

**In the High Court at Calcutta  
Civil Appellate Jurisdiction  
Appellate Side**

**Before:**

**The Hon'ble Justice Subrata Talukdar  
and  
The Hon'ble Justice Lapita Banerji**

**MAT 3210 of 2003**

**With**

**CAN 1 of 2003**

**(Old No. CAN 9663 of 2003)**

**CAN 2 of 2003**

**(Old No. CAN 9664 of 2003)**

**CAN 3 of 2010**

**(Old No. CAN 4215 of 2010)**

**Union of India & Ors.**

**Vs.**

**Subhas Chandra Das**

For the Appellants/Union of India : Mr. Indrajeet Dasgupta, Adv.,

Ms. Puspita Bhowmick, Adv.

For the Respondent : Mr. Victor Chatterjee, Adv.,

Mr. Sunny Nandy, Adv.

Hearing concluded on : 15.06.2023.

Judgment on : 30.06.2023.

**Lapita Banerji, J.:-** This is an intra-court appeal preferred from an Order dated January 22, 2003, passed by an Hon'ble Single Judge of this Court. The

Hon'ble Single Judge by the Impugned Order set aside the Order of the Appellate Authority dated February 28, 1992 and also the Order of the Reviewing Authority dated June 5, 1992.

2. The Writ Petitioner/Respondent in the Appeal, was **dismissed** from service on August 31, 1991. The writ petitioner preferred a statutory appeal. The said appeal was dismissed by the authority concerned on November 23, 1991. The petitioner filed the first writ petition in the High Court at Patna, Ranchi Bench against the Order dated November 23, 1991 passed by the Appellate Authority (hereinafter, referred to as the first "Appellate Order").

3. By a Judgment and Order dated December 20, 1991, the Hon'ble Patna High Court quashed the "First Appellate Order" with a direction to consider the Appeal preferred by the writ petitioner afresh in terms of Rule 47(2) of the CISF Rules, 1969. The petitioner was working as a Constable with the Central Industrial Security Force ("CISF") at the material point of time when he was **dismissed** from service.

4. The Second Appellate Authority considered the Appeal of the writ petitioner afresh and passed a reasoned Order dated February 28, 1992, dismissing the appeal. The petitioner preferred a Review Application which was also subsequently dismissed. The second Order passed by the Appellate Authority and the Order passed by the Reviewing Authority are under challenge in the instant writ petition being-C.O. No. 18155(W)/92.

5. The Hon'ble Single Bench held, that even though by the previous Order of the Patna High Court, the Appellate Authority was directed to consider the

Appeal afresh, the Appellate Authority had done not so in terms of Rule 47(2) of the CISF Rules. The Appellate Authority proceeded to decide on the grounds of appeal, “*casually*” by making “*general observations*”. It considered only a part of the evidence and disregarded the other part. Most of the grounds challenging *procedural impropriety* were also not considered.

6. Furthermore, it was held that the witnesses, who were not even named in the charge-sheet, were examined by the Enquiry Officer without giving prior intimation to the writ petitioner. The fact that prior intimation was not given to the petitioner, was not taken into account. The Appellate Authority (AA) failed to give reasons as to why it considered the punishment *proportionate* to the *gravity* of the offence. Therefore, the Hon’ble Single Bench held that the AA was in gross violation of the Order passed by the Patna High Court. In violation of the principles of Natural Justice, the writ petitioner was not allowed to defend himself. The Order passed by the Reviewing Authority (RA) was also set aside for being a *non-speaking* order. The RA rejected the Review Petition without recording any reason.

7. Since, no one appeared to contest the writ petition despite several opportunities being granted nor was an Affidavit-in-Opposition filed on behalf of the appellants/respondents in the writ petition, the writ petition filed in 1992 was disposed of by an Impugned Order dated January 1, 2003.

8. The Hon’ble Single Bench directed the petitioner to be treated in service from the date on which the Patna High Court set aside and quashed the First Appellate Order. The petitioner was directed to be paid salary month by month.

The arrears of salary were directed to be paid from the date of the Judgment of the Patna High Court i.e. November 23, 1991.

9. The present appeal being MAT 3210 of 2003 was filed on or about November 13, 2003, but, the process fee was not paid by the appellants. The appeal lay defective with the Department.

10. By an Order passed by a Coordinate Bench on March 23, 2004, the appellants were directed to pay the process fee for service of notice of appeal along with a copy of the application on the respondent, in the Department, within one week from the date of the Order. The appellants failed to pay such costs and there are several Office Notes by the Registry bringing the said fact on record. Again by an Order dated January 15, 2008, a Coordinate Bench directed the requisites to be put in within 3 weeks from the date of the Order. The same was not done within stipulated time. Finally, by an Order dated September 30, 2008, it was recorded that the requisites were put in out of time. Notice was issued on or about April 18, 2009. The said Notice was returned undelivered with the Postal endorsement "Incomplete address" by an Office Note dated May 10, 2010. Again it was served and the same was returned with the statement "insufficient address". The same was recorded by an Order dated November 26, 2010. Thereafter, the writ petitioner was finally served and was represented on December 3, 2010. A Coordinate Bench directed affidavits to be filed in the application made under Section 5 of the Limitation Act being CAN 1 of 2003 as there was inordinate delay on the part of the Appellants.

11. Even though the writ petitioner was represented in 2010, the postal costs along with the requisites were not put in by the Appellant till September 10, 2019.

12. The application for condonation of delay was not pursued from 2010 till 2021. By an Order dated February 19, 2021, a Coordinate Bench recorded with the *surprise* that the application for condonation of delay was being moved in “earnest after so many years”.

13. It was submitted on behalf of the writ petitioner/Respondent that since an application for contempt was being proceeded with, for payment of arrears of salaries, in terms of the Patna High Court’s Judgment, the Appeal and application of condonation of delay were now being pursued.

14. The Hon’ble Coordinate Bench even though was *prima facie* of the opinion that there was no substance in the present Appeal, still directed that upon the arrears of salaries being paid for 10 months commencing on February, 1991 till November, 1991 (being approximately equal to the period of delay) was the condition precedent to satisfy the bonafides of the appellants for the prayer for condonation of delay being considered.

15. Such directions were complied with. A Coordinate Bench of this Hon’ble Court vide an Order dated August 17, 2021 allowed the application for condonation of delay being **CAN 1 of 2003**.

16. Mr. Dasgupta, Learned Counsel appearing on behalf of the appellants argued that the Departmental Enquiry was conducted without any *Procedural*

*Irregularity.* The second Impugned Order by the Appellate Authority was a “speaking order” passed in compliance of Rule 47(2) of CISF Rules, 1969.

17. He submitted that all the issues directed by the Hon’ble High Court at Patna were considered while passing the Second Appellate Order. All the grounds taken by the writ petitioner in the Appeal were considered individually before the AA came to its findings, afresh.

18. Mr. Chatterjee, learned Counsel appearing on behalf of the writ petitioner submitted that the provision of Rule 47 (2) of the CISF Rules were not complied with. The second Order of the Appellate Authority did not comply with the Order passed by the Patna High Court and therefore, the Impugned Order was set aside. The Hon’ble Single Bench did not sit in Appeal over the Order passed by the Appellate Authority. The Hon’ble Single Judge remanded the matter back to the Appellate Authority for fresh adjudication. The appellants have waived their right to challenge the Order passed by the Hon’ble Single Bench due to inordinate delay in proceeding with the Appeal.

19. Furthermore, *procedural irregularity* was committed by the appellate authority by not considering the depositions of the witnesses in totality. The appellants have partly complied with the Order of the Hon’ble Single Bench and therefore, could not now contend that the **Order** of the Hon’ble Single Bench should be set aside. The Writ Petitioner was reinstated in service from October 4, 2010. The service benefits like seniority, promotion increment should be granted to the petitioner and the arrears of salary from the date of the Order of Patna High Court i.e. December 20, 1991 should be also released.

20. Considering the rival submissions of the parties and the materials placed on record this court of the view that:

- a. The petitioner was **dismissed** from service by an Order dated August 31, 1991 issued by the disciplinary authority.
- b. The Patna High Court set aside the first Order of Appellate Authority dated November 23, 1991, on the ground that the Appellate Authority did not conform with Rule 47 (2) of the CISF Rules.
- c. Rule 47 (2) is set out hereinunder:

- (1) In case of an appeal against an order of suspension the appellate authority shall consider whether, in the light of the provisions of rule 29 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.*
- (2) In the case of an appeal against an order imposing any of the penalties specified in rule 31 the appellate authority shall consider,-*
  - (a) Whether the procedure prescribed in these rules has been complied with, and not whether such non-compliance has resulted in violation of any provisions of the constitution or in failure of justice;*
  - (b) Whether the findings are justified: and*
  - (c) Whether the penalty imposed is excessive, adequate or inadequate; and pass orders,- (i) setting, aside, reducing, confirming or enhancing the penalty; (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:*

*Provided that-*

- 1[(i) the appellate authority shall not impose any enhanced penalty which such authority is not competent to impose;]*
- (ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and*
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Cls. (a) to (d) of rule 31 and an inquiry under rule 34 has not already been held in the case, the appellate authority shall, subject to*

*the provisions of rule 34 itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceedings o such inquiry [\* \* \* ] opportunity of making any representation which he may wish to make against such penalty pass orders as it may deem fit.*

1. Subs. by G.S.R 1109, dated 28<sup>th</sup> November, 1981, published in the Gazette of India, Pt, II. Sec.3 (i), dated 9<sup>th</sup> December, 1981.
2. Omitted by G.S.R 1109, dated 28<sup>th</sup> November, 1981, published in the Gazette of India, Pt, II. Sec.3 (i), dated 9<sup>th</sup> December, 1981.

- d. The said Rule is *Pari materia* with new Rule 52 of CISF Rule 2021.
- e. The first Order of the Appellate Authority dated November 23, 1991 recorded:-

*“ I have carefully gone through the appeal petition and all other connected documents on the file. Ex. Cons S.C. Das found in possession of Rs. 600/- on 04.3.91 contrary to the unit standing orders. Even though he did not sign the seizure list this fact is proved beyond doubt. Force personnel of paramilitary force, who is given the responsibility of safe guarding indulges himself in the activities not condusive to the duty requirement, has to be viewed very seriously. The pleas put forward by the petitioner do not have any merits. Considering above, I do not find any valid reason to interfere in the final order passed by the Disciplinary authority and this the appeal petition submitted by Ex. cons S.C. Das is carefully considered and rejected.”*

- f. The said Order of the first Appellate Authority was set aside by the Patna High Court and the Appellate Authority was directed to consider the case afresh. Upon consideration of the case afresh the Appellate Authority by its second Order held that the Enquiry Officer followed the procedure that was laid down and the principles of law in giving opportunity to the petitioner to defend himself. The petitioner/delinquent employee cross

examined the witnesses. The Enquiry Officer based his findings on the statement of the witnesses and relevant materials available on record.

g. Furthermore, it held that the final Order of penalty passed by the Disciplinary Authority was fully justified and commensurate to the *gravity* of the *offence*. The Enquiry Officer had the power to put questions to any of the witnesses or enquire regarding any documents. Therefore, the contention that the Enquiry Officer examined witnesses whose names were not in the charge-sheet was rejected. The ground taken by the writ petitioner regarding the statements of the truck driver not being recorded was rejected and it was held that the disciplinary Authority ***proved beyond a doubt*** that the petitioner took illegal gratification from truck drivers and the Petitioner was in possession of Rs. 600. The same was seized and a seizure list was prepared at the check post even though the petitioner did not sign the same.

h. The Hon'ble Single Bench held that the Appellate Authority by its second Order failed and neglected to apply its mind properly since the Order suffered from *general observations* which were made *casually*. Only one part of the evidence was considered and the other part ignored. Only one contention with regard to the witnesses who were not named in the charge-sheet being examined was taken into consideration by the second Appellate Authority (AA). The AA failed to consider that examination/cross-examination of the witnesses unnamed in the charge-sheet should have been done after giving prior intimation to the writ petitioner. The Hon'ble

Single Bench held that various grounds were taken in Appeal but the said grounds were not considered by the Appellate Authority in its second Order.

i. Ld. Counsel on behalf of the Appellants relied on various Judgments which merits consideration in some detail. He relied on a Judgment reported in (2022) SCC OnLine SC 284 (**Union of India & Ors. Vs. Managobinda Samantaray**) for the proposition that *quantum* of punishment was within the discretionary domain of the decision making authority once the charge of **misconduct** stood proved. The Constitutional Courts while exercising the power Judicial Review do not assume the role of AA. Unless there are errors of law, procedural error leading to manifest injustice, violation of principles of Natural Justice or perversity in the decision making process, the Courts will not exercise the powers of Judicial Review. The *quantum* of punishment imposed by the disciplinary authority/AA is not usually interfered with by the Courts unless the exercise of discretion is perverse being grossly disproportionate to the offence committed. Therefore, he submitted that by interfering with the *quantum* of punishment, the Hon'ble Judge erred in exercising his discretion in Judicial Review.

j. In the case of **Managobindo Samanta Roy** (supra) the Hon'ble Apex Court held that the writ petitioner's sense of integrity, commitment, discipline and camaraderie is of paramount importance being a member of the Force. No indulgence or latitude can be shown in a case of violence

and assault on the Officer who had checked and reprimanded the petitioner for dereliction of duty. The writ petitioner was found sleeping on duty. He abused, misbehaved and assaulted the Officer with a short lathi on his shoulder when caught sleeping on duty by that Officer. The Commission of Offence was not in dispute. The writ petitioner did not express any remorse or plead any good ground for having acted in the manner he did. The Hon'ble Apex Court held that to condone such *misconduct* would have ramifications. Therefore, the punishment of **dismissal** was not interfered with.

k. The facts of the aforesaid case cannot be equated with the present case since the dereliction of duty does not stem from physical assault/violence on any member of the Force. More fundamentally, the Commission of Offence is itself in dispute. *Procedural Impropriety*, non application of mind leading to perversity, breach of principles of Natural Justice by the Enquiry Officer has been challenged. The said Judgment is not applicable to the present case.

l. He then relied on a Judgment reported in (2020) 9 SCC 471 (**Pravin Kumar vs. Union of India & Ors.**). This case was cited in support of the contention that the Enquiry Officer (EO) putting questions to the prosecution/Court witnesses, did not *per se* render the disciplinary proceedings bad due to the EO exceeding his jurisdiction. Since no specific malice or bias has been alleged against the EO, and no request made during the hearing to replace the EO, such a prayer after the hearing was

concluded, was in the nature of an afterthought. It appeared to the Apex Court that the delinquent employee received a fair trial by getting an opportunity of adducing evidence, cross-examining the witness and recording of depositions in his presence.

m. The Hon'ble Single Judge did not hold that the EO exceeded his jurisdiction by putting question to the witnesses, even though such an issue was raised by the writ petitioner. Since the Impugned Order did not proceed on that issue, it is not germane to decide the same in the present Appeal.

n. Next he relied on a Judgment reported in 1994 Supp (2) SCC 468 (**State Bank of India, Bhopal Vs. S.S. Koshal**) for the proposition that in case the Appellate Authority (AA) passed an order of *affirmance*, it was not *obligatory* on the part of the AA to say more than it said in the AA's Order (on the facts of that case) to show application of its mind in the Appeal.

o. In that case, the Disciplinary Authority itself disagreed with the Enquiry Officer and held certain charges to be established by differing with the Enquiry Officer. The Appellate Authority upheld the Order of the Disciplinary Authority and stated that it had considered the facts of the case at length and grounds of appeal and other relevant papers.

p. The said case of **State Bank of India** (Supra) does not aid the appellants in any manner since in the present case the non-speaking order was set aside by the Patna High Court and the AA was specifically directed

to consider the writ petitioner's grounds of Appeal by following the procedure. The AA should have applied its mind and passed a detailed order instead of a cryptic order while dealing with the grounds of Appeal. The reasoning of the AA in support of the findings of the EO was of primary significance.

q. He then relied on a Judgment reported in (2011) 8 SCC 695 (**Oriental Bank of Commerce & Anr. Vs. R.K. Uppal**). In that case, it was held that the Order passed by the Appellate Authority was not a non-speaking Order. The Appellate Authority addressed the points raised in Appeal, albeit briefly. The Order passed by the Appellate Authority did not have to be *elaborate* or *extensive*, if it is an Order of *affirmance*. Brief reasons which indicate due application of mind in the decision making process may suffice.

r. In the present case, the Hon'ble High Court at Patna clearly directed the Appellate Authority to apply its mind afresh and pass an Order considering Rule 47(2) of the CISF Rules. Therefore, reasons showing whether the rules of prescribed procedure have been complied or not, whether the findings of the disciplinary authority are justified and whether the *penalty* imposed is excessive, adequate or inadequate had to be provided in some detail. Since, the first appellate Order was set aside for not complying with the procedure prescribed in Rule 47 (2) it was incumbent on the Appellate Authority by its second Order to provide reasons to substantiate its findings.

s. Mr. Dasgupta, relied on a Judgment reported in (1981) 3 SCC 451 (**Firestone Tyre and Rubber Company of India (p) Ltd. Vs. Workmen Employed, Represented by Firestone Tyre Employee's Union**). In that case, it was held that it was a well settled proposition of law that the Order directing reinstatement of workmen without consideration of the merits of the case could not be sustained. The case was remitted back by the Apex Court to the Industrial Tribunal to decide the dispute with regard to reinstatement after giving an opportunity of hearing to both the parties.

t. Since, the issue under Schedule 1 A was not before the Tribunal as no reference was made to that effect, it was held that the Tribunal travelled outside its jurisdiction in recording the discriminatory practice/unfair labour practice by reinstatement or some of the employees and not the others.

u. The issue in the present case relates to whether the decision making process of the Appellate Authority in its second Order can be subject to Judicial Review due to any perversity or infirmity in the said process. The issue is not whether the Appellate Authority in considering the matter afresh travelled beyond its jurisdiction in adjudicating the issue. Since, the Hon'ble Single Bench found that the Appellate Authority vide its second Order did not comply with the Order passed by the Patna High Court, the writ petitioner was directed to be reinstated. The Hon'ble Single Judge did not travel beyond his jurisdiction sitting in writ jurisdiction, by seeking to do Justice to the Writ Petitioner.

v. He then relied on decision reported in (2009) 1 SCC 122 (**Union of India and Others vs. Ram Kumar Thakur**). The said decision is cited for the proposition that, when an interim stay is not granted in favour of the Applicant and the Order is implemented by the authorities due to the interim prayer not being granted, such a course of action would not necessarily provide a ground for non admission of an Appeal.

w. There is no dispute with regard to the aforesaid proposition in **Ram Kumar Thakur** (Supra). This Court has entertained the Appeal upon condonation of delay and decided to dispose the same on merits and not on the issue of maintainability of the Appeal due to the partial implementation of the Order of the Hon'ble Single Bench.

x. There is no dispute with regard to the proposition laid down in (**High Court of Judicature at Bombay through its Registrar vs. Uday Singh s/o Ganpatrao Naik Nimbalkar and Others**) reported in (1997) 5 SCC 129, cited by Mr. Dasgupta. Judicial review is not an Appeal from a decision but a review of the manner in which the decision is made. Power of Judicial Review is meant to ensure that the individual receives fair treatment. When an enquiry is conducted on charges of misconduct by a public servant, the Court has to determine whether the enquiry was held by a competent Officer, whether rules of Natural Justice were complied with, whether the findings/conclusions were based on some evidence, whether the Authority committed any jurisdictional error. The findings of the Disciplinary Authority must be based on some evidence though the

technical rules of Evidence Act will not be applicable to disciplinary proceedings.

y. To the mind of this Court, consideration of one part of the evidence and non-consideration of another part clearly indicates *Procedural Impropriety* in conducting the disciplinary proceedings. Therefore, **Uday Singh** (supra) does not come to the aid of the appellants.

z. Mr. Dasgupta submitted that an opportunity of hearing was given to the petitioner. He chose not to cross examine some of the witnesses. The petitioner in the present case was caught red handed in a raid by the Intelligence Branch of CISF. The Seizure list was prepared on the day of the occurrence. Neither was the seizure list *manufactured* nor was punishment *disproportionate* to the gravity of the offence.

aa. This Court does not find much substance in the argument on behalf of the writ petitioner that he was put at a disadvantage since the Enquiry Officer cross-examined certain witnesses without giving an opportunity to the delinquent employee/writ petitioner to cross-examine them first.

bb. However, this Court finds that the evidence that was given in favour of the prosecution was only taken into account while the Enquiry Officer came to the finding of commission of the offence by the delinquent employee. There is no reason provided as to why the evidence of the witnesses which favoured the petitioner was not analyzed before the finding of guilt was recorded against him. Such a reason was required in view of

the admitted position of fact that the purported occurrence took place in pitch darkness due to loadshedding.

cc. Admittedly, despite having the opportunity to do the same the truck drivers who purportedly gave money to the petitioner were not examined. Out of the 11 witnesses examined to prove the charge-sheet, 4 witnesses were examined by the Court without their names being mentioned in the charge-sheet. The prosecution examined 7 witnesses.

dd. The Enquiry Officer failed to take into consideration that CW2 to 4 deposed that PW1 and PW3 searched the petitioner and only Rupee 1 and Rs. 2 were found in his possession. Therefore, the fact that Rs. 600 was discovered in his possession was unfounded.

ee. From the evidence of CW2 to CW4, it was apparent that CW1 was subsequently called to the check post, a second time and PW1 was handed over the currency notes aggregating Rs. 600 by CW1. Therefore, the allegation that Rs. 600 was found from the possession of the petitioner was completely demolished. Despite it being the finding of the complainant that money was normally collected by one constable and later distributed amongst all the constables on duty, the infliction of punishment of **dismissal** on only the Appellant was absolutely unjustified was also pleaded as a ground of Appeal.

ff. The Appellate Authority despite directions by the Hon'ble High Court at Patna failed to give reasons on the issue why the evidence of PW4 and CW2 to 4 were not considered by the Enquiry Officer. Also the issue of

CW1 coming back to the check post the second time and then handing over the currency notes aggregating Rs. 600 to the PW1 should have been addressed. The fact that upon searching of the writ petitioner by PW1 and PW3 only Rupee 1 and Rs. 2 were found in his possession as per the evidence of PW4 and CW2 to 4 should have been considered and reasons should have been given for such partial consideration of the evidence by the witnesses by the Enquiry Officer.

gg. Instead of giving reasons to justify the findings of the Enquiry Officer, the Appellate Authority made *general* observations with regard to the fact that the principles and procedure given under the law were followed and the writ petitioner was given ample opportunity to defend the case and cross-examine the PWs. Therefore, the findings of the Enquiry Officer were based on the witness statements and relevant materials and the same were justified.

hh. In the grounds of Appeal the writ petitioner clearly urged that out of the four Officers who were charge-sheeted only the Order of **dismissal** was meted out unjustifiably to the writ petitioner. He was the one who was made the scapegoat.

ii. The Appellate Authority found that the final Order of **Dismissal** was fully *justified* and well commensurate to the *gravity* of the offence. Therefore, the Hon'ble Single Judge came to the finding that the Appeal was disposed of in a '*casual*' manner.

jj. This Court is of the view that, there is no infirmity or misappreciation of fact in the Impugned Judgment and Order dated January 22, 2003. Accordingly, the Appellate Authority is directed to consider the Appeal afresh in terms of Rule 47 of the old CISF Rules (as amended) and Rule 52 of the CISF Rules 2021. In consideration of the said Appeal the grounds urged in the statutory Appeal filed by the writ petitioner before the DIG (CISF) on October 7, 1991, will be considered and reasons for allowing/rejecting the same will be mentioned by the Appellate Authority. Such an exercise will be completed within four weeks from the date of this Order, considering the imminent retirement of the writ petitioner.

kk. Before parting with the discussion this Court refers to Rule 49A of the CISF Rules relating to 'Dies Non'. The same is set out herein under:

*[Notwithstanding anything contained in these rules an appellate authority or a revising authority may, on reinstatement of a member of the Force in service after setting aside a penalty of dismissal removal or compulsory retirement without exonerating such member of the Force of the charges which resulted in any of those penalties, after giving any opportunity to the member of the Force concerned to show cause against such action and for reasons to be recorded in writing, order that the intervening period between the date of dismissal, removal or compulsory retirement as the case may be and the date of reinstatement be treated as dies non for purposes of his service.]*

ll. Upon consideration of the same, this Court holds that the petitioner will be treated in service without a break but his arrears of salary will be paid not from the date of the Order passed by the Patna High Court in

1991 but from the date of the Order passed by Hon'ble Single Bench in 2003. The petitioner will be entitled to subsistence allowance from the date of the Order passed by the Patna High Court till the Impugned Order dated January 22, 2003 passed by the Hon'ble Single Bench considering the applicability of 'Dies Non' Rule to be too harsh in the present case. The amount equivalent to 10 months salary which have already been paid pursuant to a Coordinate Bench's Order shall be deducted from the said arrears. Such payment is to be made within three months from the date of the Order.

21. With the directions aforesaid **MAT 3210 of 2003** with **CAN 2 of 2003 (Old No. CAN 9664 of 2003)** and **CAN 3 of 2010 (Old No. CAN 4215 of 2010)** are accordingly disposed of.

22. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

23. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**I agree.**

**(Subrata Talukdar, J.)**

**(Lapita Banerji, J.)**