

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 28 of 1998.

DATE OF DECISION. 4-2-2000.

Sri Dipak Kumar Kundu

PETITIONER(S)

S/Sri G.K.Bhattacharya, G.N.Das, P.Sharma
& Ms B.Dutta Das.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri S.Sengupta, Railway counsel

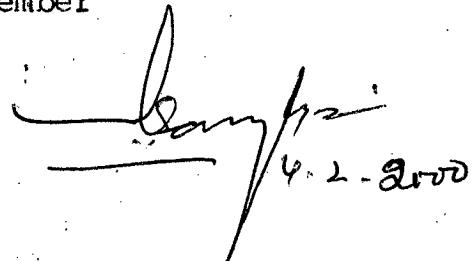
ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N.BARUAH, VICE CHAIRMAN

THE HON'BLE MR G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member


4.2.2000

45

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 28 of 1998.

Date of Order : This the 4th Day of February, 2000

The Hon'ble Mr Justice D.N.Baruah, Vice-Chairman.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

Shri Dipak Kumar Kundu,
Son of Shri Dilip Kumar Kundu,
Junior Clerk/G,
Office of the D.R.M.(M)
Lumding, Nagaon (Assam). . . . Applicant

By Advocate S/Shri G.K.Bhattacharya,
G.N.Das, P.Sharma and Mrs B.Dutta Das.

- Versus -

1. Union of India
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati.
2. Chief Personnel Officer,
N.F.Railway, Maligaon.
3. Chief Medical Director,
N.F.Railway, Maligaon.
4. Medical Superintendent,
N.F.Railway, Lumding.
5. Divisional Railway Manager (P),
N.F.Railway, Lumding.
6. Divisional Railway Manager,
(Operations) N.F.Railway,
Lumding. . . . Respondents.

By Advocate Sri S.Sengupta, Railway Counsel.

O R D E R

G.L.SANGLYINE, ADMN. MEMBER,

The applicant was working as Assistant Station Master at Mandardisa Station of the Lumding Railway Division of the North East Frontier Railway on 6.11.1995. On that day he did not grant line clear signal for a train passing through his station resulting in suspension of running of the train for a considerable period and dislocating train communication. Consequently, the applicant was arrested and kept in the Lumding G.R.P.Police Station for about 20 hours. Thereafter he was hospitalised at Lumding Railway Hospital from 7.11.1995

to 9.11.1995. The applicant was placed under suspension with effect from 6.11.1995 by Memorandum No.T/Misc/LM dated 9.11.1995. The order of suspension was revoked on 13.12.1995. He was transferred to Lumding to work as Station Clerk for 6 months with immediate effect by office order No.Es-206-D(T) dated 14.12.1995 (Annexure-III). By the same order he was directed to report for monthly medical check up alongwith his working/behaviour/attitude report for better evaluation of his case. The applicant reported to the Station Superintendent, Lumding on 16.12.1995 in compliance with the order. It may be mentioned that Departmental proceedings were held against the applicant in connection with the incident of 6.11.1995 and he was punished after appeal with stoppage of increments for 24 months (non-cumulative). While working as Station Clerk the applicant reported for the monthly medical check up. On 4.6.1996 the Chief Medical Superintendent, N.F. Railway, Lumding examined the applicant and issued certificate dated 4.6.1996 to the effect that he was found unfit for A/3, B/1 and B/2 but fit for medical category C/1 and C/2. On the Annexure-A of the same certificate the applicant endorsed his signature dated 4.6.1996 to the following effect :

"I have been advised by MS/LMG that I am not fit to continue in my post in Medical category A/Two. I do prefer to lodge an appeal to the higher medical authority within 7 days from the date for reconsideration of the adverse report.

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Dipak Kr.Kundu
4.6.96."

On 5.6.1996 the applicant was directed to appear in the suitability test for medically declassified staff in the chamber of DPO/Lumding for judging ability for further absorption and the applicant duly appeared in the test. On 9.6.1996 he applied for copy of medical certificate declaring him unfit for the categories of jobs mentioned above. Prayer

was not granted. On 21.6.1996 it was communicated that the applicant among others who was decategorised staff and declared medically fit in B/1, C/1 and below and found eligible for the suitability test held on 5.6.1996 and having recommended and accepted for alternative post shown against his name was posted accordingly. The applicant was posted as Junior Clerk(G) in the scale of pay of Rs.950-1500/- in the office of the DME(P) LMG. His pay was fixed at Rs.1200/- which is identical with the pay he was drawing as Assistant Station Master in the scale of pay of Rs.1200-2040/-. The applicant joined the post of Junior Clerk on 30.7.1996 (FN) without prejudice to his right to appeal. The applicant is aggrieved as according to him he was illegally and arbitrarily being deprived of the post due to him. According to him the respondents authority without following the procedure laid down and without giving him any treatment or medicine certified him to be a case of mental instability and debarred him from holding the post of Assistant Station Master. He therefore submitted representations dated 16.8.1996 and 12.1.1997 requesting for re-examining him medically by a specialist in the field of Neurological Science or psychiatric and to act upon their findings. There was no response. Therefore he had submitted this application praying that the order/certificate declaring him to be suffering from mental instability be set aside and directing the respondents to examine the applicant by a Medical Board. He further submitted that the impugned certificate be set aside and direct the respondents that he is not to be debarred from holding the post of Assistant Station Master.

2. The respondents have contested the application and submitted written statement. We have heard learned counsel of both sides. It was submitted for the applicant that he was illegally, arbitrarily and without following the procedure prescribed declared medically unfit for the post of Assistant Station Master. This was also done with mala fide. Similarly,

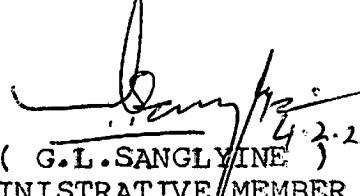
the action of the respondents in decategorising him and offering him an alternative appointment which was not in commensurate with the post of Assistant Station Master is arbitrary, capricious and mala fide. The learned counsel for the respondents however, defended the action of the respondents. The applicant was medically examined by the Medical Board on 28.11.1995. It was found that he had no present problem and at present he was in anxiety/depression state which may be due to the present situation at his job. The Medical Board finally came to the conclusion that as the applicant was at present in Anxiety - Depression state he should not be allowed to perform duty as ASM and in other posts as listed in IRMM Item No.573. He may be provided with some sedantary job with such duty which will be compatiable with railway working at least for 6(six) months at present and he should be directed for check up at monthly intervals alongwith his monthly working report for better evaluation of the case. On 8.5.1996 the Chief Psychiatrist, Central Hospital, Maligaon gave his finding that the applicant was at present psychologically fit to perform duty but considering his past psychological problems even though he had recovered from his illness, he should not be posted in the posts as listed in IRMM Item No.573. On 4.6.1996 he was examined by the Chief Medical Superintendent, N.F.Railway, Lumding and he was found unfit for A/2, A/3, B/1 and B/2 categories of service but fit for C/1 and C/2 categories. It was also stated that he shculd not be posted in a post as listed in para 573 of IRMM. The applicant had submitted representations dated 16.8.1996 and 12.11.1997 requesting for review of his case. On 4.6.1998 the Deputy Chief Medical Director rejected the appeal of the applicant on the ground that the appeal was time barred and further it was not routed through proper channel. We are of the view that the applicant was denied

justice merely on technical grounds. At any rate, the order dated 4.6.1998 could not have been passed after this original application was admitted on 24.4.1998. We therefore direct the respondents to re-consider the case of the applicant on merit by condoning the delay or procedural defects, if any. The applicant may also submit fresh representation to the respondents, if he desires, within 1(one) month from the date of receipt of this order. The respondents shall issue a final order to the applicant after hearing him within 3 months from the date of receipt of this order.

The application is disposed of. No order as to costs.



(D.N. BARUAH)
VICE CHAIRMAN



(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER
4.7.2000