	Not mentioned	Xerox
21	Page No. 722 of Railway Establishment Rules	Not mentioned	Not mentioned	Xerox
22	Letter written by Assistant Labour Commissioner (C), H. Q. to Dy. CLC (C), Ahmedabad	31.05.2021	Not mentioned	Xerox
23	Letter written by Divisional Secretary, Western Railway Mazdoor Sangh (NFIR), Vadodara to Sr. DPO – BRC	10.01.2011	Not mentioned	Xerox
24	Schedule of reference having order No. L-41011/66/2011-IR (B-I)	09.12.2011	Not mentioned	Xerox
25	Written statement filed by the Western Railway, Vadodara in Reference (CGITA) No. 94/2011	09.10.2012	Not mentioned	Xerox
26	Show-cause notice from Divisional Engineer (Estate), Western Railway, Pratapnagar, Vadodara to Shri Noor Alam Khan	22.06.2010	Not mentioned	Xerox
27	PPO No. WR/51202/241913 issued by FA & CAO (CCG), Western Railway, Mumbai to The Manager, Bank of Baroda, Service Branch, Mumbai on the subject 'Disbursement of pension through Public Sector Bank', marked to Shri Noor Alam Khan N. along with particulars of pensioner Shri Noor Alam Khan	16.06.2011	Not mentioned	Xerox

28	Office Memo having service particulars of Shri Noor Alam Khan N.	03.12.2006	Not mentioned	Xerox
29	Service Record of Shri Noor Alam Khan	Illegible	Not mentioned	Xerox
30	Application / representation from Shri Noor Alam Khan N. to The Assistant Divisional Railway Manager, Western Railway, Pratapnagar, Baroda and The General Manager, Western Railway, Churchgate, Bombay	10.05.2008	Not mentioned	Xerox

Apart from above documents, the workman has filed some documents in duplication, which have not been mentioned to avoid repetition.

4. The second party / workman has deposed himself at Ex. 11 in his oral evidence.
5. The first party / employer has filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Serialam of Document	Type / Remarks
1	Show-cause notice issued by Divisional Engineer (Estate), Western Railway, Pratapnagar, Vadodara to Shri Noor Alam Khan	09.04.2008	Ex. 15 / M-15/1	Xerox
2	Eviction Order issued from DEN (Estate), BRC, Divisional Rail Manager Office, Pratapnagar, Vadodara to Shri Noor Alam Khan N.	13.06.2008	Ex. 15 / M-15/2	Xerox
3	Notice for eviction of Quarter issued from Senior Section Engineer (C&W), W.R., Bajwa to Shri Noor Alam Khan N.	02.10.2010	Ex. 15 / M-15/3	Xerox

4	Notice for eviction of Quarter issued from Senior Section Engineer (C&W), W.R., Bajwa to Shri Noor Alam Khan N.	20.10.2010	Ex. 15 / M-15/4	Xerox
5	Notice for eviction of Quarter issued from Senior Section Engineer (C&W), W.R., Bajwa to Shri Noor Alam Khan N.	21.10.2010	Ex. 15 / M-15/5	Xerox
6	Notice for eviction of Quarter issued from Senior Section Engineer (C&W), W.R., Bajwa to Shri Noor Alam Khan N.	20.03.2011	Ex. 15 / M-15/6	Xerox
7	Order of eviction of Quarter from Shri Noor Alam Khan N.	22.03.2011	Ex. 15 / M-15/7	Xerox

6. The first party / employer has examined Shri Bimlesh Chandra, Assistant Divisional Mechanical Engineer at Ex. 14 in oral evidence.
7. I have perused the records and heard Ld. Counsel for first party / employer Shri Rajesh Singh Thakur and Representative / Counsel of second party / workman's union Shri R. S. Sisodiya in addition to his written arguments at Ex. 18.
8. The main points for consideration in this case are as under.
 - i. Whether the demand of the workman's union, not to get vacated the Railway Quarter No. 694/H from Shri Noor Alam Khan, who was dismissed from service w.e.f. 07/03/2006, is valid?
 - ii. Whether the payment of settlement dues of the workman, with 12% interest from the year 2006 along with pensionary benefits from the year 2006 is valid?
 - iii. Whether the demand of the union for the cancellation of recovery of Rs. 184644/- for damages and rent of the said quarter is valid?

- iv. Whether the demand of the workman's union in respect of the recovery of the rent from the workman Shri Noor Alam Khan at normal rates is valid?
 - v. Whether the demand of the workman's union for workman's compulsory retirement is legal and justified?
 - vi. To what relief the workman / union is entitled?
9. All the issues no. i to vi above are inter-related, hence, they are being dealt with simultaneously for the sake of convenience.
10. Shri R. S. Sisodiya, Ld. Counsel / Representative for the second party / workman's union has argued that the workman has been dismissed without conducting any enquiry. It has been further argued that the conviction order dated 24.01.2004 passed against the workman under Section 302 IPC in Session Trial No. 697/2001 by Additional Sessions Court / Fast Track Court No. 5, Etah has been stayed by Hon'ble Allahabad High Court vide its order dated 21.07.2006 passed in Criminal Appeal No. 543/2004. It is further argued that the workman has been released on bail and the conviction order has been suspended by Hon'ble Allahabad High Court and he has still been dismissed on 07.03.2006 without waiting for the final outcome in the said criminal appeal. It has been further argued that the cause of justice will suffice merely by awarding compulsory retirement. Ld. Counsel has emphasized that the employer has passed dismissal order in violation of the principles of natural justice contrary to the rule 14 (1) of Railway Servants (Discipline & Appeals) Rules 1968 which is a corollary of Article 311 (2) of the Indian Constitution.

11.Ld. Counsel for the first party / employer has argued that there was no need to conduct any enquiry before dismissing the workman on his being convicted on a criminal charge.

12.It is not disputed that the workman Shri Noor Alam Khan has been dismissed by the employer / Railways on the basis of his conviction under Section 302 IPC in S. T. No. 697/2001, wherein he has been sentenced to life imprisonment by the Additional Sessions Court / Fast Track Court No. 5, Etah (U.P.). It is also not disputed that a Criminal Appeal No. 543/2004 is pending before Hon'ble Allahabad High Court, wherein Hon'ble Court has suspended the execution of sentence passed by the Sessions Court against the workman Shri Noor Alam Khan vide order dated 21.07.2006 till the disposal of appeal. It is also clear that the conviction of the workman u/s 302 IPC has neither been suspended nor stayed by Hon'ble Appellate Court.

13.Relevant Rule 14 of Railway Servants (Discipline & Appeal) Rules, 1968 reads as under:

“14. Special procedure in certain cases - Notwithstanding anything contained in Rules 9 to 13 –

- (i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;
the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

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

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule.”

14. Perusal of this Rule 14 (1) shows that it is a corollary of Article 311 (2) of Indian Constitution. This rule is an exception to Rule 9 to 13 of Railway Servants (Discipline & Appeal) Rules, 1968. According to the dismissal order dated 07.03.2006 printed at the back side of paper at Ex. 9 / M-9/6/1, the workman Shri Noor Alam Khan, Khalasi was issued show-cause notice vide E/BJW/S 278 dated 17.01.2006 with a view to afford him an opportunity to submit his representation against the proposed penalty of dismissal from Railway service satisfying the requirement of first proviso to Rule 14 (1) of R. S. (D & A) Rules, 1968. The workman submitted his representation dated 01.02.2006 and admitted his said conviction. After perusal of the workman's representation, Discipline Authority, ADME-BJW found his conviction and sentence to life imprisonment by the Sessions Court as serious mis-conduct on his part, rendering his further retention in railway service undesirable; hence, the said dismissal order dated 07.03.2006 was passed under Rule 14 (1) of R. S. (D & A) Rules 1968.

15. Article 311 (2) of the Indian Constitution declares that no person, who is a member of the Civil Service of the Union or All - India Service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable

opportunity of being heard in respect of those charges. The second proviso, however, carves out three exceptions to the said rule. The first exception mentioned under Clause (a) is relevant, which reads as under.

“Provided further that this clause shall not apply – (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge”.

16. Hon'ble Supreme Court in the Deputy Director of Collegiate, Education V S. Nagoor Meera, AIR 1995 SC 1364, while interpreting Article 311 (2) Clause (a), has held that this clause, it is relevant to notice, speaks of “conduct which has led his conviction on a criminal charge”. It does not speak of sentence of punishment awarded. Merely because the sentence is suspended and / or the accused is released on bail, the conviction does not cease to be operative. There can be no question of suspending his conduct. It is therefore, clear that taking proceedings for and passing order of dismissal of the present workman / government servant, who has been convicted by aforesaid Sessions Court, Etah, is not barred merely because the sentence of order is suspended by the Appellate Court or on the ground that the said Government servant – accused has been released on bail. In view of exception contained in Clause (a), no enquiry was needed for such constitutional / statutory dismissal after conviction on a criminal charge. Hon'ble Supreme Court in S. Nagoor Meera (supra) has categorically explained that the more appropriate course in such a case is to take action under Clause (a) of the second proviso to Article 311 (2), once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant - accused is

acquitted on appeal or other proceedings, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. Dictum of Hon'ble Supreme Court can equally and easily be applied in the present case in view of the Parallel Provision contained in Rule 14 (1) of the R. S. (D & A) Rules, 1968. The employer, thus, does not seem to have committed any error or illegality in passing the order of dismissal on the basis of the conduct of the workman which has led his conviction. The dismissal order has been passed in accordance with above Railway Rule 14 (1).

17.Ld Counsel for the workman has argued that the employer, later on made payment of 2/3rd of compassionate allowances but not in time. There was a stay order from this Court passed in other Complaint (CGITA) Case No. 04/2006 and also an order of the Hon'ble Minister for State for Railways, not to get the government quarter vacated till the decision of Hon'ble High Court. The employer / Railway has ignored all these superior orders and got the quarter from the workman vacated forcibly and recovery of Rs. 184644/- has been effected. Ld. Counsel has emphasised to set aside recovery orders and to pay back all dues and pensionary benefits with interest.

18.Ld. Counsel for the first party / employer has argued that the workman Shri Noor Alam Khan concealed the fact of his involvement and conviction in the said criminal case. This fact came to the knowledge of the employer only when a letter was received from the relative of the workman. He has further argued that on the representation of the workman, 2/3rd of his pensionary benefits have been sanctioned and

only legal dues have only been adjusted out of final disbursement. The payment was delayed due to the conduct of the workman by not vacating quarter for long time.

19. The workman Shri Noor Alam Khan, in his affidavit Ex. 11 submitted in examination-in-chief, has repeated the averment of his statement of claim. In his cross-examination, he stated that in the year 2000, he went on leave to his village where he was made accused in a murder case and was bailed out after 25 days. He stated that he did not inform his department in respect of his involvement, conviction and sentence of imprisonment. He has further stated that he vacated his government quarter in June 2011 after his dismissal on 07.03.2006. He has also stated that he is drawing pension.
20. The order of this Court dated 17.03.2006 passed in Complaint (CGITA) No. 04/2006 filed through Ex. 12 / M-12/2, shows that by this order dated 17.03.2006, the workman was given protection from vacating the quarter till 15.05.2006 only for about two months, whereas the said government quarter got vacated only in June 2011, according to eviction memo dated 22.03.2011 as Ex. 15 / M-15/7. Eviction order cannot be said to have been passed in violation of this Court's order which was passed in some other Complaint (CGITA) Case No. 04/2006 and reported by the office to have been dismissed on 23.06.2016.
21. Demi Official letter dated 18.06.2008 filed as Ex. 12 / M-12/5, which is written on behalf of Hon'ble Minister of State for Railways, seems to have conveyed to the Divisional Railway Manager, Vadodra Division, that he would appreciate if the order of eviction of the quarter is withheld till the final verdict. This letter speaks about the dismissal of

the workman on account of his name being falsely included in a criminal case in U.P., whereas the dismissal order dated 07.03.2006 is based on the conviction of the workman under Section 302 IPC, which has been discussed as above in details. However, later on, various eviction orders dated 02.10.2010 (Ex. 15 / M-15/3), 20.10.2010 (Ex. 15 / M-15/4) and 21.10.2010 (Ex. 15 / M-15/5) issued in series by the authorised railway / authorities, cannot be presumed to have been issued in disregard to superior Railway authority. Hence, workman cannot be given any benefit out of said D.O. letter.

22. The employer's witness Shri Bimlesh Chander, Assistant Divisional Mechanical Engineer, has clarified that after the dismissal of Shri Noor Alam Khan and on his representation to ADRM, he has been sanctioned 2/3rd pensionary benefits. Railway had to take his quarter in possession by force, when the workman did not vacate despite various notices. He has further stated that the recovery of all legal dues has been made from the payable amount to the workman. It is traced that the photocopy of PPO No. WR/51202/241913 dated 16.06.2011 annexed with list Ex. 17, is on record, which has been issued on the basis of workman's qualifying service of 14.5 years. It is thus, clear that despite the dismissal of the employee, the employer has adopted a proactive approach and has shown extreme empathy to the workman by sanctioning 2/3rd pension to him. The said recovery of rent / damage has already been effected. The delay in the disbursement of the dues is clearly due to the conduct of the workman occupying the government quarter unauthorisedly after dismissal on 07.03.2006 till the procedure based / forced vacation in June 2011. Hence, he is neither entitled for

the said recovered amount nor entitled for any penal interest. The workman has no legal right for getting the dismissal order converted into compulsory retirement. In view of above, the said charter of demands of the workman are not at all justified. The reference is answered in negative against the workman and in favour of the employer.

23. The award is passed accordingly.

Let two copies of the Award be sent to the appropriate Government for the needful and for publication.

-Sd/-

(Sunil Kumar Singh-I)

Presiding Officer

CGIT-cum-Labour Court

Ahmedabad