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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

DIPANKAR DATTA;J., SATISH CHANDRA SHARMA;J.

SLP (C) NOS.1377-1380 OF 2021; May 26, 2026

BENCY JOHN *versus* KERALA STATE ELECTRICITY BOARD LTD & ORS.

Service Law – Status of Railway Servants – Civil Post under the Union – Article 309 and Article 311 of the Constitution of India – Whether a railway servant ceases to be a member of the civil service of the Union merely because separate service rules govern their recruitment, conduct, control, and pension – Held that No, A railway servant remains a person holding a civil post in connection with the affairs of the Union under the administrative control of the Central Government - The delegation of powers to the Railway Board does not separate the status of a railway servant from that of a Central Government employee, as the Railway Board functions as the Government of India itself for railway administration - Service under the Railway Board is service under the Central Government. [Paras 42, 43]

Service Law – Fixation of Pay – Weightage for Past Service – Promissory Estoppel – Withdrawal of pay weightage benefits on the ground that Railway Service is not Central Government Civil Service – Held that unjustified, The Board, having explicitly accepted the pro-rata pension contribution from the Railways and acted upon its own "Board Orders" and settlements for years, is estopped from unilaterally withdrawing the benefit of weightage from the appellant - The High Court erred in holding that because the CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965 do not apply to railway servants, their service cannot be reckoned for pay fixation. [Relied on *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36; *Moti Ram Deka v. North East Frontier Railway*, AIR 1964 SC 60; *State of Assam v. Kanak Chandra Dutta*, AIR 1967 SC 884; Paras 32-39, 44 - 47]

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For Respondent(s): Mr. Subhash Chandran K. R, AOR Ms. Krishna L. R., Adv. Mr. Anirudh K. P., Adv. Mr. Bineesh K., Adv. M/s KRS Associates, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEALS

1. These appeals by the appellant - Bency John - by special leave, are unusually directed against multiple orders of a Division Bench of the High Court of Kerala at Ernakulam.
2. W.A. No.1155 of 2017 (Kerala State Electricity Board Limited & ors. v. D. Vishnu Nampoothiri) was allowed by the Division Bench *vide* a short order dated 19th August, 2019 spread over 3 (three) pages containing only 5 (five) paragraphs. The judgment and order dated 8th February, 2017 of the Single Judge in W.P. (C) No.13862 of 2014 was set aside. On the same day, i.e., 19th August, 2019, the Division Bench dismissed W.A. No.1895 of 2017 (Kerala State Electricity Board Limited & ors. v. Bency John) by a short two paragraph order, referring to its earlier order in W.A. No.1155 of 2017. As a result, the judgment and order dated 21st March, 2017 passed by the Single Judge allowing the appellant's writ petition [W.P. (C) No.18225 of 2013] stood set aside. Appellant applied for a review (R.P. No.1095 of 2019) of the order dated 19th August, 2019 whereby the appeal of the Kerala State Electricity Board Limited¹ was allowed. Though not a party to W.A. No.1155 of 2017, the appellant also applied for a review (R.P. No.280 of 2020) of the order dated 19th August, 2019

¹ Board

whereby such appeal stood allowed. By its order dated 6th March, 2020, the Division Bench dismissed both the review petitions.

3. Thus, these 4 (four) appeals challenge the orders of the Division Bench allowing W.A. No.1155 of 2017 and W.A. No.1895 of 2017 of the Board and dismissing R.P. No.1095 of 2019 and R.P. No.280 of 2020 of the appellant.

4. Dismissal of review petitions do not accord a ground to carry the same in an appeal. Thus, we shall confine our examination to the validity of the orders of the Division Bench dated 19th August, 2019, allowing the writ appeals of the Board referred to above.

BRIEF FACTS

5. The basic facts, lying in a narrow compass, are not in dispute.

6. Appellant joined the Indian Railways² as a Junior Draftsman on 9th August, 1990. After rendering more than 10 (ten) years of regular pensionable service with the Central Government, he was relieved on 24th February, 2001 to join the Board. He joined as a Sub-Engineer on 26th February, 2001.

7. Upon his joining the Board, the Railways remitted a sum of Rs.2,16,429/- towards pro-rata pension liability against a demand of Rs.1,50,597/- made by the Board. This was duly recorded in the appellant's 'Service Book', acknowledging that the service rendered in the Railways is liable to be reckoned for pension.

8. The Board itself, through its order bearing B.O. 2119/96 dated 9th January, 1996³, had explicitly provided that "regular pensionable Central Government Service followed by Board Service" would be counted for the purpose of "computing qualifying service for weightage".

9. Further, Long Term Settlements entered into between the Board and its employee unions in 2000⁴ and 2007⁵ consistently provided that "former Government service followed by Board service without break will be counted for the purpose of computing qualifying service for weightage."

10. Relying on these provisions, the appellant's prior service in the Railways was reckoned, and he was granted weightage for pay fixation and other benefits.

11. However, on 1st December, 2012, the Chief Internal Auditor of Board issued a letter⁶ objecting to the fixation of pay, cancelling the weightage granted, and ordering recovery of the alleged excess amount paid. The sole reason cited was that "Railway Service cannot be reckoned as a Central Government Service for weightage in pay revision."

12. Appellant's representations were rejected, compelling him to file W.P.(C) No.18225/2013 before the High Court. A Single Judge, following the precedent in the case of another similarly situated employee, D. Vishnu Nampoothiri who had succeeded⁷ in W.P.(C) No. 13862/2014, allowed the appellant's writ petition *vide* a judgment and order dated 21st March, 2017⁸. The Single Judge held that service in the Railways is required to be reckoned as Central Government service.

13. The Board challenged both the judgments in writ appeals the outcome whereof has been noticed in the previous segment. The Division Bench held that Railway service cannot be reckoned for weightage because the Central Civil Services (Conduct) Rules, 1964, and

² Railways

³ Annexure P-5

⁴ Annexure P-6

⁵ Annexure P-10

⁶ Annexure P-13

⁷ Annexure P-17

⁸ Annexure P-18

the Central Civil Services (Classification, Control and Appeal) Rules, 1965 do not apply to railway servants, who have their own separate rules.

14. Dismissal of the review petitions filed by the appellant led him to approach this Court with 4 (four) special leave petitions, out of which these appeals arise.

ARGUMENTS OF THE APPELLANT

15. Appellant's learned counsel argued as follows:

15.1 Railways is an integral department of the Central Government, and its employees are central government servants.

a. The finding of the High Court is fundamentally flawed and contrary to the established constitutional and statutory position of the Railways. The Railways is a department of the Government of India, functioning directly under the Ministry of Railways. It is not a separate legal entity, a Public Sector Undertaking, or a statutory corporation. Regular employees of the Railways are civil servants of the Central Government and/or hold civil posts under the Government of India, under the provisions of Article 311 of the Constitution of India. They are also covered within the meaning of the expression "persons appointed, to public services and posts in connection with the affairs of the Union" under Article 309 of the Constitution.

b. **Statutory Recognition:** The Indian Railways Act, 1989, itself defines "Government railway" as a railway owned by the Central Government [Section 2(20)] and a "railway servant" as any person employed by the Central Government or by a railway administration in connection with the service of a railway [Section 2(34)]. This statutory definition is unequivocal. Section 2(34) reads as follows:

(34) "railway servant" means any person employed by the Central Government or by a railway administration in connection with the service of a railway including member of the Railway Protection Force appointed under clause (c) of sub-section (1) of Section 2 of the Railway Protection Force Act, 1957 (23 of 1957);

c. **UPSC Regulations:** The Union Public Service Commission (Exemption from Consultation) Regulations, 1958, explicitly define "Central Service" to include "Railway Services". This demonstrates that for the highest constitutional bodies dealing with public services, Railway Service is treated as a Central Service.

d. **Code of Civil Procedure, 1908⁹:** Section 80 of the said code deals with notices for suits against the Government, carves out a specific procedure for suits against the Central Government where it relates to a railway. This provision inherently recognizes the railway as being synonymous with the Central Government for the purpose of litigation.

e. **Central Pay Commissions:** Successive Central Pay Commission reports have consistently treated Railway employees as Central Government employees. The reports classify employees department-wise, and the Ministry of Railways is shown as a major department of the Central Government, accounting for the largest share of civilian employees.

f. In exercise of the powers conferred by clause (3) of Article 77 of the Constitution, the President of India has promulgated the Government of India (Allocation of Business) Rules, 1961. As per Rule (2) of the said Rules the business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to the Rules. The Ministry of Railways (Rail Mantralaya) and the Railway Board have been specifically authorised to transact all matters, including those relating to Railway revenue and expenditure thereunder.

⁹ CPC, 1908

g. The mere existence of separate service rules viz. the Railway Services (Conduct) Rules, 1966 is a common feature in large government departments (e.g., Defence civilians, Foreign Service) and is for administrative convenience. It does not alter the fundamental status of the employees as being servants of the Central Government. The High Court's reliance on this distinction to deny the appellant's status is an error apparent on the face of the record.

15.2 Board is bound by its own orders and settlements

a. The action of the Board is in direct contravention of its own binding orders and settlements. The Board itself has taken a contrary stand: while admitting the previous service rendered by the appellant as a Central Government employee for the purpose of pension, they have taken a contrary stand as regards grant of weightage.

b. Board Order being B.O. 2119/96 dated 09.09.1996 is unambiguous. It allows for the counting of "regular pensionable Central Government Service" for the purpose of weightage. Appellant's service in the Railways was both regular and pensionable, and thus was undoubtedly Central Government service.

c. The long-term settlements of 2000 and 2007, which are binding settlements under the Industrial Disputes Act, 1947, reiterate this position by allowing "Former Government service" to be counted for weightage.

d. The Board cannot be permitted to resile from its own solemn commitments made in Board Orders and statutory settlements. The impugned action of cancelling the benefit is arbitrary, illegal, and a violation of the principles of promissory estoppel. The Board, having accepted the pro-rata pension contribution from the Railways, is estopped from denying the consequential benefits to the appellant.

15.3 The impugned judgment creates an unreasonable and discriminatory classification.

a. The effect of the impugned order allowing the writ appeals is that an employee from the Department of Posts, Government of India, would be entitled to weightage, but an employee from the Ministry of Railways, Government of India, would not be. This creates an artificial and invidious distinction between two classes of Central Government employees without any rational basis or nexus with the object sought to be achieved (i.e., granting benefit for past government service).

b. This classification is arbitrary and violative of the equal protection clause under Article 14 of the Constitution of India. The High Court failed to consider this discriminatory effect of its interpretation.

c. It is a settled principle of law that recovery from a retired employee, especially when the initial payment was not due to any misrepresentation by the employee, is impermissible in law. The order to recover alleged excess payments from the appellant, who has since retired, is harsh, inequitable, and contrary to the law laid down in **State of Punjab & Ors vs Rafiq Masih (White Washer)**¹⁰.

d. The judicial precedents in **S. Bhaskar Reddy v. Superintendent of Police**¹¹, **Union of India v. J.V. Subhaiah**¹² and **M.M.R. Khan v. Union of India**¹³ lay indirect references to the judicial proposition that railway servants are Central Government employees.

¹⁰ (2015) 4 SCC 334

¹¹ (2015) 2 SCC 365

¹² (1996) 2 SCC 258

¹³ Supp. SCC 191

16. In light of the foregoing submissions, it has been prayed that the impugned order be set aside and the judgment of the Single Judge dated 21st March, 2017 in W.P.(C) No. 18225/2013 restored.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

17. Learned counsel for the respondents argued that:

17.1 A Railway Servant is not a ‘Central Government Servant’ within the meaning of the applicable rules

a. The expression ‘Central Government Service’ as employed in Board Order No.2119/96 dated 9th September, 1996, and as clarified by the Order dated 10th March, 1997, refers to Central Government Civil Service as understood under the Central Civil Services (Conduct) Rules, 1964, and the Central Civil Services (Classification, Control and Appeal) Rules.

b. Rule 2(b) of the Central Civil Services (Conduct) Rules, 1964 defines ‘Government Servant’ as:

“Government servant means any person appointed by Government to any civil service or post in connection with the affairs of the Union and includes a civilian in a Defence Service”.

c. Further, as per Rule 2(h), ‘Government Servant’ means a person who :

(i) is a member of a Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;

(ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;

(iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government.

d. A bare perusal of the aforesaid definitions makes it evident that a “railway servant” does not fall within the definition of ‘Government Servant’ under the applicable rules. The definitions are exhaustive and exclusive, being limited only to specific persons appointed by or serving under the Central or State Governments in the manner described therein. Railway servants, governed by a separate statutory framework, are conspicuously absent from these definitions.

e. Section 80 of the CPC, 1908, which refers to Government servants for the purpose of serving notice before institution of suits, does not provide a substantive definition of ‘Government Servant’ and merely enumerates persons to whom notice is to be issued. Reliance on such a provision for defining the scope of ‘Central Government Service’ for service benefit purposes is wholly misconceived.

f. Railways is a Public Sector Undertaking under the Central Government, wherein recruitments are carried out through the Railway Recruitment Board. Employees of Indian Railways are governed by a separate and distinct statutory framework, namely, the Railway Services (Conduct) Rules, 1966 and the Indian Railway Establishment Code¹⁴.

g. Railway service, except for the Railway Inspectorate, is not included in the list of Central Government Services. Accordingly, railway service cannot be treated as qualifying service for the purpose of weightage in pay fixation under the Long-Term Settlement. The Answering Respondents have consistently maintained this position, and no other employee’s railway service has ever been considered for weightage purposes, just as the Railways do not reckon service rendered in Board for the purpose of granting weightage.

¹⁴ IREC

h. Even services rendered under entities such as Kerala State Financial Enterprise, Kerala Water Authority, and Municipal Service, some of which are directly under the Government of Kerala, are similarly not counted for the purpose of weightage in pay revision. This demonstrates a consistent and non-discriminatory application of the policy.

17.2 Railway Service may only be counted for pensionary benefit – not for weightage

a. Appellant's prior railway service has not been disregarded. Under the applicable Long-Term Settlement and Board Orders, such service may be reckoned only for pensionary benefits, but cannot be treated as qualifying service for weightage in pay fixation.

b. Clause 6 under Article IV of the Long-Term Settlement dated 2nd August, 1995 provides that only Kerala State Government Service followed by Board Service without break shall be counted for computing qualifying service for weightage. The provision does not extend this benefit to railway service.

c. The Board Order dated 9th September, 1996 clarified that regular pensionable Central Government service followed by Board Service may be counted for weightage; however, the order dated 10th March, 1997 issued by the Chief Personnel Officer specifically excluded railway service from its scope.

d. In any event, the appellant has already been granted full pensionary benefits, including credit for his prior service in Indian Railways, upon his retirement in 2019.

17.3 Appellant cannot place reliance on new documents at the stage of review

a. It is a settled legal position that a party cannot introduce or rely upon additional evidence at the stage of review. As held in **Balai Chandra Hazra v. Shewdhari Jadav**¹⁵, review proceedings are not meant to supplement the record with fresh material.

b. Further, Order XLI Rule 27 of the CPC, 1908 permits additional evidence only in limited circumstances, none of which apply in the present case.

18. It was, accordingly, prayed that the appeals be dismissed.

QUESTIONS

19. Two questions arise for decision in these appeals. They are:

A. Whether a railway servant ceases to be a member of the civil service of the Union merely because separate rules govern his service conditions including recruitment, conduct, control, pension, etc.?

B. Whether the Board, having accepted the pro-rata pension contribution and having acted upon its own "Board Orders" and settlements for years, is estopped from unilaterally withdrawing the benefit of weightage from the appellant?

ANALYSIS

20. Prior to embarking on our task of answering the above questions, it would be appropriate to consider what the Railways means to India and its people.

21. Railways, by far, is the biggest establishment by every major metric – personnel, coverage, operational complexity and responsibility. It is the largest civilian employer. Its reach by way of rail-connectivity extends to all but two States, viz. Meghalaya and Sikkim. In the process, its presence is felt in excess of two dozen States and half a dozen Union Territories. Apart from an administrative spread of 17 zones and 68 divisions under the Ministry of Railways, Government of India, which requires a huge budgetary allocation in the Union Budget every year, the Railways has a strategic role to perform. It moves, apart from

¹⁵ (1978) SCR (3) 147

people, troops, food grains, coal, petroleum, and other essential commodities, round the clock. It is also a lifeline during disasters. A single day strike can paralyse the country.

22. Tackling the Railways is, obviously, no mean job. A normal Ministry secretariat could not have handled it through conventional departmental procedure. That is exactly why the Railway Board was created in pursuance of the Indian Railway Board Act, 1905 and constituted under the Resolution of the Government of India, Public Works Department No. 256G, dated 18th February, 1905. Section 2 empowered the Central Government to invest the Railway Board with all or any of the powers of the former under the Indian Railways Act, 1890. With the enactment of the Railways Act, 1989, sub-section (1) of Section 2-A thereof provides for a body to be constituted known as the Railway Board to exercise the powers conferred upon, and to perform the functions assigned to it under this Act; and the Railway Board, earlier constituted, and with its composition as revised from time to time, shall be deemed to be the Railway Board constituted under this Act. Sub-section (2) of Section 2-A ordains that the Central Government may, by notification, invest the Railway Board, either absolutely or subject to any conditions, with all or any of the powers or functions of the Central Government under this Act with respect to all or any Railways. The Railway Board is a specialised technical body having members for traffic, engineering, electrical, mechanical, finance, staff, etc., who are all domain experts, quite unlike a normal ministry. The conferment and exercise of powers and functions of the Central Government by the Railway Board under the Railways Act, 1989 and the rules framed thereunder, is a continuation of the arrangement for administrative convenience and efficiency in the working of the vast railway system in the country which formed the foundation for the Railway Board's creation and constitution in 1905. The Railway Board is, thus, a statutory body exercising governmental powers because the alternative would be unworkable.

23. Bearing in mind the history behind creation and constitution of the Railway Board, we need to take a look at the provisions of the Constitution and the relevant rules now.

24. Article 309 is the source to which all the rules relevant for a decision on these appeals owe their origin. What does it provide? The substantive provision ordains that subject to the provisions of the Constitution itself, recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or of any State, may be regulated by Acts of the appropriate Legislature. However, till such time provision in that behalf is made by or under an Act of the appropriate Legislature under this article, the proviso empowers the President or the Governor of a State, or such person as the President/Governor may direct in the case of services and posts in connection with the affairs of the Union/of the State, as the case may be, to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts; and any rules so made shall have effect subject to the provisions of any such Act.

25. Number of rules are in place governing the members of the Central Civil Services¹⁶, viz. CCS (Conduct) Rules, 1964, CCS (Classification, Control & Appeal) Rules, 1965, CCS (Pension) Rules, 1972 to name a few. Preamble to all these rules reflect that the same have been made in exercise of power under Article 309 of the Constitution.

26. The common thread running through all these rules is that they apply to all Government servants except, *inter alia*, any railway servant.

27. There are, however, different set of rules similar in content to regulate conditions of service of railway servants, viz. Railway Services (Conduct) Rules, 1966, Railway Services (Discipline and Appeal) Rules, 1968, Railway Services (Pension) Rules, 1993, etc. These rules are also made by the President under Article 309.

¹⁶ CCS

28. The Railways Act refers to “government railway” and “non-government railway”. Section 2(20) and 2(32) of the Railways Act define “government railway” and “railway administration”, respectively. While “government railway” means a railway owned by the Central Government, “railway administration” in relation, *inter alia*, to a Government railway, means the General Manager of a Zonal Railway. Definition of a “railway servant” is found in Section 2(34) in terms whereof “railway servant” means any person employed by the Central Government or by a railway administration in connection with the service of a railway. The remaining part is not relevant for our purpose.

29. Definition of a “railway servant” is also found in Rule 103(33) of the IREC, 1985 Edition. It means a person who is a member of a service or holds a post under the administrative control of the Railway Board and includes a person who holds a post in the Railway Board.

30. If indeed services in the Railways are not to be regarded as services in connection with the affairs of the Union, and also that railway servants are not to be considered as appointed to posts in connection with the affairs of the Union, we wonder whether it was at all necessary for the President to make the aforesaid rules for regulating the conditions of service of the railway servants.

31. Article 311 of the Constitution may now be adverted to. It provides safeguards from arbitrary State action. Clause (1) is sufficient for the present discussion. To the extent relevant, it mandates that no person who is a member of a civil service of the Union or holds a civil post under the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed.

32. As held in *Parshotam Lal Dhingra v. Union of India*¹⁷, clause (1) of Article 311 is quite explicit and hardly requires discussion. The scope and the ambit of that protection are that government servants of the kinds referred to therein are entitled to the judgment of the authority by which they were appointed or some authority superior to that authority and that they should not be dismissed or removed by a lesser authority in whose judgment they may not have the same faith. The underlying idea obviously is that a provision like this will ensure to them a certain amount of security of tenure.

33. It is nobody’s case that a railway servant is not entitled to the procedural safeguards Article 311 contemplates. Any action *dehors* Article 311 adversely impacting a railway servant would be amenable to challenge before the relevant Central Administrative Tribunal ¹⁸ under the Administrative Tribunals Act, 1985.

34. Section 14 of the AT Act reads as follows:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) **all service matters** concerning— (i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,

¹⁷ AIR 1958 SC 36

¹⁸ Tribunal

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union Territory.

35. To understand what “service matters” used in Section 14 of the AT Act means, one has to read Section 3 thereof. Clause (q) of Section 3 of the AT Act defines “service matters”. Paraphrasing it, to the extent relevant for the present discussion, “service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or under the control of the Government of India, as respects remuneration (including allowances), pension and other retirement benefits; tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation; leave of any kind; disciplinary matters; or any other matter whatsoever.

36. Section 2 of the AT Act specifically posits that the said enactment will not apply to any member of the naval, military or air forces or of any other armed forces of the Union; any officer or servant of the Supreme Court or of any High Court or courts subordinate thereto; any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature, of that Legislature.

37. Therefore, jurisdiction of the Tribunal is not barred in respect of a “railway servant”. He is as much a person having *locus standi* to move the Tribunal as a Government servant as defined in the CCS Rules referred to above.

38. We may now turn to the decision in in **Moti Ram Deka v. North East Frontier Railway**¹⁹. There, several permanent railway employees, including Moti Ram Deka, were terminated under Rules 148(3) and 149(3) of the IREC, which permitted termination of service by notice without any departmental inquiry. A seven-Judge Bench of this Court held that these provisions were unconstitutional because they enabled the termination of permanent railway employees without affording them an opportunity to defend themselves, thereby directly violating the safeguards guaranteed under Article 311(2) of the Constitution. The mere use of the expression “termination” could not disguise what was, in substance, a dismissal or removal from service. Constitutional protection under Article 311 cannot be circumvented by merely changing the nomenclature of the action. Paragraph 33 of the judgment is reproduced below:

33. There is no doubt that on a fair construction, the impugned Rules authorise the Railway Administration to terminate the services of all the permanent servants to whom the Rules apply merely on giving notice for the specified period, or on payment of salary in lieu thereof, and that clearly amounts to the removal of the servant in question. Therefore we are satisfied that the impugned Rules are invalid inasmuch as they are inconsistent with the provisions contained in Article 311(2). The termination of the permanent servants, tenure which is authorised by the said Rules is, no more and no less than their removal from service, and so, Article 311(2) must come into play in respect of such cases. That being so the Rule which does not require compliance with the procedure prescribed by Article 311(2) must be struck down as invalid.

Accordingly, once the Court held that the protection of Article 311 was available to railway servants notwithstanding the existence of separate service rules, it necessarily followed that railway employees were holders of civil posts under the Union, since Article 311

¹⁹ AIR 1964 SC 600

applies only to members of the civil services or persons holding civil posts under the Union or a State. The decision therefore rejected the notion that permanent railway employees were merely contractual servants whose services could be terminated at will by notice.

39. Reference may be made at this stage to the decision in *State of Assam v. Kanak Chandra Dutta*²⁰. While considering the question as to whether a ‘Mauzadar’ is a person holding a civil post under the State within the meaning of Article 311 of the Constitution and answering in the affirmative, this Court had the occasion to explain what a civil post is in the following words:

9. ... There is no formal definition of “post” and “civil post”. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to of Article 311. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State’s right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds “office” during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

40. The holder of a post undoubtedly on the civil side as distinguished from the defence side is the holder of a civil post. Holding a post under the Railway Board does not detract from the position that a railway servant is a Government servant. Most importantly, all the CCS Rules referred to in paragraph 25 supra make it clear that the same shall not apply to any Government servant who is a railway servant. We may aptly refer to Rule 1(3) of the CCS (Conduct) Rules²¹ in this behalf.

²⁰ AIR 1967 SC 884

²¹ (3) Save as otherwise provided in these rules and subject to the provisions of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, these rules shall apply to every person appointed to a civil service or post (including a civilian in Defence Service) in connection with the affairs of the Union:

Provided that nothing in these rules shall apply to any Government servant who is – (a) (i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890);

(ii) a person holding a post in the Railway Board and is subject to the Railway Services (Conduct) Rules; holding any post under the administrative control of the Railway Board or of the Financial Commissioner of Railways;

41. By the very terms of the proviso, a railway servant is also a Government servant though it is not the CCS (Conduct) Rules but the Railway Services (Conduct) Rules that would apply to him.

42. On a conspectus of all these provisions of the Constitution, the AT Act and subordinate legislation made under Article 309, as well as the precedents obtaining in the field, our inevitable conclusion is that the delegation of powers to the Railway Board does not have the effect of making a railway servant an employee of the Railway Board as distinct from the Central Government, nor does it alter his status as a member of the civil service of the Union. A railway servant though appointed in a Government Railway under rules made exclusively for the Railways in exercise of powers under the proviso to Article 309 of the Constitution remains a person holding a civil post in connection with the affairs of the Union under the administrative control of the Central Government. The Railway Board functions as the Government of India itself for railway administration; consequently, service under the Railway Board in the broader sense is service under the Central Government, and a railway servant does not cease to be a member of the civil service of the Central Government merely because his conditions of service are regulated by rules specific to the Railways.

43. We, thus, answer the first question in the negative.

44. Moving on to the second question, the answer cannot but be in the affirmative.

45. We are surprised that after the appellant was extended benefits in terms of the “Board Orders”, the same was sought to be withdrawn on the basis of a purported order of the Chairman of the Board dated 3rd

June, 2013, preceded by a note of the Chief Internal Auditor of the Board dated 1st December, 2012.

46. The Division Bench committed an error in upholding such order(s) based on a misconception that since the CCS (Classification, Control & Appeal) Rules, 1965 and the CCS (Conduct) Rules, 1964 do not apply to a railway servant, the service put in by the appellant cannot be reckoned for weightage in the fixation of pay and allowances.

47. The second question is, accordingly, answered.

RELIEF

48. For the reasons aforesaid, the impugned orders dated 19th August, 2019 allowing W.A. No.1155 of 2017 and W.A. No.1895 of 2017 cannot be sustained. The same are hereby set aside. The appeals against the orders dated 1st December, 2012 and 3rd June, 2013 are not entertained. The judgment and order of the Single Judge dated 21st March, 2017 is restored. Appellant shall be entitled to the benefits extended in terms of the “Board Orders” and no benefit accrued in his favour shall be withdrawn.

CONCLUSION

49. The appeals stand allowed, without any order for costs.

50. Appellant shall be entitled to all benefits flowing from the judgment of the Single Judge, since affirmed by us, within a period of three months from date of production of an authenticated copy of this judgment.

51. If D. Vishnu Nampoothiri has not preferred any appeal against the order of the High Court dismissing his writ petition, he may approach the Board for grant of similar relief that was granted to the appellant based on the order of the Single Judge on his (D. Vishnu Nampoothiri) writ petition. We hope and trust that in such event, the Board will not subject D. Vishnu Nampoothiri to any discrimination.