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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30 / 09 / 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.16870 OF 2016

D.Emarose

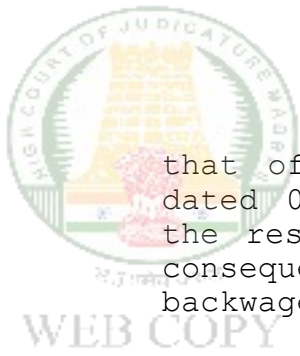
... Petitioner

Vs.

- 1.The General Manager
Southern Railway HQ Office
Park Town,
Chennai - 600 003.
- 2.The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
Chennai.
- 3.The Chief Passenger Transportation Manager
Southern Railway HQ Office
Personnel Branch
Park Town,
Chennai - 600 003.
- 4.The Additional Divisional Railway Manager
DRM's Office
Chennai Division
Southern Railway
Chennai - 600 003.
- 5.The Senior Divisional Operations Manager
DRM's Office
Chennai Division
Southern Railway
Chennai - 600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the second respondent's order made in I.D.No.66 of 2013 dated 22.05.2014 and 21.12.2015 confirming the orders of the 5th respondent made in No.M/CON/T/1160 dated 05.03.2010 and that of the 4th respondent made in M/CON/C/1160 dated 17/21.05.2010 and



that of the 3rd respondent's order made in No.P(A)94/2010/924 dated 07.12.2010 to quash the same and to consequently direct the respondents to forthwith reinstate the petitioner with all consequential benefits both service and monetary including backwages etc.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.M.Vijay Anand
1, 3 to 5

O R D E R

Challenging the order passed by the Central Government Industrial Tribunal cum Labour Court, Chennai, in I.D.No.66 of 2013 dated 22.05.2014 and 21.12.2015 respectively, confirming the punishment order issued by the respondents 3 to 5, the petitioner has preferred the above writ petition.

2.The petitioner was initially appointed as a Casual Labourer under the Station Superintendent, Madras Central (Southern Railway) on 29.07.1978. He was granted temporary status with effect from 29.11.1978 on completion of four months of continuous service. He was empanelled in the regular post as Porter on 16.03.1984 and further temporarily promoted to the scale of pay of Rs.775 - 1025 on 02.05.1992. While he was working as such, a charge memo pertaining to major penalty proceedings was issued on 06.09.1996 and the charge reads as under:

"Shri G Bhaskaran, S/o.Shri N T Ganesan, impersonated as Shri D Emarose S/o. Shri A.S.Damodara Mudaliar (Retd Senior Parcel Clerk, Madras) and secured employment in Southern Railway and is now working as LRP / MAS. Thus, the person working in the name of Sri D.Emarose, contravened Rule no.3.1(i) & (iii) of Railway Service Conduct Rules, 1966."

3.The respondent / Railway Administration has not chosen to file any criminal complaint against the petitioner and appointed an Enquiry Inspector attached to the Vigilance Organization as Enquiry Officer to enquire into the charges framed against him. The charges were held to be proved and he was dismissed from service on 15.05.1997. The appeal and revision petition filed by him were also rejected.

4.Hence, the petitioner filed an Original Application challenging the above said orders before the Central Administrative Tribunal, Madras Bench in O.A.No.429 of 2004. The



Tribunal by its order dated 10.01.2005 quashed the penalty and directed the respondents to reinstate the petitioner in service and conduct a fresh and full fledged enquiry and to pass appropriate speaking order.

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5.Challenging the order dated 10.01.2005 passed by the Central Administrative Tribunal in O.A.No.429 of 2004, the Railway Administration preferred a writ petition in W.P.No.22355 of 2005 before this Court and this Court on 09.04.2009 remanded the matter and directed the Railway Administration to complete the enquiry within a period of two months from the date commencing from 15.04.2009 and stayed the order of reinstatement. Further, the petitioner was directed to appear before the Senior Personnel Officer, Southern Railway, on 20.04.2009.

6.Eventhough the Senior Personnel Officer was directed to conduct a fresh enquiry, he did not examine the two witnesses and proceeded with the third witness and held the charges as proved. The punishment of dismissal from service was imposed on 05.03.2010 and the appeal and revision petition were also rejected on 21.05.2010 and 07.12.2010 respectively. These orders were challenged before the Central Government Industrial Tribunal cum Labour Court, Chennai, in I.D.No.66 of 2013. The Tribunal by its order dated 21.12.2015 rejected the same.

7.The petitioner has challenged the order of the Central Government Industrial Tribunal cum Labour Court on the grounds that it is violative of principles of natural justice, violation of the orders passed by the Central Administrative Tribunal and the findings of the authority is without any evidence and thereby perverse.

8.The respondents denied all the allegations and would contend that the petitioner himself admitted that he joined in the name of D.Emarose at the request of his foster father. The fact that the petitioner was claiming himself as D.Emarose son of Damodara Mudaliar, and secured appointment, which amounts to impersonation and therefore, the finding that the charges were proved is absolutely in order. The Labour Court in its award has categorically observed that the clinching evidence against the petitioner in the enquiry proceedings was his own defense brief. Though the defense brief was not produced by the petitioner, probably because of the damaging consequence, the gist of the brief is available in the report of the Enquiry Officer. On the basis of the same, the Tribunal dismissed the industrial dispute raised by the petitioner. The principles of natural justice has been complied with, ample opportunity was given to the petitioner and after conducting a fresh and full fledged enquiry, a categorical finding was given based on records and



therefore, the order of punishment need not be interfered as prayed for by the petitioner.

9. Heard the submissions made on either side and perused the materials available on record.

10. It is noted that in the first round of litigation, in O.A.No.429 of 2004, the Central Government Industrial Tribunal cum Labour Court, Madras, in its order dated 10.01.2005 has directed reinstatement and to conduct a fresh and full fledged enquiry and to pass appropriate orders. The operative portion of the said order dated 10.01.2005 reads as under:

"8. The applicant preferred a revision petition before the revisional authority and also the mercy petition before the appropriate authority and both were dismissed. After perusal of the enquiry proceedings and also the impugned orders passed by the disciplinary authority, the appellate authority including the enquiry proceedings, we are of the considered view that the applicant was not given ample opportunity to defend himself in the enquiry proceedings. Hence, the impugned orders are illegal and violate the principles of natural justice. Consequently, the impugned order dated 14-5-1997, 7-8-1997 and 16-9-2003 passed by the third respondent, second respondent and first respondent respectively are hereby quashed and the respondents are directed to reinstate the applicant in service and conduct a fresh and full fledged enquiry and pass appropriate speaking order."

11. The order of reinstatement by the Central Administrative Tribunal alone was stayed by this Court in the writ petition preferred by the Railway Administration and a further direction was given to complete the enquiry within a period of two months commencing from 15.04.2009. Therefore, it is crystal clear that the respondents were directed to conduct a fresh and full fledged enquiry and pass appropriate orders. The reason for passing this order was that the petitioner was absent during the examination of the witnesses, which means that he shall be given an opportunity to be present during the examination of witnesses and to cross examine them.

12. From the perusal of the records, it is noted that one D. Emarose and one Devadoss were cited as witnesses in the annexure to the charge memo. But, both the witnesses were not examined before the Enquiry Officer who was appointed to conduct



the fresh enquiry. On the other hand, he proceeded to examine one T.Rajamohan who conducted the preliminary enquiry / confront enquiry as third witness.

13.A fresh enquiry means, starting the process all over again. It shall commence from the beginning. The previous enquiry and the findings thereon will become non-est. It shall commence from the stage of appointing a defense assistant, getting the statement of Presenting Officer on the side of Management / Prosecution, introduction of Management witnesses, chief examination, marking of documents, cross examination of Management witnesses by the delinquent, witnesses on the side of delinquent, cross examinations, enquiry report, calling for objections against report and other procedures.

14.A full fledged enquiry means not only recording of evidence of parties, but also reasonable opportunity given to the parties to meet the charges / defense, to provide ample time to meet the new facts, new documents, surprise evidences, unexpected circumstances, ordering production of relevant documents, getting expert evidences, opinions and full opportunity lead evidence and address arguments. Eventhough it cannot be compared with trial following strict rules of evidence, it shall adhere to the principles of natural justice and fairness.

15.At the outset, as contended by the learned counsel for the petitioner that the conduct of the present enquiry is not a fresh and full fledged enquiry, but it is a continuation of the previous enquiry. The statements of the witnesses cited in the charge memo before the Enquiry Inspector during preliminary / confront enquiry were marked as exhibits and they were not examined as witnesses in the fresh enquiry as ordered by the Tribunal as well as by this Court. We have already discussed that the reason for ordering for fresh enquiry was that the delinquent was not present during the examination of those witnesses. In that event, if those witnesses were not examined afresh, the opportunity of cross examining those witnesses can be considered as denied to the delinquent. This deprivation of the opportunity would defeat the very purpose of ordering a fresh enquiry. It is pertinent to note that the petitioner was sought for a document in his letter dated 30.04.2009 and it was denied by the respondent Railway Administration by letter dated 30.04.2009. The document sought for by the delinquent as vital piece of evidence, it would have shattered the very foundations of the charge. Refusal to produce the evidence, will lead us to construe that the full fledged enquiry was not conducted. In that view of the matter, the enquiry conducted by the Railway Administration after the order of the Tribunal dated 10.01.2005 is not a fresh enquiry much



less a full fledged enquiry. On this basis alone, the order of the respondent Railway Administration can be set aside.

16. However, instead of deciding the matter on technicalities, we consider it fit to examine as to whether the decision making process was carried over in accordance with law and principles of natural justice.

17. The Hon'ble Supreme Court in ROOP SINGH NEGI VS. PUNJAB NATIONAL BANK AND OTHERS [2009 (2) SCC 570] has held as under:

"10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

15. Yet again in M.V. Bijlani vs. Union of India & ors. (2006) 5 SCC 88, this Court held:



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"....Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

18.From the above judgment, it is mandatory that the documents produced by the Management or prosecution shall be proved through competent witnesses. Even though the rules of evidence will not strictly apply to the departmental proceedings, the minimum principles of natural justice has to be followed. The prosecution cannot introduce a document just like that and held it proved. Mere introduction of documents would not amount to proof of the allegations or charge made against the delinquent.

19.The learned counsel appearing for the respondent Railway Administration would produce the entire file relating to the enquiry conducted by the Management as per the directions of the Central Administrative Tribunal and this Court.

20.A perusal of the file discloses the fact that the engagement of Casual Labourers is governed by the Rules Regulating Recruitment and Other Service Conditions of Casual Labour and Substitutes (Shortly "the Rules"). Clause 5 of the Rules specifies the method of recruitment. The unit of recruitment shall normally be the area of location of work where casual labour is required to be engaged. Notice should be put up at the local office and the candidate shall present themselves for engagement as Casual Labour. Extant orders in regard to literacy, educational qualifications and other requirements for regular recruitment to Class IV vacancies will be followed while recruiting Casual Labour. After completion of continuous service for four months, the Casual Labour will be considered for temporary status. Those persons, who have attained temporary status, will be considered for absorption. They will be eligible for engagement against regular vacancies in Class IV categories.



Those Casual Labourers on attaining temporary status are liable to be governed under Discipline Rules as per Class - 29 of the Rules.

21. Therefore, it can be inferred that for engagement of Casual Labour, a person shall present himself for selection in the unit where the Casual Labours are wanted. There will not be any notification calling for application, prescribed qualification or any particular selection process. It is at the discretion of the Project Officer of the Unit to engage and disengage a Casual Labour suiting the requirement of the work done.

22. From the evidence of S.W.3, the witness examined on the side of the Management, it is noted that a Senior Supervisor of the Department concerned was empowered to engage Casual Labour against casualty vacancies. No formal appointment order is issued in such cases and the LTI of the individual is recorded in a LTI Register duly recording the candidates name, date of birth, father's name, date of initial engagement with signature and seal of the supervisory official. The relevant portion of the cross examination of S.W.3 is extracted hereunder:

"Q.54. Kindly recollect your memory and say what was the procedure followed for engaging casual labour prior to the year 1981?

Ans. Prior to 01.01.1981 the senior supervisor of the department concerned were empowered to engage casual labour / substitute against casualty vacancies. No formal appointment order is issued in such cases and the LTI of the individual is recorded in a LTI register duly recording the candidates name, date of birth, father's name, date of initial engagement with signature and seal of the supervisory official.

Q.57. Kindly say the genuineness of such certificates are verified before making entries in the SR ?

Ans. During the relevant period, there was no procedure for verification of certificates unless there is a specific complaint.

Q.58. In answer to Q.8 of Ext.S6, Shri Bhaskaran alias Emarose stated as "Shri A.S.Damodara Mudaliyar who brought up me has got an appointment for his son D.Emarose and given the order to me to join in Railways....." In answer to A.5 Shri A.S.Damodaran recorded as "during 1978 with



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great difficulty by approaching Divisional Superintendent I got appointment order in Railways for my son D.Emarose. Perusal of SR of Shri Emarose reveals that initial Shri Emarose was engaged as casual labourer under SS / MAS on 29.07.1978." Kindly recollect and say was there any possibility of issuing such order for engagement of casual labour?

Ans. Normally no appointment order will be issued at the engagement of casual labourer. However, the Retd. Parcel Clerk Shri Damodaran was a loyal workers during the General Strike 1974 perhaps some order might have been issued based on the application given by the loyal workers for the engagement of casual labourers.
"

23.From the cross examination of S.W.3, it could be culled out that the petitioner was not engaged as a Casual Labour on the basis of any qualification prescribed or by indicating any particular selection procedure. He presented himself for engagement of Casual Labour on the appointed day and was engaged. To be specific, he had not appeared for selection using any call letter given by the authorities, much less using a call letter addressed to D.Emarose in particular. The facts remains that he had given his name as Emarose, but not at cost of the so-called Emarose. In fine, the said Emarose was not deprived by the selection. This exactly is the evidence of A.S.Damodara Mudaliar. Giving a different name while affixing the LTI of the Casual Labour in LTI register and father name will not fall within the definition of impersonation. None were prejudiced by the action of the petitioner and the petitioner did not grab the benefit given to somebody else. The witness examined by the Management also was not sure that there was a scheme giving preference to the wards of Railway employees or any documentary evidence in this regard, not even the written complaint given by the so-called Emarose, who was said to have been impersonated by the petitioner. Therefore, it can be inferred that there is no evidence or basis for framing the charge.

24.Be that as it may, the enquiry report reveals that the witnesses in the charge memo were not examined and whereas, a person, who conducted the confronted enquiry / preliminary enquiry was examined as S.W.3. In so far as the oral enquiry is concerned, it is based on the statements obtained by the Enquiry Inspector during preliminary enquiry. Ex.S1 is the statement given by Emarose S/O. A.S.Damodara Mudaliar. Ex.S2 is the statement given by R.Devadoss before the Enquiry Inspector.



These statements would not automatically amount to evidence and those statements would not prove the charges. The author of the statement is expected to be present and prove the same, as held by the Hon'ble Supreme Court in Roop Singh Negi's case (cited supra) otherwise it will amount to hearsay evidence and denial of opportunity to the delinquent to disprove the same. Even assuming that the delinquent was present during preliminary enquiry, it would not suffice and the witnesses shall be made available for cross examination in the regular departmental enquiry. The witness on the side of the Management had produced the statements and it was not proved by the persons, who were cited as witnesses, in the charge memo. If the entire proceedings is based on these statements recorded during preliminary enquiry, the charge would automatically fail as not proved.

25. Interestingly, the entire disciplinary proceedings were initiated based on a written complaint. But, during enquiry, the only witness appeared on behalf of the respondent Railway Administration would answer that there was no written complaint. In the absence of any written complaint, the charge falls to the ground. Therefore, it can be categorically held that the enquiry conducted by the respondent Railway Administration is a farce and the findings are without any legal evidence and thereby perverse.

26. The Enquiry Officer has totally relied on the statements to arrive at a finding that the charge is proved. As discussed above, the statements would not amount to proof and thereby the finding that the delinquent has admitted the charges also falls to ground and without any legal evidence.

27. In the enquiry report, the Enquiry Officer himself would admit that though the allegation is a criminal offence, no police complaint was preferred. But it was investigated by the Vigilance Branch of the Railway Administration within the limited scope of powers vested with them. But, no such scope of powers or the source of power which empowers them to enquire into the criminal offence was not set out. Neither the Disciplinary Authority nor the Appellate Authority had applied their mind to this aspect at all. Therefore, the very inaction or not preferring a criminal complaint and not getting a judgment of the Competent Court of Criminal jurisdiction to declare that the said criminal offence of impersonation was committed, the respondents have no jurisdiction to proceed on their own assumptions and presumptions. The decision making process as such has been hampered by so many legal lapses, non-application of mind and by arbitrary exercise of power.



28. In so far as impersonation is concerned, someone shall go on somebody else's identity and take advantage of their credentials and get the benefit to which they do not deserve. In the instant case, it is admitted by the only witness examined by the Railway Administration that no appointment orders were given for engaging Casual Labour. No specific selection method is also adopted. During 1981, a Senior Supervisor was empowered to engage the Casual Labour at his choice. The petitioner was engaged in the year 1978. At that time, no selection procedure and no qualification were prescribed. Therefore, the engagement of the petitioner as Casual Labour is purely at the discretion of officials at that point of time. In other words, the petitioner has not used the appointment order given to somebody else, particularly, to one D. Emarose as claimed by the respondent Railway Administration and joined the services of the respondents. The petitioner was engaged as Casual Labour only on his appearance before the officer and that engagement of Casual Labour was not earmarked or reserved for the said Emarose. Interestingly, the person said to have been impersonated was very well working in B & C Mills during that period. Therefore, in the absence of any appointment order or using someone else's credentials or taking up the engagement which is assigned for somebody else will not arise in the instant case and therefore, the allegation of impersonation will not also arise. The charge itself is baseless.

29. The Enquiry Officer would find that securing appointment by concealing his real name and his father's name amounts to impersonation. Such a definition to impersonation will not apply to the case on hand. At the risk of repetition, it is reiterated that for engagement of a Casual Labour, the name of the individual and name of the father are not the essential criteria. The Casual Labour are engaged on the basis of need of workers for the particular project. In fact, for attaining temporary status, the continuous service of four months is considered and not the individual's name or his credentials. Only after attaining temporary status, an individual will be fall within the ambit of Discipline Rules of the Railways. The so-called offence was not committed after attaining the temporary status. The petitioner had completed 16 years of service without any blemish. After a lapse of 16 years, if disciplinary action is taken, it can be considered as hopelessly hit by laches. Therefore, the instant case cannot be considered as impersonation and the findings are perverse. Therefore, such a finding is not sustainable in law.

30. It is also pertinent to note that the Disciplinary Authority, Appellate Authority, Revisional Authority and the Tribunal proceeded on the basis that the delinquent / petitioner



had admitted his guilt. But these findings are based on the statements given by the individuals before the Enquiry Inspector during preliminary enquiry / confronted enquiry. If that can be relied, there is no necessity to conduct a full fledged departmental enquiry by issuing a charge memo. Once a charge memo is issued and the delinquent comes forward and admit to the allegations made in the charge memo, it can be considered as admission. But, in the instant case, the delinquent has not examined himself as witness and he has not introduced any defense witness at all. In that event, the question of admission will not arise. We have already found that the statements produced by the departmental witness, without examining the author of the statements, will not amount to proof. Therefore, the findings made by the authorities are based on no evidence, much less on any legal evidence and thereby perverse.

31. Though several these points were raised in the objection submitted by the petitioner, they were not considered by the Disciplinary Authority. The Disciplinary Authority proceeded only on the basis of admission alleged to have been made by the petitioner during the enquiry. But there was no such admission as observed above. Even assuming there was admission, it has to be considered as to whether it is an unambiguous admission of guilt for the reasons recorded. Therefore, the order of punishment passed by the Disciplinary Authority is without application of mind.

32. It is well settled that the Appellate Authority shall apply his mind and reduced down in writing the reasons for accepting or not accepting the findings of the Disciplinary Authority and the proportionality of the punishment. Even though the order need not be elaborate, it must record the reasons for accepting or not accepting the order of the Disciplinary Authority. But in the instant case, the order of the Appellate Authority as well as the Revisional Authority are cryptic without assigning any valid reasons, that too, without considering the grounds raised in the appeal and the revision by the petitioner. Non consideration of the grounds raised by the petitioner would amount to non application of mind and thereby violative of principles of natural justice and arbitrary exercise of power.

33. Therefore, from the perusal of the entire records, it is seen that (i) the enquiry conducted by the respondents is not in accordance with the directions issued by the Central Administrative Tribunal, Madras Bench, in its order dated 10.01.2005 in OA No.429 of 2004; (ii) the reliance of the statements recorded in the entire departmental proceedings without examining the concerned witnesses in the regular



departmental proceedings after issuance of charge memo is not legal and it will not amount to proof; and (iii) the findings on the basis of hearsay and the statements made by the witnesses without cross examination and without proof is illegal and alien to service jurisprudence. The findings based on unsubstantiated, unproved and without any material evidence amounts to a decision taken on no evidence and thereby perverse.

34.The procedure adopted in the enquiry without examining all the witnesses and without providing ample opportunity to the delinquent is absolutely a farce and will not fall within the meaning of fresh and full fledged enquiry. Such an enquiry is contrary to the directions of the Tribunal and well settled procedures. Therefore, the entire enquiry stands vitiated for want of adherence to directions and the principles of natural justice. The Central Government Industrial Tribunal cum Labour Court, Chennai was also carried away by the so-called admission recorded by the Enquiry Officer and the Disciplinary Authority. Hence, the award is also without application of mind and the finding is based on no evidence and therefore, not sustainable in law.

35.Accordingly, the order made in I.D.No.66 of 2013 dated 22.05.2014 and 21.12.2015 by the second respondent confirming the orders of the fifth respondent made in No.M/CON/T/1160 dated 05.03.2010 and the order made in M/CON/C/1160 dated 17/21.05.2010 by the fourth respondent and the order made in No.P(A)94/2010/924 dated 07.12.2010 by the third respondent are set aside and the petitioner is entitled to reinstatement and consequentially to all attendant and monetary benefits.

36.It is submitted that the petitioner had attained the age of superannuation during the pendency of the writ petition and cannot be reinstated. In that event, the respondents 1, 3 to 5 are directed to settle all the terminal benefits due to the petitioner within a period of three months from the date of receipt of a copy of this order.

37.In fine, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar



TK

To

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- 1.The General Manager,
Southern Railway HQ Office,
Park Town,
Chennai - 600 003.
- 2.The Presiding Officer,
Central Government Industrial Tribunal,
cum Labour Court,
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- 5.The Senior Divisional Operations Manager,
DRM's Office,
Chennai Division,
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Chennai - 600 003.

+lcc to Mr.L.Chandrakumar, Advocate Sr.50622

+lcc to Mr.M.Vijay Anand, Advocate Sr.50640

WP NO.16870 OF 2016

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