

(2019) 01 GAU CK 0061
In the Gauhati High Court
Case No : Writ Petition (C) No. 980 Of 2016

Anupam Nag

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 9, 9(9)(a)(i), 10, 10(1), 10(2), 10(2)(a), 10(2)(b)

Citation : (2019) 01 GAU CK 0061

Hon'ble Judges : A.S. Bopanna, CJ;A. K. Goswami, J

Bench : Division Bench

Advocate : S Nath, D K Dey

Judgement

A. K. Goswami, J

1. Heard Dr. J. L. Sarkar, learned counsel appearing for the petitioner. Also heard Mr. D. K. Dey, learned Standing counsel, N. F. Railway, appearing for the respondents.

2. The instant writ petition is filed by the petitioner assailing the order dated 21.05.2015, passed by the Learned Central Administrative Tribunal (CAT), Guwahati, in Original Application (O.A.) No. 040/00047/2014 (Annexure-4), whereby the Original Application filed by the petitioner was dismissed. Challenge is also made in the writ petition to the Memorandum of Charge-sheet dated 30.08.2012, Inquiry report dated 06.04.2013, Order imposing penalty of removal from service dated 30.07.2013 and the appellate order dated 20.11.2013 dismissing the appeal preferred by the petitioner against the imposition of penalty.

3. On 15.06.2012, in Borahu (BRHU) Railway Station (Lumding Railway Division), the 15959 Up Kamrup Express entered Line No. 3 instead of Line No. 2 where Brake Van of Up Amoni Goods train was standing and it was only due to application of brake by the Loco Pilot that a collision was averted. In view of the

above, the General Manager, N.F. Railway, had constituted a fact finding inquiry committee called Coordinating Head of Department (CHOD) Committee on 15.06.2012 comprising of the Chief Safety Officer (CSO), Chief Operation Manager (COM) and Chief Signal & Telecommunication Engineer (CSTE). The CHOD Committee had submitted the report on 04.07.2012, which was accepted by the General Manager. As per the report, such an event took place because of signal failure caused by electrical tampering of the circuit and as the petitioner was working at BRHU station at the time of the incident, he was a party to the electrical circuit tampering as he admitted in the inquiry conducted that he might have been seen by the Assistant Station Master at the end of the platform where West Location Hut is located.

4. A Memorandum of Charge-sheet dated 30.08.2012 was thereafter issued by the competent authority of the Railway proposing to hold an inquiry against the petitioner under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short, "1968 Rules") and, accordingly, an Article of charge was framed against the petitioner which is annexed to the said Memorandum as Annexure-I. Statement of imputation of misconduct was also enclosed thereto as Annexure II. Annexure-III of the Memorandum of Charge-sheet, which refers to the list of documents by which the Article of Charge framed against the petitioner was sought to be established, contains a copy of the Inquiry report of CHOD. Under the heading "Annexure-IV" a list of witnesses is referred to, by which the Article of charge framed against the petitioner was proposed to be sustained but, significantly, it is indicated as "NIL".

5. Dr. Sarkar, learned counsel for the petitioner, has submitted that in absence of any witness having been examined during the inquiry proceeding, the reliance placed by the Inquiry Officer on the so-called CHOD report is wholly impermissible in law and the same had reduced the inquiry into a farce. The petitioner was not furnished with documents sought for to enable him to file an effective written statement and, therefore, there is violation of principle of natural justice and the provisions of 1968 Rules. It is submitted by him that, even otherwise, there was no basis for proceeding against the petitioner and the petitioner was removed from service only on the basis of suspicion that as Point No. 102 did not work, the petitioner, being a senior technician having expertise in signal circuit, along with the other charge-sheeted employees, was individually and collectively responsible for the incident. He has further submitted that the petitioner had stated before the CHOD Committee that when the incident had occurred he was sitting inside No. 55812 Dn passenger train and only upon hearing the commotion that had ensued, he had rushed out to the platform and this aspect was wrongly taken to be an admission on his part that he was seen near the end of the platform where purportedly Point No. 102 signal was malfunctioning. Dr. Sarkar has submitted that based on the statement of the Assistant Station Master during the CHOD inquiry that the petitioner had been seen at the end of the platform, it was sought to be established that the petitioner was instrumental in committing the mischief. He has also submitted

that though there was a charge of tampering of electrical circuit of the signal, the same cannot be said to have been proved in the inquiry and, therefore, the conclusion derived by the departmental authority was wholly fallacious. It is contended by him that learned CAT was wholly wrong in accepting the submission advanced on behalf of the Railways that even in absence of any witness being examined it is possible to establish the charge against the delinquent employee by placing reliance on documentary evidence. It is further submitted by him that the learned CAT relied on an un-amended version of Rule 10 of the 1968 Rules in negating the contentions advanced by the petitioner that the petitioner having not been provided with the earlier inquiry report dated 25.01.2013, submitted to the Disciplinary Authority and the disagreement note of the Disciplinary Authority and he having not been provided opportunity to show cause on the points of disagreement, the proceedings are vitiated and, therefore, the reasons assigned by the learned CAT cannot be sustained. It is contended by Dr. Sarkar that in respect of the same incident, a departmental proceeding was initiated against, amongst others, Mr. Dibakar Saikia, who was also removed from service like the petitioner. Shri Dibakar Saikia had approached the CAT by filing O.A. No. 218/2013 and the Railway authorities had conceded in the said proceeding that there were procedural lapses in initiating the disciplinary proceeding against Shri Dibakar Saikia as the same was not in conformity with the 1968 Rules and, therefore, on the basis of such submission, the order imposing penalty was quashed while granting liberty to the Railways to proceed with the matter in accordance with law. However, in the instant case, the respondents did not concede and the learned CAT had, on erroneous interpretation of the provisions contained in the 1968 Rules as well as established principles governing disciplinary proceeding, came to a perverse conclusion that the respondents had established the charge framed against the petitioner. In support of his submissions, Dr. Sarkar has placed reliance on the judgement of the Supreme Court in the case of Punjab National Bank and Others vs. Kunj Behari Misra, reported in (1998) 7 SCC 84, with special emphasis on paragraph 19 thereof.

6. Mr. Dey, on the other hand, has supported the action taken by the respondents as well as the order passed by the learned CAT. Placing reliance on the report of the CHOD, Mr. Dey contends that train No. 15959 could have entered into Line No. 3 only if Point No. 102A was in reverse condition because there was no visible damage at the Point. This very fact, according to him, leads to suspicion towards the staff of Signal and Telecom Branch and, therefore, four employees working in the Signal and Telecom Branch, including the petitioner, were proceeded against. He has submitted that the petitioner was fully associated during the CHOD inquiry and, therefore, it cannot be countenanced that the petitioner did not have reasonable opportunity to defend himself. The Disciplinary Authority had committed no impropriety or illegality in placing reliance on the CHOD inquiry report which was available on record, he contends. It is submitted by him that the case of Shri Dibakar Saikia was on a different

footing and, therefore, while examining the case of the petitioner, no reliance can be placed on the judgement passed by the learned CAT in the case of Shri Dibakar Saikia (O.A. 218/2013) and the case of the present petitioner has to be considered on its own merits. Pointing out that there was no infirmity in the findings of the Inquiry Officer and the ultimate conclusion reached by the departmental authority, Mr. Dey submits that the writ petition deserves to be dismissed.

7. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

8. Before proceeding further, it will be appropriate to extract in its entirety the Memorandum of Charge-sheet, which is as follows:

"Annexure to Standard Form No.5 - Memorandum of Charge Sheet under Rule 9 of the R.S. (D&A) Rules, 1968

ANNEXURE I

Statement of Articles of charge framed against Sri Anupam Nag, Tech/I/SIG/GHY under SSE/SIG/GHY.

ARTICLE - I

That the said Shri Anupam Nag, while functioning as Tech/I/SIG/GHY under SSE/SIG/GHY, Violated the Railway Service Conduct Rules 1966 Para 3.1.(i),(ii) & (iii).

ANNEXURE II

Statement of imputation of misconduct/misbehaviors to Support of the articles of charge framed against Shri Anupam Nag, Tech/I/SIG/GHY under SSE/SIG/GHY.

ARTICLE I

On 15-06-2012, Home Signal at BRHU Station was given for 15959 (Kamrup Express) for line No.2 but 15959, after passing Up Home Signal entered into the line No.3 which was a blocked line. LP of 15959 controlled the train and stopped it about 50 mts short of Brake Van of Up Amoni Food grain. Thus, resulting into averted rear end collision. The point machine of point No.102A was replaced on 14-06-12. Point No.102 was giving trouble since 14:13:10 Hrs on 15-06-12. Sri Anupam Nag, Tech/I/SIG/GHY was working at BRHU Station on 15-06-12 when averted collision took place at BRHU. The Home Signal 15959 was cleared for line No.2 for train 15959 on 15-06-12 but, train entered into the line No.3. As there was no visible mark of damage on point No.102(A), it is clear that this is not a case of wrong mechanical adjustment of the point. It is possible only by electrical tampering of the circuit.

Since Sri Anupam Nag, Tech/I/SIG/GHY was working at BRHU station at the time of the incident, it has been evident that Sri Anupam Nag has been a party to the electrical circuit tampering as he has admitted in the inquiry that he might have been seen by the ASM near the end of the platform (West location hut is also

located near the end of the platform). A CHOD level inquiry has been conducted which held Sri Anupam Nag, Tech/I/SIG/GHY primary responsible. Hence, Sri Anupam Nag, Tech/I/SIG/GHY is responsible individually and collectively for adopting shortcut method resulting into signal being taken off for mainline without proper setting of point No.102.

ANNEXURE III

List of documents by which the Article of Charge framed against Sri Anupam Nag, Tech/I/SIG/GHY under SSE/SIG/GHY.

1. Copy of the Inquiry report of rear end averted collision between 15959 Up (Kamrup Express) and Up Amoni food grain at BRHU station on 15-06-2012 at 18:12 Hrs, circulated vide Sr.DSO/LMG's letter No.T/2/16/12-12/LM dtd 08-08-12 is attached herewith.

ANNEXURE IV

List of witnesses by whom the Articles of Charge framed against Sri Anupam Nag, Tech/I/SIG/GHY under SSE/SIG/GHY are proposed to be sustain.

NIL

Sd/- 30/8/12

(MASOOD ALAM)

Sr. DSTE/Maligaon"

9. Though the Memorandum of Charge-sheet was issued on 30.08.2012 requiring the petitioner to file his written statement within a period of ten days if he did not require to inspect any document for preparation of his defence, on that very day itself an Inquiry Officer, namely, respondent No. 6, was appointed. By a letter dated 12.09.2012, the petitioner initially sought for the copy of the depositions of the 20 (twenty) witnesses, who were examined while conducting the inquiry by the CHOD, so as to enable him to file his written statement at a later date. By another letter dated 19.10.2012, addressed to the Disciplinary Authority, the petitioner sought for production of Shri Simanta Baishya, Assistant Station Master, BRHU, for cross-examination and also prayed for furnishing the diary of the Assistant Station Master, BRHU, for the morning and evening shift on 15.06.2012 as well as the Signal Failure Register for the aforesaid period supported by copies of failure memos. In paragraph 43 of the Original Application it was stated by the petitioner that these documents had not been supplied to him. Such statement was not denied by the respondents when paragraph 43 was traversed by the respondents in paragraph 5 of their written statement. In the said letter dated 19.10.2012, it is stated by the petitioner that he was not asked to attend to Point No. 102 on 15.06.2012 as no failure was reported and that he was asked to attend Point No. 151A and, thus, he was wrongly implicated at the behest of the on-duty Assistant Station Master. Rule 9 (9)(a)(i) of the 1968 Rules provides that the disciplinary authority shall consider the written statement and,

then, decide whether the inquiry should be proceeded. In the instant case, not only documents, as sought for, were not provided but also on the very day of issuance of the Memorandum of Charge-sheet, Inquiry Officer was appointed raising question of procedural fairness in the inquiry.

10. It appears from the materials on record that no Presenting Officer was appointed on behalf of the department and the Inquiry Officer performed the role of both Inquiry Officer and Presenting Officer. No witness was examined on behalf of the department either. The inquiry report, which was sought to be relied upon by the respondents, was also not tendered into evidence on record. It is not clear how one Manikankana Bhattacharjee came to be examined as a witness. The petitioner contends that she was not examined on his behalf. The evidence of Manikankana Bhattacharjee was recorded in question and answer form. It may not be necessary for us to dilate this aspect of the matter as nothing much hinges on the evidence of Manikankana Bhattacharjee. Shri Simanta Baishya, who was Assistant Station Master, was also examined. There is controversy as to whether he was deposing as a prosecution witness or defence witness. The petitioner had taken the stand that he was not called as a witness for the defence though recorded as such by the Inquiry Officer.

11. It appears that the Inquiry Officer had submitted an inquiry report to the Disciplinary Authority on 25.01.2013. It also appears from the subsequent inquiry report dated 06.04.2013 that the Disciplinary Authority did not agree with the findings in the inquiry report submitted on 25.01.2013 and he had referred the case back to the Inquiry Officer with some observations to conduct a fresh inquiry into the charges framed against the petitioner. Pursuant to that, a date of hearing was fixed on 06.04.2013 and hearing was concluded on that very day and report was subsequently submitted on 22.04.2013 holding that the charge had been proved.

12. The Disciplinary Authority accepted the report and the same was communicated to the petitioner with the findings of the Inquiry Officer. The petitioner submitted his reply to the inquiry report and, thereafter, by the impugned order dated 30.07.2013 the petitioner was removed from his service with immediate effect while sanctioning 2/3rd of Compassionate Allowance. The appeal preferred by the petitioner dated 22.08.2013 was came to be dismissed by the appellate authority by its order passed on 20.11.2013.

13. It will be appropriate to extract the findings as recorded by the Inquiry Officer. The same reads as follows:

"7. Findings:-

On the basis of Prosecution Document and oral evidence adduced during the course of inquiry, I as I/O consider that the charges framed against Mr. Anupam Nag, Tech/I/GHY vide memorandum No. N/Staff/CON/ MLG/Pt.II(Loos) dated 30.08.12 issued by Sr. DSTE/MLG is as under:

That Mr. Anupam Nag, while functioning as Tech/I/SIG under SSE/ SIG/GHY violated the Railway Service Conduct Rules 1966 Para 3.1(i), (ii) & (iii). To which violation of Railway Service Conduct Rules 1966 Para 3.1(ii) & (iii) are proven and definitely the question of integrity arises against Mr. Anupam Nag which is evident from the findings of CHOD inquiry and data logger reports in PDI. From data logger reports it has been proven that the indication of Normal setting of point was given manually. This can be done only by a person who has technical expertise in signaling circuits. As such the expertise and confidence to touch a signaling circuit could come by virtue of very long circuit related work experience which was certainly applicable to Mr. Anupam Nag. It was also revealed in the PDI that out of the 14 persons present on 15/06/2012 only five persons are acquainted with the knowledge of electrical circuit who are Mr. Dibakar Saikia, Mr. Biswajit Das, Mr. Bharat Manjhi, Mr. Anupam Nag and Mr. Dipak Goswami., SSE/Sig/GHY and Biswajit Das had left BRHU early before this incident. Therefore, only three persons including Mr. Dipak Goswami were present in the Station during the incident. Hence, Mr. Anupam Nag is a party to the electrical circuit tampering which caused out-of-correspondence indication of point No. 102 and led to the averted rear end collision between Goods train and passenger train. If the same incident was not averted, the same might have resulted into the death of large number of passengers. Thus, charge of violating Para 3.1(i) is also proved."

14. A perusal of the said findings goes to show that the Inquiry Officer had placed heavy reliance on the findings of the CHOD inquiry and Data Logger Reports in PD1 (Prosecution Document 1). Based on the same, the Inquiry Officer had drawn inference and had come to the conclusion that the petitioner was party to the tampering of electrical circuit in the signal system, which almost led to a disaster in the form of collision between a goods train and a passenger train. Data Logger Reports were not listed as documents to be relied upon by the department and it is not known how the documents were made part of the inquiry. In absence of any departmental officer having been examined, it is not really understood as to how the inquiry report came to be accepted as PD1. In all probability, the Inquiry Officer himself had marked the said document as "PD1". Adverse inference was drawn on the basis of Data Logger report that as there was indication that normal setting of Point was given manually, the same could be done only by a person such as the petitioner who has technical expertise in signaling circuits. Reliance on such report, which was not part of the documents relied upon, militates against principles of natural justice. We are unable to accept the conclusion arrived at by the learned CAT that the department, without relying on the oral evidence of individuals, can rely on documentary evidence. If the documentary evidence is to be brought to the records of the case for the purpose of consideration by the Inquiry Officer, at least, a witness has to tender the same into evidence. While it is true that an inquiry proceeding cannot be equated with the proceedings in court, but, then, the fundamental principles of fair procedure cannot be simply wished away. As noted in the earlier part of this

judgement, an Inquiry Officer had doubled up as Presenting Officer and as a witness also. In certain given circumstances it may be permissible for an Inquiry Officer to adopt the role of a Presenting Officer, but under no circumstance such an act on the part of the Inquiry Officer should be prejudicial to the interest of the delinquent officer.

15. That strong reliance was placed on the report of the CHOD is also evident from the following observations of the Inquiry Officer, which read as follows:

"ASM/BRHU had first seen Mr. Anupam Nag at about 17:45 hrs and second time he saw him approx. 20-25 minutes after the incident. The incident occurred at 18:13 hrs (as per Data logger report). It means that the on-duty ASM had seen Mr. Anupam Nag at approx. 18:33-18:38 Hrs, which is 48-50 minutes later than his first spot of sight. The duration of 50 minutes is sufficient for him to reach the west location Hut (KKET end side).

During CHOD inquiry dated 02-07-2012 replying to Q.No.8 Mr. Nag stated that "He was sitting inside 55812 DN passenger, when this incident happened. And hearing the chaos he rushed out to the platform end." But he is not able to substantiate it by any evidence.

During further inquiry dated 06-04-2013 while replying to Question No.7&9 ASM/BRHU said he had seen Mr. Anupam Nag, Majhi and Goswami coming hurriedly from KKET end and that they were in between the Location Hut and Platform. It is to be kept in mind that the location hut is the only spot from where short circuiting was done."

16. A preliminary inquiry report or a fact finding report, such as the one conducted by the CHOD in the present case, has nothing to do with the inquiry conducted after issuance of Charge-sheet. Preliminary inquiry is conducted only to find out whether any departmental proceeding is to be initiated against any delinquent officer. Once a regular departmental proceeding is initiated, the importance of the preliminary inquiry pales into insignificance. In the instant case, as noticed earlier, in absence of any evidence tendered in the inquiry proceeding, reliance was placed entirely on the inquiry proceeding of CHOD. True that the statement of the petitioner and 20 witnesses were recorded in such inquiry but this is not enough. In such proceeding, the petitioner was not afforded any opportunity of cross-examining the witnesses examined by the CHOD. Therefore, even if any finding was recorded against any particular individual in such an inquiry, the same cannot, ipso facto, be applied in a departmental proceeding. Otherwise, there will be no necessity of holding any departmental inquiry and simply based on the findings recorded in preliminary inquiry penalty can be imposed. When an allegation as serious as of tampering of electrical circuit of a railway signal was laid against the petitioner in the statement of allegation, the manner and method, in which the inquiry was conducted, leaves a lot to be desired.

17. A perusal of the statement of imputation at Annexure-II of the Charge-sheet

goes to show that a conclusion was drawn that the petitioner was a party to electrical circuit tampering as he had admitted in the inquiry that he might have been seen by the Assistant Station Master near the end of the platform (West Location Hut is also located near the end of the platform). Assuming that the petitioner had admitted in the inquiry that he might have been seen by the Assistant Station Master at the end of the platform, we are unable to fathom as to how the same is relevant in coming into the conclusion that the petitioner had been a party to the electrical circuit tampering. No material particulars, if any, had been indicated in this regard so as to enable the petitioner to effectively counter the allegation. The plea of tampering of electrical circuit is a bald allegation and not supported by any material particulars. A perusal of the judgement of the CAT, particularly, paragraph 26 thereof, shows that although the petitioner, in his second representation dated 19.10.2012 had sought for, amongst others, Signal Failure Register supported by copies of failure memo., the learned CAT was of the opinion that the same was not required to be proved on the ground that the petitioner was fully aware of failure of Point No. 102 and that he was fully involved at the time of fact finding inquiry. The Assistant Station Master, in his response to question No. 5 posed to him during the inquiry, had stated that he was not sure whether the petitioner was aware of the failure of Point No. 102.

18. The learned CAT also relied on un-amended Rule 10(2) of the 1968 Rules in negating the arguments advanced by the petitioner that he was entitled to the disagreement note of the Disciplinary Authority on the inquiry report dated 25.01.2013 so as to enable him to file representation. Rule 10(1) and amended Rule 10(2) of the 1968 Rules being relevant, the same are reproduced below:

"10. Action on the Inquiry report:

(1) If the Disciplinary authority -

(a) After considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

(b) Is not itself the inquiring authority may for the reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9, as far as may be.

(2) The Disciplinary authority -

(a) shall forward or cause to be forwarded a copy of the report of inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any held under sub-rule (1)(a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway servant who shall be required to

submit, if he so desires, his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable to the Railway servant;

(b) shall consider the representation, if any submitted by the Railway servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5)."

19. A perusal of Rule 10(2)(a) goes to show that a Disciplinary Authority may, for the reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall, thereupon, proceed to hold further inquiry according to the provisions of Rule 9. In the instant case, as noticed, the report dated 25.01.2013 of Inquiry Officer was not agreed upon by the Disciplinary Authority and fresh inquiry into the charges framed against the petitioner was ordered to be conducted. The procedure adopted is wholly impermissible. If the findings of the Inquiry Officer were not acceptable to the Disciplinary Authority, the Disciplinary Authority, in terms of Rule 10(2)(b), with its own tentative reasons recorded in writing for disagreement, could have forwarded the inquiry report to the delinquent officer to submit his written response, if he so desired. The above course was not adopted and, instead, the Disciplinary Authority ordered a fresh inquiry. In the instant case, the disagreement note of the Disciplinary Authority has not seen the light of the day. What was the inquiry report dated 25.01.2013 is also difficult to say in absence of the same being produced by the respondents.

20. In Punjab National Bank (supra), the Hon'ble Supreme Court had laid down that whenever the Disciplinary Authority disagrees with the enquiring authority on any article of charge then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Inquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer.

21. In the instant case, the salutary provision, as contained in Rule 10(2) of the 1968 Rules was also given a complete go by. After a fresh inquiry was ordered, the same was conducted on 06.04.2013 and the same was concluded on the very same day.

22. The discussion above is a pointer to the fact that the disciplinary proceeding initiated against the petitioner was conducted in gross violation of the 1968 Rules and in gross violation of principles of natural justice. The infirmities go to the root of the matter.

23. In view of the above discussions, we are of the considered opinion that the order imposing penalty on the petitioner on the basis of the proceedings, where no prosecution witness was examined and which was based on no evidence, cannot receive judicial imprimatur and the same cannot be sustained. Taking that

view, the order dated 30.07.2013 imposing penalty of removal of the petitioner from service, the appellate order dated 20.11.2013, and the order dated 21.05.2015, passed by the CAT, Guwahati Bench, in O.A. No. 040/00047/2014 are set aside and quashed. The petitioner shall be re-instated in service forthwith.

24. Considering the matter in its entirety, we are of the opinion that ends of justice will be sub-served if back wages to the tune of 50% is awarded to the petitioner. Ordered accordingly.

25. The period for which the petitioner stood removed from service shall, now, be counted for the purpose of continuity of his service and pensionary benefits. However, if, in the meantime, 2/3rd of the Compassionate Allowance had been paid to the petitioner, the same shall, accordingly, be adjusted with the back wages payable to him.

26. With the above observations and directions, the writ petition stands allowed and disposed of.