

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 20/2000

OF 199

Applicant(s)

Guwahati OGA.

Respondent(s)

Union of India and others.

Advocate for Applicant(s)

Mr. U. Bhuyan
Smt. S. D. Bhuyan.

Advocate for Respondent(s)

Rly.

Notes of the Registry	Date	Order of the Tribunal
OG 453666 15/11/99 Sd/- 25-1-2000 Service of notices prepared and sent to D. Section 200 issuing of the same to the respondents through Regd post with A.P.D. Vide S.O. No. 223 to 227 Dtd- 25.1.2000.	21.1.2000	<p>Present : Hon'ble Mr Justice D.N. Baruah Vice-Chairman Hon'ble Mr G.L. Sanglyine, Administrative Member.</p> <p>Application is admitted. Issue usual notice.</p> <p>Mr U. Bhuyan, learned counsel for the applicant prays for an interim order of stay of Annexure-J order dated 29.10.99. None appears on behalf of the Railways.</p> <p>Issue notice to show cause as to why the interim prayer shall not be granted. Returnable by four weeks.</p> <p>List on 21.2.2000 for filing reply to the show cause and order. Meanwhile status quo as on today shall be maintained.</p> <p>Sd/- Member</p> <p>Sd/- Vice-Chairman</p>

(2)

of 20/2000

Notes of the Registry	Date	Order of the Tribunal
<u>18 - 2 - 00</u> 1) Service reports are still awaited.	21.2.00 mk	Two weeks time is allowed on the prayer of Mr. J.L. Sarkar, learned Railway Advocate. List on 9.3.00 for filing of written statement. <i>62</i> Member
<u>8 - 3 - 2000</u> 1) Notice duly served on R. No - 2, other respondents are still awaited. 2) No. written statement has been filed.	9.3.00 trd 24.3.00	On the prayer of Mr. J.L. Sarkar, learned advocate for the Railways two weeks time is allowed for filing of written statement. List on 24.3.00 for written statement and further orders. <i>62</i> Member (J) <i>62</i> Member (A)
<u>23 - 3 - 00</u> w/ dateind by new year for W	1m 7.4.00	On the prayer of Mr. S. Sengupta learned Rly. counsel two weeks time is allowed for filing of written statement. List on 7.4.00 for orders. <i>62</i> Member
<u>3 - 7 - 2000</u> No. written statement has been filed.	1m 4.7.00	No written statement has been submitted. There is no prayer for the respondents. List for hearing on 4.7.00. <i>62</i> Member
No. written statement has been filed.	15.5.00 23.1.01	There is no D.O. adjourned 1 - 15.9.00. 870 1 No. written statement has been filed. 15.2.01
	23.1.01	Adjourned on the prayer of Mr D.K. Das on behalf of Mr U. Bhuyan to 16.2.01. 1000 hours Member <i>62</i> Vice-Chairman

31

Notes of the Registry

Date

Order of the Tribunal

31

16.2.01

Mrs. Bhuyan learned counsel prays for adjournment due to indisposition of Mr. A. Bhuyan learned counsel for the applicant. Mr. S. Sengupta learned counsel for the respondents has no objection. List on 19.3.01 for hearing.

U.U. Shar

Member

Vice-Chairman

lm

20-2-2001

W/S have been filed for and on behalf of the respondents.

Prbly
20/2/2001

19.3.

None appears for the applicant. Mr. S. Sengupta, learned Standing Counsel, by submitted that the case is squarely covered by a judgement of this Bench in O.A. 359/01. Adjourned for the day. List on 20/3/2001.

M/s

A. W. S.

W.B.

20.3.01

Heard counsel for the parties.

Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is allowed in terms of the order. No order as to costs.

U.U. Shar

Member

Vice-Chairman

17.4.2001

Copy of the judgement has been sent to the D.P.C.C. for issuing the same to the applicant as well as to the Rayli Standing counsel.

W.S.

pg

Notes of the Registry	Date	Order of the Tribunal
<u>26.2.2004</u> ✓✓✓		

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.X. No. . 20 of 2000.

DATE OF DECISION 20-3-2001.

Shri Gunindra Ojha,

PETITIONER(S)

Shri U.Bhuyan

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India (G.M., N.F.Railway) & Ors

RESPONDENT(S)

Shri S.Sengupta, Railway standing counsel

ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE MR K.K.SHARMA, 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 Vice-Chairman.



X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 20 of 2000.

Date of Order : This the 20th Day of March, 2001.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Gunindra Ojha,
Son of Late Umesh Chandra Ojha,
Resident of Quarter No.240 B,
West Ghatanagar,
Maligaon,
Guwahati-11.

... Applicant

By Advocate Shri U.Bhuyan.

- Versus -

1. North East Frontier Railway,
Maligaon, Guwahati-11
through the General Manager,

2. Chief Operations Manager,
N.F.Railway, Maligaon,
Guwahati-11.

3. Chief personnel Officer,
North East Frontier Railway,
Maligaon, Guwahati-11.

4. Deputy Chief Operations Manager(Goods),
N.F.Railway,
Maligaon, Guwahati-11.

5. Divisional Railway Manager,
Alipurduar Junction Division,
N.F.Railway, Alipurduar,
West Bengal.

... Respondents.

By Shri S.Sengupta, Railway standing counsel.

O R D E R

CHOWDHURY J.(V.C)

This is an application under section 19 of the Administrative Tribunals Act 1985 assailing the Office Order dated 29.10.99 sparing the applicant from his respective post and ordered to report to the respective original division.

2. The applicant holds a substantive post of Supervising Assistant Station Master. While working as such at Dhekiajuli Road Railway Station under Alipurduar Junction Division,

Rangia-Rangapara North section the station was attacked by some miscreants/extremists on 19.4.91 at 6 P.M. The miscreants were armed with weapons and they came to snatch away the Railway revenue stored in the said station. The applicant was in possession of all the station keys. The miscreants entered the house of the applicant and wanted the iron safe keys from him. He refused to hand over the keys and as a result the applicant was severely assaulted by the miscreants causing severe injuries to him. They also attacked applicant's wife and 7 months old baby causing serious bodily injuries. FIR was lodged in the Dhekiajuli Police Station and a case was registered under Sections 395/397 IPC. Pursuant thereto the police arrested 6 miscreants in connection with the aforesaid case. The applicant, his wife and the child were shifted to Tezpur Civil Hospital after giving medical aid at Dhekiajuli Civil Hospital. Thereafter they were shifted to the Central Hospital, N.F.Railway, Maligaon. They were under treatment in the Central Hospital from 21.1.91 to 30.4.91. Thereafter the applicant was shifted to Orthopaedic Hospital at Eastern Railway, Howrah from 2.5.91 to 1.6.91. Applicant and his wife were also treated in the Northern Railway Hospital from 18.4.92 to 29.4.92 and again from 27.8.92 to 10.10.92 and thereafter they had to undergo treatment in the All India Institute of Medical Science, New Delhi from 11.1.93 to 29.9.93. The applicant thereafter had to undergo three stages of reconstructive surgery at Central Hospital, Maligaon during 1994-95 and his wife also had to undergo surgery in the Good Health Hospital, Guwahati. The applicant apart from the trauma and pain suffered had to bear financial expenditure for which he also made appropriate application before the concerned authority for

necessary aid. The applicant also referred to the enquiry conducted by the Railways authorities including enquiry report submitted on 29.11.94. It was inter alia stated that the said report also mentioned about the injuries suffered by the applicant and his wife at the hands of the miscreants. After prolong medical treatment the applicant was considered fit for undertaking light work. It appears that the Railway authority took steps to make temporary variation of one post of ASM from Alipurduar Division with temporary transfer of the applicant to Central Control, Maligaon in the present pay scale and public interest. The said action was done in the circumstances set out above occasioned due to the incident that took place in Dhekiajuli. Pursuant thereto the applicant joined at Central Control, Head quarter, Maligaon against the temporary variation of post at Alipurduar Junction vide DRM(P) APDJ's order No.ES/7139(T) dated 2.5.93 as reflected in the communication of the General Manager(Operations) N.F.Railway, Maligaon vide No.ESTT/CC/PT-I dated 9.5.94. The applicant in terms of the said order is working at Central Control and also carrying on his treatment and also his wife. That apart he submitted representation to the General Manager, N.F.Railway on 6.12.95 praying for financial assistance, reimbursement of medical expenditure, posting at Maligaon Headquarter against a permanent job and to treat the entire medical treatment period as on hospital leave. The applicant has been medically assessed at 40% and that his wife at 50% orthopaedically handicapped. In this connection the applicant referred to the Medical Certificate given by the competent authority. The certificate among others indicated that right hand flexor tendons and digital nerves of all four fingers were covered including head of 4th and 5th metacarpal. At AIIMS stage wise several operations were performed. The

concerned authority also certified that the applicant did not regain normal activity and was not fit to work for SASM job. It was also stated that his turn of promotion came and he was promoted to the scale of Rs.5500-9000/- by his parent division. But in view of the fact that he was medically declared unfit to work as SASM the applicant was retained in Central Control, Headquarter, Maligaon and to that effect an office order was issued by General Manager (P), N.F.Railway, Maligaon vide order No.E/283/108 pt.VIII(T) dated 2.7.99. While things stood at this stage the impugned order was passed by which the applicant alongwith 10 others working in the Central Control were spared on 29.10.99. The said order also contained the direction to report to the respective original Divisions and that all previous orders of post variation stands cancelled with immediate effect. The applicant submitted his representation personally and his case was also espoused by the Railway Union. The applicant also comprehensively submitted ~~in full~~ representation dated 23.12.99 before the General Manager for decategorisation of the job which he was holding. In the aforesaid application the applicant narrated about the health condition alongwith medical report and prayed before the authority for offering him an alternative job instead of high risk job of operation. Failing to get appropriate relief the applicant moved this Tribunal by filing this application assailing the impugned order as arbitrary, discriminatory and praying for further direction to the authority to consider his case for permanent absorption in the Headquarter in any other post.

2. The respondents contested the claim and submitted that the applicant's transfer was made to the Headquarter only as a stop gap arrangement against temporary variation

of post from Alipurduar Division. By way of temporary variation of one post of ASM of Alipurduar Junction Division the applicant was accommodated temporarily in the Headquarter. As the applicant was posted at the Central Control on temporary basis he was holding his lien/ in his parent organisation and Division at Alipurduar and his further service prospect and promotional avenue is from in the line of Assistant Station Master side. Question of his permanent absorption in Headquarter or in any other offices did not arise in the circumstances of the case. The respondents stated that his representation was duly considered and same was turned down on the ground that it was not possible to promote the applicant and also retain him at Maligaon in view of the cadre position. The Railway authority further referred to a judgment and order of this Bench in O.A.351/99 in which like same order was assailed by 6 other applicants and the Tribunal dismissed the said application.

3. There is no dispute on facts. The applicant was injured in course of his duty in protecting Railway property. The respondents authority favourably considered his case and accordingly relieved from operational duty and he was offered with lighter duty in the Headquarter, may be for temporary period. There is no change of the situation, the applicant is still physically handicapped. Mr S.Sengupta, learned Railway standing counsel submitted that the applicant ~~originally~~ belonged to operational area and his career advancement of ~~the~~ ~~was~~ ~~not~~ ~~relatable~~ ~~confine~~ to the operational area. The impugned order was passed bonafide by which 11 other ASM were spared and transferred to respect posts. Six of such persons moved this Tribunal and their cases were turned

down. Since the order was turned down, this case is also covered by the aforesaid decision.

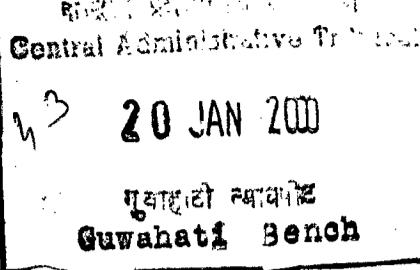
4. We have given our anxious consideration on the matter. The applicant was not brought with the others those were involved in O.A.351/99. The applicant was stationed on different ground. The present applicant was brought on medical ground. They were transferred and posted at Computer Cell as a temporary measure to overcome the particular situation. Their transfer and posting was for administrative ground. The applicant was brought to the headquarter on medical ground and as elluded earlier there was no change in the situation. In the circumstances the case of the applicant cannot be equated with those six applicants involved in O.A.351/99. The facts and circumstances are clearly distinguishable from the earlier case. The present applicant stands on his own footing. The respondents authority fully aware of the situation and therefore took all possible care and posted him with a lighter duty at Headquarter. We are of the considered opinion that the applicant deserves a sympathetic consideration from the authorities and accordingly we direct the respondents to consider the case of the applicant afresh in the light of the facts and circumstances set out above and pass a reasoned order thereon as per law. While considering the case of the applicant the respondents shall take into account that the applicant alongwith his wife and ~~the~~ child had to undergo an agonising upheavel in protecting public property in just and fair manner as a model employer, as was previously done. The respondents are directed to complete the above exercise as expeditiously as possible within a period of 3 months from the date of receipt of this order and till completion of the aforesaid

exercise the impugned order dated 29.10.99 shall remain in abeyance.

The application is allowed to the extent indicated. There shall, however, be no order as to costs.

K K Sharma
(,K.K.SHARMA)
ADMINISTRATIVE MEMBER

(D.N.CHOWDHURY)
VICE CHAIRMAN



Filed by:-

Shri Gunindra Ojha
- - - Applicant

Through:- To
Ujjal Bhuyan
Advocate

18.1.2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

G U W A H A T I .

An application under Section 19 of the Administrative Tribunals Act, 1985.

O.A. No. 20 of 2000

Shri Gunindra Ojha - Applicant,

-Versus-

N.F. Railway and others - Respondents,

I N D E X

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Gunindra Ojha

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Gunindra Ojha

Applicant

Gunindra Ojha

16

I. PARTICULARS OF THE APPLICANT :-

Shri Gunindra Ojha,
Son of Late Umesh Chandra Ojha,
Resident of Quarter No.240 B,
West Gotanagar,
Maligaon,
Guwahati - 781 011.

II. PARTICULARS OF THE RESPONDENTS :-

1. North East Frontier Railway,
Maligaon, Guwahati - 11,
Through the General Manager.
2. Chief Operations Manager,
North East Frontier Railway,
Maligaon, Guwahati - 11.
3. Chief Personnel Officer,
North East Frontier Railway,
Maligaon, Guwahati - 11.
4. Deputy Chief Operations Manager(Goods),
North East Frontier Railway,
Maligaon, Guwahati - 11.
5. Divisional Railway Manager,
Alipurduar Junction Division,
North East Frontier Railway,
Alipurduar,
West Bengal.

III. PARTICULARS...

Gunindra Ojha

**III. PARTICULARS OF THE ORDER AGAINST WHICH
APPLICATION IS MADE :-**

Office Order issued by the Deputy Chief Operations Manager (Goods), North East Frontier Railway, Maligaon, Guwahati - 11 vide Memo No.T/Staff/OS/99 dated 29-10-99.

(Annexure "J")

IV. JURISDICTION OF THE TRIBUNAL :-

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

V. LIMITATION :-

The applicant further declares that the present application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

VI. FACTS OF THE CASE :-

1. The applicant is a citizen of India and is as such entitled to all the rights and privileges guaranteed to the citizens of India by

the

Guwahati *Office*

the Constitution of India and the laws framed thereunder. The applicant is an employee of North East Frontier Railway (briefly "the N.F. Railway" hereafter), working at Central Control, N.F. Railway Headquarters at Maligaon.

2. That the applicant was appointed as Supervising Assistant Station Master ("SASM" for short) under Alipurduar Division on 3-1-1975. Since his appointment, he was posted in various stations under the said Division in the said rank.

3. That while the applicant was serving as SASM, Dhekiajuli Road Railway Station under Alipurduar Junction Division (Rangia-Rangapara North section), the said station was attacked by some miscreants/extremists on 19th April, 1991 at about 6.00 P.M.. The miscreants/extremists were armed with weapons and they came to snatch away the Government (Railway) revenue stored in the said Station. All the station-keys were in the possession of the applicant. The miscreants forcefully entered the house of the applicant and wanted the iron-safe keys from him. The applicant refused to hand over the keys of the railway station to the miscreants. At this, the applicant was mercilessly assaulted by the miscreants/extremists causing grievous injuries on his person.

The ...

Gunindra Ch. Bhag

The miscreants also attacked applicant's wife Smti. Anar Das (Ojha) and also their 7 (seven) months old baby causing grievous injuries to both.

4. That in this connection, FIR was lodged before the Dhekiajuli Police Station and on the basis of the same Dhekiajuli Police Station Case No.82/91 under sections 395/397 IPC was registered. Pursuant to the registration of the aforesaid case and the investigation that was carried out, the police arrested 6(six) miscreants in connection with the said case. In this regard, the Officer-in-Charge of Dhekiajuli Police Station had issued a certificate dated 29-7-1991.

The applicant craves leave to produce a copy of the said certificate at the time of hearing.

5. That by his aforesaid action, the applicant saved the earnings of the Dhekiajuli Road Railway Station and properties from the hands of miscreants though in the process he, his wife and their baby were badly injured in the attack by the miscreants. The Area Officer, Rangapara North N.F. Railway, issued a certificate dated 10-10-91 as well as wrote a letter to the Deputy Commissioner, Sonitpur dated 11-10-91 stating about the aforesaid facts.

Copies . . .

Guruadeb Ojha

Copies of the said certificate dated 10-10-91 and the letter dated 11-10-91 are enclosed herewith and marked as Annexures "A" and "B" respectively.

6. That as the applicant, his wife and the child were badly injured, they were immediately shifted to Tezpur Civil Hospital after giving medical aid at Dhekiajuli Civil Hospital. Thereafter, the applicant and the other injured were shifted to the Central Hospital, N.F. Railway, Maligaon.

7. That all the three had to undergo hospitalisation in the Central Hospital, N.F. Railway, Maligaon from 21-1-91 to 30-4-91. Thereafter, the applicant had to be treated in the Orthopaedic Hospital at Eastern Railway, Howrah from 2-5-91 to 1-6-91. Both the applicant and his wife were treated in the Northern Railway Hospital from 18-4-92 to 29-4-92 and again from 27-8-92 to 10-10-92. Both the applicant and his wife had to undergo treatment in the All India Institute and Medical Science (AIIMS), New Delhi from 11-1-93 to 29-9-93. The applicant, thereafter, had to undergo three stages of reconstructive surgery at the Central Hospital, Maligaon during 1994-95. His wife had to undergo surgery again in the

Good Health

Gunindra Ojha

Good Health Hospital, Guwahati, for which purpose she had to be hospitalised for the period from 26-7-98 to 15-8-1998.

8. That after prolong medical treatment in different hospitals both in and outside Assam, the applicant, his wife and child recovered substantially. But both the applicant and his wife has become physically handicapped. Further, in course of their treatments, the applicant had to spend a lots of money, even by selling his landed properties. In this connection, the applicant, through the then Minister of State (Independent Charge), Food Processing Industries, Sri Tarun Gogoi submitted an appeal to the Minister of Railways - requesting him for the necessary financial help. The said appeal was forwarded by Shri Tarun Gogoi vide his letter dated 23-6-1993. A copy of the said letter alongwith the appeal/representation of the applicant was also forwarded to the Hon'ble Prime Minister of India. The Hon'ble Prime Minister vide his letter dated 3-7-1993 informed Sri Tarun Gogoi that he had instructed his office to look into this request.

Copies of the said letter dated 23-6-93 and 3-7-93 are enclosed herewith and marked as Annexure "C" and "D" respectively.

9. That

Gurunder Singh

9. That be that as it may, a departmental enquiry was conducted by the Railway Authorities into the incident which took place on 19-4-91 at Dhekiajuli Road Railway Station, although belatedly. After a lapse of about $3\frac{1}{2}$ (three & a half) years, the enquiry report was submitted on 29-11-94. The findings as recorded in the said enquiry report were that the applicant was severely injured by the miscreants alongwith his family members as he refused to give the keys of the Station iron-cash safe, thereby he saved the railway revenue of Dhekiajuli Road Railway Station.

The applicant craves leave to produce a copy of the said enquiry report dated 29-11-94 at the time of hearing.

10. That in spite of repeated appeals/representations made by the applicant and his wife, no steps were taken by the railway administration for redressal of their grievances. Even after the Hon'ble Prime Minister's letter dated 3-7-93 wherein it was stated that he had instructed his office to look into the requests of financial assistance for medical treatment of the applicant and his family, no positive steps were taken by the railway administration.

11. That after prolong medical treatment as stated

above,

Gurudeva Daga

above, the applicant was considered fit for undertaking light works. The Senior Personnel Officer (T) for the General Manager (Personnel), N.F. Railway, issued an order dated March 23, 1994 stating that there is temporary variation of 1(one) post of Assistant Station Master from Alipurduar Junction Division with temporary transfer of the applicant in his present pay and scale to the Headquarter in the Central Control at Maligaon. It was stated that the applicants should be immediately spared from Dhekiajuli by making internal arrangement. This was followed by another letter dated 1-4-94 of the said authority.

The applicant craves leave to produce copies of the aforesaid letter dated 23-3-94 and 1-4-94 at the time of hearing.

12. That pursuant to the aforesaid temporary variation of 1(one) post of Assistant Station Master from Alipurduar Junction Division with temporary transfer of the applicant to Central Control, N.F. Railway Headquarter, Maligaon, the applicant joined in his said place of posting on medical ground. This was informed to all concerned by the General Manager (Operations), N.F. Railway vide his letter dated 9-5-94.

A copy of the said letter dated 9-5-94 is

enclosed

Gunudrea Ojha

enclosed herewith and marked as Annexure "E".

13. That since 9-5-94, the applicant is working at Central Control, N.F. Railway Headquarter, Maligaon where he is also carrying on his treatment as well as that of his wife.

14. That the applicant submitted a representation to the General Manager, N.F. Railway on 6-12-95 stating therein the entire facts and his grievances. In the said representation, the applicant prayed for the following reliefs :-

- (i) Financial assistance ;
- (ii) Reimbursement of medical expenditure;
- (iii) Suitable job alongwith the permanent posting at Maligaon Headquarters;
- (iv) To treat the entire medical treatment period as on hospital leave etc..

The said representation was made through proper channel which was forwarded for favourable consideration in view of the genuineness of the Case.

A copy of the said representation dated 6-12-95 is enclosed herewith and marked as Annexure "F".

15. That

Bruniudeo Ojha.

15. That as has been stated above, both the applicant and his wife have become orthopaedically handicapped permanently and their treatment is still continuing. The permanent disability of the applicant has been medically assessed at 40% whereas that of his wife at 50%. In this connection, a medical certificate dated 25-2-99 was issued in respect of the applicant from the office of the Medical Director, Central Hospital, N.F. Railway, Maligaon. It has been certified that among other injuries, in his right hand, the tendons and digital nerves of all four fingers were severed and that at AIIMS, New Delhi stage-wise several operations were performed. It was certified that normal activity has not been regained and that the applicant is not fit to work for SASM job in the Railway Station. Similar certificate dated 11-10-99 was also issued in respect of the applicant's wife.

Copies of both the certificates dated 25-2-99 and 11-10-99 are enclosed herewith and marked as Annexures "G" and "H" respectively.

16. That in the meantime, the applicant's turn for promotion came and he was promoted to the scale of Rs.5500-9000/- by his parent division. But in view of the fact that the applicant was medically declared unfit to work as SASM in the Railway Station, the

applicant... .

Gurwinder Singh

applicant was retained in the Central Control at Maligaon. In this connection, office order dated 2-7-1999 was issued from the office of the General Manager (P), N.F. Railway, Maligaon wherein it was stated that the applicant is hereby retained in Central Control, Maligaon as ASM in the scale of Rs.5500-9000/- with immediate effect against the post variated. It was clearly stated that the said order was issued with the approval of the competent authority.

A typed copy of the said office order dated 2-7-1999 is enclosed herewith and marked as Annexure "I".

17. That while the applicant was discharging his duties at Central Control, Maligaon, he was surprised and taken aback when he came to know that an office order dated 29-10-99 was issued by the Deputy Chief Operations Manager (Goods), N.F. Railway whereby the applicant and 10 (ten) others working at Central Control, Maligaon were spared on 29-10-99. It was stated that the staff named in the said office order should report to their respective original Divisions and that all previous orders of post variation stands cancelled with immediate effect.

A copy of the said office order dated 29-10-99 is enclosed herewith and marked as Annexure "J".

Gunendre O/S

18. That

18. That on coming to know about the issuance of the aforesaid order, the applicant became extremely worried and fell sick. Because of such sickness, the applicant became unfit to perform his duties from 30-10-99. In this connection, a "sick" certificate dated 30-10-99 was issued from the Medical Department, N.F. Railway. The applicant craves leave to produce the said Certificate as and when called upon). It is because of the applicant's indisposition that he could not approach this Hon'ble Tribunal earlier.

19. That the aforesaid order has caused extreme prejudice to the applicant. He has rendered selfless and dedicated service to the Railways since his joining. While serving as the SASM, Dhekiajuli, he and his family were attacked by miscreants/extremists in 1991 who had come to loot Railway property. The applicant did not allow the miscreants to loot Railway property but in the process he and his wife suffered serious injuries. Because of the said injuries, both of them have suffered permanent physical disability. Both the applicant and his wife had to undergo a series of operations, both in and outside Assam. Their treatment is still continuing. As the applicant has been medically declared unfit to carry out the job of SASM in the Railway station and to facilitate their treatment, the applicant was shifted with post variation and posted in the Central Control at Maligaon.

Even

Gurindra Ojha.

Even his promotion in the parent division was modified and such promotion was effected in the Central Control itself. The applicant has worked in the Central Control since 1994 in view of his physical incapacity and also to carry on with his and his wife's treatment.

20. That the General Secretary of the N.F.Railway Mazdoor Union submitted a representation dated 23-11-99 to the General Manager (P), N.F. Railway highlighting the unfortunate plight of the applicant and requested the said authority to take appropriate steps in the matter for absorption of the applicant in appropriate grade and scale in terms of the Railway Board's letter dated 29-4-99. The applicant's wife also submitted a representation in this regard to the General Manager, N.F. Railway on 6-12-99. This was followed by another representation dated 15-12-99. The General Secretary of the N.F. Railway Mazdoor Union reiterated his appeal to the General Manager (P), N.F. Railway again on 19-12-99. The petitioner also submitted a representation dated 23-12-99 to the General Manager (P), N.F. Railway with a prayer to allow him to continue at Central Control permanently or to absorb him in alternative job to suit his present physical condition. However, in spite of the submission of the aforesaid representations/appeals, no steps have been taken by the Respondents withdrawing the office order dated 29-10-99 in respect of the applicant or to allow him

to continue

Govindrao Ojha

to continue at Central Control at Maligaon.

2

Copies of the said representations dated 23-11-99, 6-12-99, 15-12-99, 19-12-99 and 23-12-99 are enclosed herewith and marked as Annexures "K" , "L" , "M" , "N" and "O" respectively.

21. That the aforesaid office order dated 29-10-99 has not yet been given effect to as against the applicant. The applicant is still working at Central Control, Maligaon.

22. That Shri Jagannath Chakraborty and five other staff effected by the said office order dated 29-10-99 have challenged the same before this Hon'ble Tribunal in O.A. No.351/99. This Hon'ble Tribunal by Order dated 15-11-99 admitted the said application. On hearing the counsel for the parties, this Hon'ble Tribunal suspended the order dated 29-10-99 until further orders in respect of the applicants in O.A. No.351/99. The said case is pending before this Hon'ble Tribunal and, in fact, has been fixed for hearing on 28-4-2000.

A copy of the said order dated 15-11-99 is enclosed herewith and marked as Annexure "P".

VII. GROUNDS

Gunindra O/Tu

VII.

G R O U N D S

1. For that the impugned order in so far as the applicant is concerned is wholly illegal, arbitrary, unreasonable, unfair and without any justification. The applicant has rendered selfless and dedicated service to the Railways for about 25 years now. While he was discharging his duties as SASM of Dhekiajuli Railway Station, the said station came under attack of extremists/miscreants on 19-4-1991. The extremists/miscreants had come to loot the cash and other Railway property from the said station and for that purpose, demanded the keys from the applicant. The applicant not only refused to hand over the keys but also resisted the miscreants. The miscreants attacked the applicant, his wife and child. In the said attack, the applicant and his wife were seriously injured. They had to undergo prolonged treatment and stage-wise surgery in various hospitals both in and outside Assam. Their treatment is still continuing. The applicant has been medically declared to be unfit for working in the job of SASM in the Railway Station. He has been declared to have suffered permanent physical disablement, his disablement has been assessed at 40%. His wife has been declared to have suffered 50% permanent physical disablement. Considering the applicant's physical condition and to facilitate his and wife's treatment, variation of one post of ASM from Alipurduar Division was made and the applicant was shifted from the Alipurduar

Division... .

Guaranteed *DK*

Division to Central Control at Maligaon on medical grounds in 1994. Even when the applicant's turn for promotion came, his promotion was effected at Central Control, Maligaon itself and he was allowed to continue at Central Control, Maligaon. That was in July, 1999. Since then there has been no change in the situation to justify/necessitate sparing of the applicant and cancelling the order of post variation of the applicant. Even now, according to the applicant's personal surgeon, he is not fit to use his right hand and in normal daily activity. That being the position, the impugned office order dated 29-10-99 in respect of the applicant is without any justification and reason.

2. For that the applicant had so far back as on 6-12-95 submitted a representation to the General Manager, N.F. Railway (Annexure "F") praying for among others a permanent posting at Maligaon Headquarters for his safety and also in view of his disablement. The applicant has suffered permanent disablement (so also his wife) in the discharge of his duties and in protecting/saving railway property from being looted. His representation in this regard is pending since 6-12-95. Instead of taking a sympathetic and favourable view of the matter, the Respondents have on the contrary issued the impugned order dated 29-10-99 sparing the applicant and directing him to report to his original Division. The impugned order, in the given facts and

circumstances... .

Gundecha ④th

circumstances of the case, is wholly unreasonable and unfair.

3. For that the job of ASM (at the Railway Station) requires regular attachment. The job of A.S.M. has been categorised in the "essential category". It is a high risk job. Considering the importance and risk factor involved, persons serving as ASMs are required to undergo periodic medical check-up and refresher course. Since the gruesome incident in 1991, the applicant has not served as SASM in the Railway Station and since 1994, he has been working in the Headquarter at Central Control. The applicant is now medically and physically unfit and not capable of working as SASM in the Railway Station. It is, therefore, wholly unfair and unjustified to send the applicant back to the Division to work as ASM. The same is neither for administrative convenience nor in the public interest. In fact, it would not only expose the applicant to security risk but also jeopardise the safety of the railway properties. There is no way the applicant can discharge duties as SASM in the Railway Station. His 4(four) fingers in the right hand have become dysfunctional as a result of which he is not capable of holding/handling any operational equipments. In fact, the applicant has been medically decategorised for the post of ASM by the competent medical authority of the Railways.

4. For

Guru Nanak Singh

4. For that no prior intimation or notice was given to the applicant before issuing the impugned order. In view of the peculiar facts and circumstances and also considering physical condition of the applicant, the authorities made a post variation and shifted him to Maligaon in 1994. His application for permanent posting in the Headquarter is pending since 1995. Therefore, in the given facts and circumstances, it was necessary on the part of the Respondents to have given notice or prior intimation before issuance of the impugned order. Issuance of the impugned order abruptly and without giving any prior intimation or notice is in violation of the principles of natural justice and is as such liable to be set aside and quashed.

5. For that the impugned order has been issued by the Respondent No.4. It is submitted that the Respondent No.4 is not the competent authority to issue the said order; it is the Respondent No.3 who is competent to issue such order. The impugned order is, therefore, without jurisdiction and liable to be set aside and quashed.

6. For that on being shifted to the Headquarter from his Division, the applicant has also shifted his family and they have been residing here for the last about 6 years. Their child has also availed of the educational facilities here. They have settled down here

and are

Gurindra Ojha

and are continuing with their medical treatment. He has been medically declared incapable/unfit for undertaking the job of SASM in the Railway Station. He has become permanently disabled while saving railway properties. Therefore, shifting him back to the Division besides being uncalled for and medically untenable, would expose the applicant to safety and security risk. It would disrupt his treatment, thereby jeopardising his safety and security.

7. For that the Respondents have displayed a very callous, negligent and apathetic attitude towards the applicant. Save and except a cash merit award of Rs.300/- only in April, 1992 alongwith a merit certificate in respect of his courageous act neither the applicant nor his wife were provided any financial assistance or help by the Railway administration. This despite the fact that the applicant made innumerable prayers before the authority and at one point time even approached the Hon'ble Prime Minister of India, who had instructed his office to look into the matter. However, no such assistance has been forthcoming. Due to the heavy expenditures incurred in their treatment the applicant has been ruined financially as he had to borrow money from different sources. The applicant was also compelled to sell his landed properties. Instead of providing him financial assistance, the Respondents have on the contrary directed him to go back to his Division vide the impugned order.

8. For

Gunindra Ojha,

8. For that the applicant became permanently disabled while he was on duty. He had not only saved Railway revenue and property from extremists/miscreants but also proved himself as a most loyal railway employee and a true citizen of this country by his courageous act. Instead of landing his actions, the authorities have shifted him back to his Division, completely overlooking the medical reports.

9. For that the applicant is entitled to get ex-gratia payment from the Railway administration in respect of the said incident as well as financial assistance for the medical expenses incurred for his and his wife's treatment. The failure of Railway administration in the regard is unreasonable and unjustified.

10. For that the impugned action of the Respondents is illegal, arbitrary, unreasonable, most unfair and wholly unjustified. The Respondents have acted without any application of mind to the relevant factors and issued the impugned order most mechanically. The applicant has been subjected to an unfair treatment by the authority. For the ends of justice and in any view of the matter, the impugned order is liable to be set aside and quashed.

11. For that as this Hon'ble Tribunal has already

stayed... .

Gunwalea Ojha

stayed the impugned order in other applications, it is submitted that the said benefit should also be extended to the applicant.

VIII. DETAILS OF THE REMEDIES EXHAUSTED :-

The applicant has submitted representation before the authority. Representations have also been filed on his behalf. The following representations have been filed :-

Representations dated 23-11-99, 6-12-99, 15-12-99, 19-12-99 and 23-12-1999.

IX. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :-

The applicant has not filed any other case/application in any other Court/Tribunal.

X. RELIEFS SOUGHT :-

Under the facts and circumstances, the applicant prays for the following relief :-

1. To set aside and quash the office order issued

by the

Gurudeva Ogha

by the Deputy Chief Operations Manager (G),
North East Frontier Railway, Maligaon, Guwahati-11
vide Memo No.T/Staff/OS/99 dated 29-10-99
(Annexure "J").

2. Permanent posting in the N.F. Railway Headquarters with suitable job commensurate with his qualification and seniority and keeping in view his physical disablement.
3. Financial assistance to the applicant for the expenses incurred in his and his wife's treatment.
4. Ex-gratia payment or reward to the applicant for his courageous and brave act in saving railway revenue from miscreants/extremists on 19-4-91.
5. Cost of the proceeding.
6. The applicant further prays that for the following interim relief pending disposal of the present application :-

To stay/suspend the office
order issued by the Deputy Chief
Operations Manager(G), North-East
Frontier Railway, Maligaon, Guwahati

Guwahati

Guwahati Office

48
B

- 23 -

Guwahati - 11 vide Memo No.T/Staff/OS/99 dated 29-10-99 (Annexure "J") and/or direct the Respondents to allow the applicant to continue at Central Control, North-East Frontier Railway Headquarters, Maligaon.

XI. PARTICULARS OF THE POSTAL ORDER :-

Postal Order No. : OG 453666

Date : 5-11-1999

Issuing Post Office : Guwahati G.P.O.

Payable at : Guwahati G.P.O.

XII. LIST OF ENCLOSURES :-

An index showing the particulars of documents enclosed.

VERIFICATION

Guwahati
Gurudeba Ojha

VERIFICATION

I, Shri Gunindra Ojha, Son of Late Umesh Chandra Ojha, aged about 45 years, by profession service, resident of Quarter No.240 B, West Gotanagar, Maligaon, Guwahati-11 do hereby verify that I am the applicant in the accompanying application. I am acquainted with the facts and circumstances of the Case. I hereby verify that the statements made in paragraphs I to XII are true to my knowledge and that I have not suppressed any material fact.

Gunindra Ojha

Guwahati, the 13th
day of January, 2000.

Applicant,

TO WHOM IT MAY CONCERN

This is to certify that Shri Gunindra Ojha, SASM/Dhekiajuli Road Railway Station son of Late Umesh Chandra Ojha of Barpeta is working at Dhekiajuli Road Station as Supervising Asstt. Station Master and he was badly injured by the miscreants on 19.4.1991 evening at about 18.00 hrs. He saved the Railway Station earnings and properties from the hands of miscreants by exhibiting his courage and prowess.

Kekep
Area Officer, (0/10/91)
N.F.Rly/Rangapara North.

क्षेत्र अधिकारी/Area Officer
प. स. रले रंगपारा नथ
N.F.Rly/Rongopara North



NORTHEAST FRONTIER RAILWAY

Office of the,
Area Officer,
N.F.R/Rangapara North.

No. E/RP/8.
Dated: the 11th.Oct/91.



To,

The Deputy Commissioner,
Senitpur, Tezpur,
Assam.

Sub:- Assaultation on Sri Gunindra Ojha,
SASM/Dhekiajuli Road.

On 19.4.91 at about 18.00 hrs. while Sri Gunindra Ojha, SASM/Dhekiajuli Road was on duty had gone to his Railway Quarter which is nearer to the station platform, was suddenly attacked by some miscreants. He was attacked with deadly weapons and her wife with a baby on her lap came to rescue Sri Ojha but she was also badly assaulted and injured with deadly weapons. The miscreants fled away injuring Shri Ojha, his wife and baby. They were immediately shifted to Tezpur Civil Hospital after giving Medical Aid at Dhekiajuli Civil Hospital then he was shifted to Central Hospital, N.F.Railway, Maligaon and he is still under treatment there. The matter was referred to higher authority for n/a.

Shri Gunindra Ojha, SASM showed his bravery and not allowing them to take any Railway property and station earnings from the Railway Station although he was severely injured.

This is for your information please.

11 Oct 91

Area Officer,
N. F.Rly/Rangapara North.

Area Officer
S. M. S. Rangapara North
N. F. Rly/Rangapara North

Ch/-

राज्य मंत्री
(राज्य प्रभारी)
राज्य प्रसंकरण बोर्ड
भारत

MINISTER OF STATE
(INDEPENDENT CHARGE)
FOOD PROCESSING INDUSTRIES
INDIA

June 23, 1993

Dear Shri *[Signature]*

I am enclosing herewith an appeal with all connected documents of Shri Gurindra Ojha, Supervising Assistant Station Master/Dhekiajuli Road, under Divisional Railway Manager/Alipurduar Junction, N.F. Railway, requesting for necessary financial help. It would be seen from the enclosed Appeal that Shri Ojha is a victim of extremists, while on duty and is still under treatment in the All India Institute of Medical Sciences, New Delhi.

I shall be grateful if you kindly give due consideration to his prayer.

With regards,

Yours sincerely,

Encl: As above.

[TARUN GOGOI]

Shri C.K. Jaffer Sharief,
Minister of Railways,
Rail Bhawan,
NEW DELHI.



PRIME MINISTER

New Delhi
July 3, 1993

My dear Tarun,

I have received your letter of June 23, 1993 enclosing a representation from Shri Gurindra Ojha seeking financial assistance for medical treatment.

I have instructed my office to look into this request.

With regards,

Yours sincerely,

P.V. Narasimha Rao

[P.V. Narasimha Rao]

Shri Tarun Gogoi
Minister of State for Food Processing Industries
New Delhi

No. ESTT/CC/PT-I

Office of the
General Manager (operations)
N.F. Railway, Maligaon

GM(P) Maligaon

9/5/94

Sub:- Joining report.

In terms of DRM(P) APDJ's Office order No. ES/7139(T) dt. 2/5/93, Shri Gunindra Ojha, ASM/DKJR in scale Rs. 1400-2300 has joined at Central control (Hd. Qrs.) Maligaon FN of date against the temporary variation post of ASM from APDJ division vide GM(P)'s letter No. 1956/4/2-PIII(T) APDJ dt. 23/3/94 on medical grounds.

This is for information of all concerned and necessary action pl.

9/5/94
General Manager (operations)
Maligaon

Copy forwarded for information and necessary action to :-

1. FA & CAO/MLG 2. DRO/APDJ 3. Sr. DOM/APDJ 4. DPO/APDJ

LPC of Shri Ojha may please be sent early to SPO(T) Maligaon for drawing his salary.

5. AM/RPAN 6. OS/ET/Bill CFO's office

7. SS/DKJR, 8. Staff concerned

9/5/94
General Manager (operations)
Maligaon

GM(P) letter No 1956/4/2 - P III (T)

DRM(P) APDJ Office date No. ES/7139(T)

Ref. 090594

APDJ
dt. 2.3.93.

To

The General Manager,
N.F.Railway/Maligaon.

(Through proper channel)

Sub:- Prayer for liquidation of grievances on humanitarian ground - Grant of financial assistance etc. to Shri Gunindra Ojha, Ex. SASM/DKJR (Dhekiajuli Road) under IRRM(P)/Alipurduar Jn of N.F.Railway, now working at SASM/CC/Maligaon (HQ).

Hon'ble Sir,

With due respect and humble submission I beg to place before you the following with humble prayer to mitigate my long outstanding grievances. I hope it will find a place in your broad mind and draw your sympathetic attention to my aggrieved family having morally depressed and mentally disbalanced on account of attack by extremists on 19-4-91 at around 18/00 hrs. at Dhekiajuli Road station.

1. That Sir, it is a crystal clear case of inhuman attack by the extremists to a loyal Railway staff and his family (my Railway Qrs. was adjacent to the Railway station building of Dhekiajuli Road where my family consisting of wife and a minor child of 7 months were residing) while on duty on 19-4-91, which is confirmed by the Joint enquiry report alongwith findings conducted by TI/RPAB and SLBI/RPAB dt 29-11-94. I am very much astonished to see that the enquiry took 3 and half years, whereas a poor employee, ignoring safety of his life, fought for the benefit ~~only~~ not only for Railway administration but also for the Nation.

I had, on many a time, preferred appeals for the financial assistance but I could not understand how MD/N.F.Railway vide his letter No. II/219/1/Pt. III dt. 8-4-94 to GM(P)/Maligaon stated that no application has yet been received from me asking financial assistance. It may also be seen that the Board had asked clarification whether any assistance has since been granted to me from the Staff Benefit fund. In this connection I may mention here that I did not get any assistance from any respective corner, though I had applied for the same previously (also CLW/ADPAB came to my native house and took signature from me). In this context I may mention here that my prayer was very kindly looked into by Hon'ble Minister of State (Independent charge) Food Processing Industries, India and being aggrieved forwarded my appeal to the Hon'ble Minister for Railways and to Hon'ble Prime Minister. The Prime Minister was very kindly gone through my prayer seeking financial assistance for medical treatment and had instructed his office to look into the request and the same was conveyed to Shri Tarun Gogoi, Minister for Food Processing Industries vide Hon'ble PM's letter dated July 3, 1993. But sorry to bring to your notice that after a lapse of 3 and half years no assistance has yet been received by me.

(contd...2)

2. That Sir, secondly, I am bringing the matter regarding reimbursement of all the incurred expenditure during bonafide medical treatment at different hospitals especially in AIIMS/New Delhi, Delhi & Howrah. Though I repeatedly requested for the same but nothing was paid to me. In this connection Shri V. Vaideh, Desk Officer, Estt (Welfare) Railway Board vide his D.O.No. E(W)T3/FL-4-4/5680 dt. 7-12-93 wanted to know for the information of Board that whether the entire cost whatever I had incurred for the treatment of me and my wife was reimbursed to me by N.F.Railway and if not so then it would be reimbursed from the Railway Minister's Welfare and Relief Fund. Also he had requested to send a proposal to Board in the prescribed proforma, but till to-day nothing has been done. Sir, you will agree that in these hard days I had to manage the cost of my prolonged treatment by taking loan from different sources and till I am bearing the burden of loan. Even I had to sell all my landed properties which had made me homeless causing immense hardship to my family members. Now I am not in a position to meet the minimum requirements of my family. Sincere and devotion to duty I had to pay a heavy price for utter negligence of the Railway staff. The above activities, to some extent, forced me to an almost beggar, that Sir, not due to fault of me. This has not only discouraged my mind but also added insult to my injury.

3. That Sir, thirdly, I bring to your honour that no suitable reward in recognition to my boldness and courageous activities (this has already been agreed by the Railway Administration) rendering not only saving the Govt. revenue and govt. money whatsoever but also deprived the extremists injuring myself and family grievously.

4. That Sir, not only at present I am not mentally fit and prepared for the work of SASM or such work but also in future. As your honour is well apprised of the insurgent activities which is going on unabated in this region. If I come back to field station again, the extremists may again attempt to loot out the Govt's cash and even my life also. I will be grateful if you pass a favourable order posting me at CC/Maligaon or Hgrs./Maligaon under COM/Maligaon or CCM/Maligaon so that a loyalist to the Railway administration like me may receive isolation of mind and feel more encourage to the safe guard the interest of the Govt on account of safety of my life and also for the life of my family. My physically handicapped wife due to insurgent activities and my only beloved daughter want to remain always beside me but due to above reason it may not be possible for them.

✓ In this connection I would also mention here that to get the medical aid from the Central Hospital at Maligaon my presence at Maligaon is necessary. The treatment at present I am having is not available in any other Divisional Hospital. As per advise of the doctors, I may also require to go AIIMS/New Delhi by now and then. If I stay at Maligaon it would help not only to me but also for the Medical authority for sending me and my family to New Delhi for further medical treatment (reconstruction surgery).

5. That Sir, I request to treat the entire bonafide medical treatment period as Hospital leave as proposed by Sr.DFO/APDJ vide his D.O.No. ES/7139(T) dt. 4-11-95 and the same was agreed to by Associated Finance with the following observation:

"The injury was inflicted intentionally by another person during the course of employment. As per provision under para 522 RI special disability leave may be sanctioned."

In the above context there may not be any objection for granting Hospital leave for the period of sickness from 20-4-91 to 02-5-94 (RMC fit certificate No. 90 dt. 2-5-95 issued by DMO/ADM).

R.D.A.N.

That Sir, under the above circumstances, I pray before you the following in summary:-

- (1) Financial assistance to me.
- (2) Reimbursement of incurred expenditure during prolonged bonafide medical treatment period in different hospitals outside and in Assam.
- (3) Suitable reward/award in Railway Board level or headquarters level.
- (4) Suitable job alongwith permanent posting order at Maligaon headquarters for the safety of my life and the life of my family.
- (5) To treat the entire bonafide medical treatment period from 20-4-91 to 2-5-94 as Hospital leave (with full pay).

Lastly, I pray to your humanity to redress my prayers as quoted above for which not only me but also my family will remain grateful to you. I hope you will consider my prayer at an early date.

Thanking you.

dt. 06-12-95.

Yours faithfully,

Gunindra Ojha.

(Gunindra Ojha)

Ex. SASM/DKJR

Now working at SASM/CC/Maligaon
N.F.Railway/Maligaon.

Desirous of
favorable
consideration
as the case is genuine
S. C. Ojha
Ex. SASM/DKJR
Now working at SASM/CC/Maligaon
N.F.Railway/Maligaon.

Riced

Am copy only

8/12/95

-33-

Office of the Medical Director
 Central Hospital, N.F. Railway,
 Maligaon, Guwahati - 11 (Assam)

TO WHOM IT MAY CONCERN

This is to certify that Sri Gunindra Ojha, SASM, Central Control, MLG aged 43 years, Male who sustained severe multiple injuries to his body due to attack by dacoits at Dhekiajuli Road in 19th April, 1991. Hand, Face, (L) fore arm & (L) hand were involved due to assault.

In his (R) hand flexor tendons and digital nerves of all four fingers were severed including head of 4th & 5th metacarpal.

He was referred to Rly. Institute of Orthopaedics, E.Rly., Howrah then to Central Hospital, Northern Rly and All India Institute of Medical Sciences, New Delhi.

At AIIMS/New Delhi stage-wise several operations were performed.

Recently at Central Hospital, N.F. Rly, Maligaon pedicled skin grafting was done. But, normal activity has not been regained. His dis-ability has been assessed 40% loss of earning capacity for his right hand.

He is not fit to work for SASM job in the Railway Station.

No. H/139/1 (Cert.)

Dated : 25.02.99



(DR. D. K. GHOSE)
 M.D. M.Sc. (ORTH)
 SR. SENIOR MEDICAL OFFICER,
 CENTRAL HOSPITAL, MALIGAON
 J. P. N. E. RAILWAY
 HOSPITAL, MALIGAON

No: H/138/1 (Contd.).

M.D's OFFICE/C.H/MLG.
Dt. 11.10.99

9

To whom it may concern

This is to certify that Mrs. Anar Das Ojha wife of Mr. Gunindra Ojha, at present SASM/Central Control /Maligaon a victim of Dacoity at Dhekiajuli along with her husband and child.

She had been resisting to save her husband and Rly. Station Keys.

There was deep cut injury to her Right fore arm antero medially cutting part of her right ulna, flexor tendons along with her ulnar nerve.

At present her hand has developed contracture of the four fingers except Right thumb. There is loss of sensation also along the distribution of Right ulnar nerve.

She is physically handicapped person her disability amounts to fifty percent (50%).

Appriuate
11.10.99

(Dr. D.K. Ghose)
Sr.D.M.O/Orthopaedics
N.F.Rly/Maligaon
गोपनीय डॉ. डी. के. घोसे
स्री. डी. मो/ओर्थोपेडिस
न.फ. रेलवे. मालिगाँव
N.F. RAILWAY. Maligaon



Annexure "I"

NORTH-EAST FRONTIER RAILWAY.

OFFICE ORDER

Shri Gunindra Ojha ASM/DEJR currently posted at Central Control/MLG in Scale Rs.5000-9000/- who was ordered for posting as ASM/KKJ in Scale of Rs.5500-9000/- vide DRM(P)/APDJ's office orders endorsed under No.283/5 (T) 95 dated 17-8-98 is hereby retained in Central Control/MLG as ASM in Scale Rs.5500-9000/- with immediate effect against the post varisted vide GM(P)/MLG's memorandum No.E/283/108 Pt. VIII(T) dated 2-06-99.

This issues with the approval of the competent authority.

for GENERAL MANAGER(P)/MLG

No.E/283/108 Pt.VIII(T) Maligaon, dated 2-07-1999

Copy forwarded for information and necessary action to :-

- 1) COM/MLG.
- 2) QPTM/MLG.
- 3) DRM(P)/APDJ.
- 4) Sr.DGM/APDJ.
- 5) PAO/APDJ
- 6) CRC/CC/MLG
- 7) CS/T/MLG.
- 8) CT/Cadre.
- 9) CPO/Bill Section
- 10) Staff concerned.

Sd/- Illegible,
2/7/99
for GENERAL MANAGER(P)/MLG.

N. F. Railway.

Office of the
Chief Operations Manager
Maligaon, Guwahati-11

Office Order

As per COM/MLG's order the following ASM/SASMs working at Central Control/MLG including Computer Cell are hereby spared on 29/10/99. They are to report to their respective original Divisions :-

1)	S/ Shri J. N. Chakraborty,	ASM/LMG ✓
2)	" P. Gose,	ASM/KIR ✓
3)	" D. Bhowal,	ASM/KIR ✓
4)	" P. K. Dutta,	ASM/APDJ ✓
5)	" S. Barua,	ASM/LMG ✓
6)	" D. C. Das,	ASM/TSK
7)	" R. Ray,	ASM/KIR ✓
8)	" P. C. Sanyal,	ASM/APDJ
9)	D. P. Bhattacharjee	SASM/LMG
10)	G. Sarma,	ASM/APDJ
11)	G. Oiha,	ASM/APDJ

11 persons were
Span

Six persons
OA 331/99
Dis.

All previous orders of post variation stands cancelled with immediate effect. This has the approval of COM/MLG.


DY. Chief Operations Manager (G)
N.F. Railway, Maligaon, G.F.Y. - 11

No. 2/Staff/BS/99

Maligaon, Dated: 29/10/99

Copy forwarded for information & necessary action to :-

- 1) Sr. DOMs/APDJ, KIR, LMG
- 2) DOM/TSK.
- 3) DPM(P)/KIR, APDJ, LMG & TSK.
- 4) DAO/KIR, APDJ, LMG & TSK.
- 5) SPO(T)/MLG.
- 6) FA&CAO/MLG.
- 7) CHC/CC/MLG
- 8) OS/T/MLG
- 9) ET/Bill sec./MLG
- 10) Staff concerned.


DY. Chief Operations Manager (G)
N.F. Railway, Maligaon, G.F.Y. - 11

Attested
by Shyam
Advocate
18.1.2000.

PU/C/MLO/99.

23.11.99

To
The General Manager (P)
N.F. Railway, Maligaon,
Guwahati-11.

(for attention of Sri S.K. Sond, CPO/A)

Dear Sir,

Sub:- Sad plight of Sri Gunin Ojha, AGM.

Sri Gunin Ojha while on duty at Dhekiajuli station in Dary-HPM section on 19.4.91 at about 18-00 hrs. a gang of dacoit surrounded him and tried to snatch away railway cash running to some thousands of rupees. Sri Ojha tried to protect the Railway money. The dacoit attack him with sharpen weapons. His Railway Quarters is just adjacent the Railway Station. Hearing this and cry his wife Mrs. Anar Das Ojha rushed to the spot with her 7 months baby on her laps. The dacoits mercilessly hit them with sharpen weapons. As a result both of them were seriously injured and immediately hospitalised both of them received treatment at different Hospitals for a pretty long time being directed by Railway Medical Authorities or otherwise.

Sri Ojha is now working in Central Control/AG. He has been medically declassified for the post of AGM by Sr. M.A/Ortho/ MLC and 40% has assessed as loss of earning capacity to him and 50% loss of earning capacity in case of his wife. Both of them have been still suffering due to multiple injuries.

Detail particulars of injury, treatment taken etc. are given below for correct appreciation.

1. Name of the Employee : Gunindra Ojha
2. Designation : Ex. SASH/DMJR, now working at Central Control/MLO since 10.5.94.
3. Date and time of accidents on 19.4.91 at around 18 hrs.
4. Nature of Injury : Grievous multiple cut injury hand, face, L/fore arm, 8/Hand flexor tendons and digital nerves of all four fingers were covered including head of 4th and 5th metacarpal bones.

Attacked by sharp weapon by the miscreants while on duty at Dhekiajuli Road Railway station, saved Railway earnings, Govt. properties from the hands of the miscreants.

Contd.....2

5. Name of injured family members: Mrs. Anar Das Ojha(wife, Miss Piyasmita Ojha(menor daughter aged seven months at that time)

Wife : Cut multiple injury at bresillary area, cheek, R/hand arm just above the wrist cut index, middle, and ring finger, R/hand nerve cut injury.

Child: Only cut injury near eye brow and nose.

6. Medical treatment taken:

Name of Hospital	Date		Time
	From	To	
i) Dhokiajuli Health Unit	19.1.91		20.00 hrs.
ii) Tezpur Civil Hospital	19.1.91	30.4.91	
iii) Central Hospital/MLG	21.1.91	30.4.91	
iv) Orthopaedic, E.Rly.Hdl/Cal	2.5.91	1.6.91	
v) Northern Rly/NDLS/CH/Hospital	8.4.92	29.4.92	
vi) Northern Rly/NDLS	17.8.92	10.10.92	
vii) AIIMS/NDLS	11.1.93	24.9.93	
viii) At Good Health Hospital Dispur(self)	26.7.98	15.8.98	
ix) Central Hospital/MLG(Self) 95-96 3 stages plastic operation done by CMD/MLG.			

7. Loss of earning Capacity

Mr. G.Ojha(self) - 40% (forty percent)
Mrs. A. Ojha(Wife) - 50% (Fifty percent)

assessed by Sr.DMO/ORTHO/CH/MLG dt. 5.6.99 and 11.10.99
respectively. For G.Ojha countersigned by MD/CH/MLG &
approved by CMD/MLG.Hdg.

8. Decategorised for the job of SAGM - By Sr.DMO/Ortho/CH/MLG.

9. Date of appointment : 3.1.1975 as AGM.

10. General Qualification : B.A.

You are requested to take appropriate steps in this matter for absorption of Sri Ojha in appropriate grade & scale in terms of Railway Board's Letter No. 5(RG)/I/96/RE/3/9(1) dated 29.4.99.

Yours faithfully,

(RANJAL DAS GUPTA)
GENERAL SECRETARY

Copy to :-

1. CMD/MLG (for attention of Sri G.C.Raju. The present condition of Sri Ojha and his wife are stated below for his kind action please.

Present condition

Self: R/Hand four fingers become stiff inactive & painful.

Wife: Severe pain in cut injury of R/hand mainly ulnar nerve flexor tendons and all fingers become inactive and R/hand all finger developed contracture.

Medical Advice : For both Mr. & Mrs. Ojha require still more(few) sitting of surgery(recontractive surgery) for tendons and nerves grafting to get a reasonably useful R/hand for each.

Copy to :-

2. COM/N.F.Rly/Maligon. | They are also requested to take appropriate
3. DRB/N.F.Rly/MPDJ | action in the matter.

Yours faithfully,

(RAJBAL DAS (URJA))
GENERAL SECRETARY
N. F. RAILWAY MALLIGA UNION
PANJU.

Copy to :-

1. Sri Gunindra Ojha.
2. Secretary/NFRMU/MLG Branch.

GENERAL SECRETARY.

The General Manager,
N.F. Railway
Maligaon, Guwahati-11

-40-

Annexure - L

Subject : Prayer for liquidation of grievances on humanitarian ground, suitable job along with permanent posting at Maligaon H.Q. etc. (Victim of miscreants activity).

Hon'ble Sir

With due respect and humble submission I beg to place before you the following with humble prayer to mitigate my outstanding grievances. I hope it will find a place in your board mind and draw your sympathetic attention to my aggrieved family having morally depressed and mentally disbalanced on account of attack by miscreants.

That Sir, it is a crystal clear case of inhuman attack by the miscreants to a loyal Railway staff and his family, while on duty my husband as a Station Master at Dhekiajuli Road Station (Rangiya-Rangapara North Section) on 19.4.91 at around 18.00 Hrs a gang of miscreants surrounded him and tried to snatch away Railway cash earning to some thousands of Rupees, Sri G. Ojha tried to protect the Railway money as he refused to give the keys of the Iron Safe of the Station. The miscreants attacked him by sharpen weapons. Hearing hue & cry, Mrs. Anar Ojha (wife) rushed to the spot with 7 month-baby on lap, the miscreants mercilessly hit with sharpen weapons. As a result, both were seriously injured and became unconscious. Thus, he saved the Railway revenue, Govt's properties from the hands of the miscreants at the cost of his life, which is confirmed by the joint enquiry report along with findings conducted by TI and SLWI/RPAN on 29.11.94. I am very much astonished to see that the enquiry took 3 and half years, whereas a poor employee ignoring safety of his life, fought for the benefit not only for railway administration but also for the nation.

That both of us were shifted to Dhekiajuli Health Unit, then shifted to Tezpur Civil Hospital and then to Central Hospital for treatment that the treatment continued for a very petty long time since injuries both - Mr. G.Ojha

and Mrs. Anar Ojha were grievious. He was referred to Rly Institute of Orthopaedics, E.Rly, Howrah, then to Central Hospital, Northern Rly (both) and AIIMS/New Delhi. Three stages of Reconstructive Surgery done by CMD/MLG in the year 1994-95, at Central Hospital/Maligaon. Ulner nerve cut injury severe pain suddenly admitted into Good Health Hospital, Dispur (wife) operated by Prof. D. K. Chang Kakati, in the period from 26.7.98 to 15/8/98. We require still few more sitting of surgery for tendons and nerves grafting to get a reasonably useful Rt. hand for each. My husband was fit for light duty job arranged by CMD and COM/MLG at Central Control, Maligaon after prolonged Medical treatment. Since 10.5.94, he is still working at Central Control/Maligaon office.

That his chance of promotion came and he was promoted in scale of Rs.5500-9000/- as SASM by his parent Division and posted in the APDJ Division. But considering his physical incapabilities, he was retained at Maligaon in the Central Control by variqting a post.

That the Medical Authority on 5.6.99 issued a certificate declaring him unfit to work as SASM and also declared that he lost his earning capacity to the extend of 40% (forty-percentage).

That as I understand, the Chief Operations Manager/Maligaon has passed order to transfer him to parent Divn. to work as SASM, which job he cannot do because of his incapability to handle the operational job due to 4 fingers of his Rt hand has lost due strength of holding/handling any operational equipments. In view of the above circumstances, I shall pray to your good office to kindly allow him to continue in the Central Control permanently, since the jobs to some extent suit his present health condition and or absorb him in the alternative job of commercial Inspector in the indicated grade - due vacancies against direct recruitment quota are available and he has the requisite qualification for holding such a position.

He is not mentally fit and prepared for the work of SASM or such work but also in future. As your honour is well apprised of the insurgent activities which is going on unabated in this region. If he came back to

field station again the miscreants may again attempt to loot out the Govt's cash even his life also. So that a loyalist to the Rly administration like him may receive isolation of mind and feel more encourage to the safe-guard the interest of the Govt. on account of safety of his life and for the life of my family. I Mrs. Anar Ojha (wife of Mr. G. Ojha) physically handicapped (involved with incident) I have 50% loss of earning capacity (Rt hand) and my only beloved daughter wants to remain always beside him.

Your kind intervention is necessary so that he can permanently settle in a particular position to lead my family life with grace and dignity.

I am enclosing herewith the certified copies of relevant documents for your ready reference as Annexure.

Lastly, I pray to your humanity to redress my prayer as quoted above for which not only me but also my family will remain grateful to you for ever. I hope you will consider my prayer at an early date.

Thanking you,

Yours faithfully,

Mrs. Anar Ojha.

(Mrs. Anar Ojha)
Wife of
Mr. Gunindra Ojha,
Ex SASM/DKJR, now working
at Central Control/MLG.

Date : 6.12.99

Encl: As stated above

Recd. Encl. copy 2 only
R. B. 6/12/99

To

The Hon'ble Railway Minister,
Govt. of India,
Rail Bhawan, NEW DELHI.

B

Subject : Prayer for liquidation of long outstanding grievances on humanitarian ground(victim of miscreants' activity).

Ref : My husband Sri Gunindra Ojha, ex SASM/Dhekiajuli Road under DRM/APDJ of N.F. Rly. Now working as SASM/Central Control/Maligaon applications sent to GM/N.F.Rly on 6.12.95 and 5.6.96 and my application through CM/ASSAM on 26.2.96 and 6.12.99.

Respected Madam,

I have the honour to state that I, being wife of Sri Gunindra Ojha ex SASM/Dhekiajuli Road, Now working at Central Control/Maligaon, N.F.Rly. At the very outset, I beg appology for encroaching your valuable time to look after my husband's long outstanding grievances, as you are the supreme head of the Railway family. I could not get any response from anywhere, though I repeatedly prayed on many occasions to different officials. Now I have decided to place my grievances before your honour and I hope I shall get justice from you and we the suffering members of this family will survive peacefully in the remaining days of life with your blessings.

That Madam, at around 18.00 hours of 19th April, 91, while my husband was on duty as SM/Dhekiajuli Road Rly station of Alipurduar Jn Division (Rangiya-Rangapara North Sec.) was attacked by some miscreants who came ~~to~~ with arms to snatch the Govt. revenue but he was morally so strong that he refused to hand over the Key's of Iron Safe of Rly Station where station earnings were kept. Being deprived of the money, the miscreants mercilessly tortured my husband. Not only that but also on me and even they did not spare our child of 7 months, resulting in grievously injured to us. After prolonged medical treatment in different hospitals in Assam and outside of Assam, we got new life by God's grace but we became handicapped physically and eco-nomically. During treatment, we had to spent a lot of money apart from Rly side. Even we had to sell our landed properties and ultimately we are almost depending only on the meagre amount of my husband's salary which is not sufficient.

The inhuman attack was confirmed by a Departmental Enquiry conducted by TI and SLWI/RPAN and report submitted by them after lapse of 3½ years. It is a matter of great regret that the enquiry took such a long time to prove the case, which was known to all the people of the area as well as N.F.Rly Administration. But though repeated appeals were made by my husband and myself to mitigate the grievances, no body lends his ears to his appeal. Even our Hon'ble PM being aggrieved of the fact conveyed to Sri Tarun Gogoi, Ex Minister for Food Processing and using, India, that my husband's prayer was gone through by him and had instructed him again to look into the request vide his letter dated July 3rd, 1993. But till today even Hon'ble PM's instruction was not looked into.

After prolonged medical treatment, my husband was fit for light job arranged by CMD and COM/MLG at Central Control. Since 10.5.94 he is still working at Central Control/Maligaon H/s Office and our treatment is going on.

That his chance of promotion came and he was promoted in Scale of Rs.5500-9000/- as SASM by his parent division and posted in the APDJ Division. But considering his physical incapacities he was retained at Maligaon in the Central Control by variating a post that the medical authority on 5.6.99 issued a certificate declaring him unfit to work for job of SASM and also declared that he lost his earning capacity to the extent of 40% (forty percentage) and 50% assessed in favour of me for our right hands. (Physically handicapped)

That as I understand, the chief Operations Manager/Maligaon has passed order to transfer him to parent division to work as SASM which job he cannot do because of his incapability to handle the operational job due to 4 (four) fingers of his right hand have lost due strength for holding/handling any operational equipments. In view of the above circumstances, I shall pray to your good office to kindly allow him to continue in the Central Control permanently, since the jobs to some extent suit his present health condition and/or absorb him in the alternative

suitable job of Commercial Dep't. as he has the requisite qualification for holding such a position.

He is not mentally fit and prepared for the work of SASM or such work but also in future. As your honour is well apprised of the insurgent activities which is going on unabated in this region. If he comes back to a field station again, the miscreants may again attempt to loot out the Govt. cash even his life also. So that a loyalist to the Railway Administration like him may receive isolation of mind and feel more encourage to the safeguard the interest of the Govt. on account of safety of his life and for the safety of my family.

Your kind intervention is necessary so that he can permanently settle in a particular position to lead my family life with grace and dignity and may require medical treatment in future.

That madam, ultimately my appeal before you with the following -

- (1) Posting order in Rly Head Urs with suitable job commensurate to his qualification.
- (2) Suitable reward/award in Rly Board's level if not national level to boost his morale to my husband and make an instance to others.
- (3) Financial Assistance to my husband to boost his morale as well as to make the loss (It may be a drop of water in the ocean) as no exgratia was sanctioned to him and to me.
- (4) Re-imbursement of incurred expenditure during prolonged bonafide medical treatment period as not fully met by the Rly Administration.

That Madam, being a house wife and mother of a minor child, I beg to place before you my appeal and may hope that your sympathy may bring a happy and prosperous life of us. For your act of kindness, we can pray to almighty for your peaceful life. We cannot do anything more and solely understand that there is some one who can hear the poors and solve the problems.

Thanking you, I am awaiting for something good from you.

Thanks are again,

Yours faithfully,

Mrs Anar Das (Ojha)

(Smt. Anar Das (Ojha)
Wife of Sri Gunindra Ojha,
Ex SASM/DKJR, Now working at
Central Control /Maligaon.

Date : 15/12/99

MU/C/MLG/99.

19.12.99

To
The General Manager(P)
N.F.Railway, Maligaon,
Guwahati-11 (for attention of Sri S.K.Sood, CFO/A).

Dear Sir,

Sub:- Sad plight of Sri Gunindra Ojha, ASM/Dhekeajuli
Road under DRM(P)/APDJ.

Refs:- This Office letter of even number dated 23.11.99.

Apropos my telephonic talk with you on 18.12.99 and in continuation to this Office letter cited above I have to draw your attention to Para 3 of your letter No. S/204/21(P) Pt.II dated 21.11.99 addressed to CHS/MLG.

Sri Ojha should have been rewarded for his heroic deed. Instead he is facing all sorts of difficulties. He was posted in the Central Control at MLG for sedentary job. But he has been shunted from Central Control. He has been declared declassified and waiting for absorption.

He himself and his wife are still suffering due to the incident at Dhekeajuli station while he was on duty. While saving Rly. cash he and his wife was attacked with surper weapon by the miscreants and both of them received severe injury and still Sri Ojha did not part with the Rly. Cash.

The Rly. Board vide their letter D.G. Letter No. P(W)93 FU4-4/5680 dated 7.12.93 addressed to Dy. CFO/IR/MLG had held that all the expenditure for the treatment of him and his wife will be borne by N.F.Rly. But Sri Ojha had to bear the cost of treatment of his wife by himself.

Since, the entire episode is directly related to his heroic deed to save Rly. cash, this case need due weightage and consideration in respect of the cost of treatment as well as for his absorption in alternative category.

Yours faithfully,

(RAKHAL DAS GUPTA)
GENERAL SECRETARY.

Copy to the:-

The Chief Medical Director, N.F.Rly. Maligaon. He is also requested to take steps for re-imbursement of the cost of treatment of wife and Sri Gunindra Ojha and for her further treatment.

Yours faithfully,

GENERAL SECRETARY
N.F.RLY. MAZDOOR UNION/PANDU.

Copy to :- Secretary/NFRMU/MLG(2 copies).


GENERAL SECRETARY.

Annexure "O"

To
The General Manager(P)
N.F. Railway,
Maligaon, Guwahati - 11.

Sub :- Prayer for decategorised for the
job SASM (victim of miscreants
activity on medical ground.)

Ref:- MD/CH Office N.F. Railway/MLG vide
Certificate No.40 and Sr. DMO/Ortho/
CH/MLG Unfit Certificate No.H/139/1
(Cert) dated 25-2-99 countersigned
by MD/CH/MLG and approved by CMD/MLG
dated 5-6-99.

Respected Sir,

With due respect and humble submission, I beg
to place before you the following with humble prayer
to mitigate my trouble. I hope it will find a place
in your mind and draw your sympathetic attention to
my aggrieved family having morally depressed and mentally
disbalance on account of attack by miscreants.

That Sir, while I was on duty SM at Dhekiajuli
Road Station in RNY-RPAN Section on 19/4/91 at around
18.00 hrs a gang of miscreants surrounded me and tried
to snatch away Railway Cash running some thousands of
Rupees. I tried to protect the Railway money. The mis-
creants attacked me with deadly/sharpen weapons. As my
Railway Quarter was just adjacent the Railway Station,

bearing . . .

hearing hue and cry, my wife rushed to the spot with 7 (seven) months baby on her laps. The miscreants mercilessly hit them with sharpen weapons. As a result, we all had got grievously injuries and immediately hospitalised with the help of local people and received treatment at different hospitals for a petty long time being directed by Railway Medical authorities in Assam and outside Assam.

After prolonged Medical treatment, I was fit // for light job recommended and arranged by CMD/MLG & COM/MLG at Central Control/MLG. Since then 10-5-94, I am still working at CC/MLG HQ with my pay drawn under GM(P) MLG. and our treatment is going on.

That my chance of promotion came and I was promoted in the Scale of Rs.5500-9000/- as SASM by my parent division and posted in APDJ Division. But considering my physical incapacities I was retained at Maligaon in the Central Control by variating a post.

That Sir, Medical Authority on 5-6-99 issued a Certificate declaring me unfit to work for job of SASM and also declared that I had lost my earning capacity to the extent of 40% and 50% assessed in favour of my wife for our right hands I was in sick list with effect from 29-10-99 (A/N) under I/c Sr.DMO O.P.D. vide my RMC Unfit Cert. No.91/61 dated 30-10-99.

That

That as I understand, the Chief Operations Manager/MLG has passed order to transfer me to parent Division to work as SASM which job I cannot do because of my incapability to handle the operational job due to 4 (four) fingers of my Right hand have lost due strength for holding/handling any operational equipments.

In view of the above circumstances, I shall pray to your good office to kindly allow me to continue in the Central Control permanently. Since, the job to some extent suit my present health condition and/or absorb me in the alternative job of commercial Inspector in the indicated grade - due vacancies against direct recruitment quota are available as I have the requisite qualifications for holding such a position.

Your kind intervention is necessary, so that I can permanently settle in a particular position to lead my family life with grace and dignity and may require medical treatment immediately in future.

Thanking you, I am awaiting for something good from you.

Thanks once again.

Yours faithfully,

Sd/- Gunindra Ojha,

Ex, SASM/DKJR

Now working at CC/Maligaon

Date 23-12-99

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 351/99 OF 199

Applicant(s) Sri. Jagannath Chakrabarty and Ors.

Respondent(s) Union of India and Ors.

Advocate for Applicant(s) Mr. N. Datta Mr. C. Bhagat

Advocate for Respondent(s)

S. F. Advocate.

1m

15.11.99

Present : Hon'ble Mr Justice D.N. Baruah,
Vice-Chairman and
Hon'ble Mr G.L. Sanglyine,
Administrative Member.Application is admitted. Issue
usual notice.List on 16.12.1999 for written
statement and further orders.

contd..

Notes of the Registry	Date	Order of the Tribunal
	15.11.99	MR N.Dutta, learned Sr.counsel for the applicants prays for an interim order staying the operation of Annexure-F order dated 29.10.99. Heard Mr J.L. Markar, learned Railway counsel, who has opposed the prayer. On hearing the counsel for the parties the Annexure-F order dated 29.10.1999 is suspended until further orders, insofar as it relates to the applicants.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (AUMN)

Certified to be true Copy
अमिता अमिता

Myonc
15/11/99
Dapat Recd. (0)
Central Adminis. Office Tribunal
Guwahati Bench

X/15/1999

52-57
52
Central Admin. Tribunal
20 FEB 2001
Gu

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Central Personnel Office
C. D. Rly. / Malignon
Guwahati-11

IN THE MATTER OF :

O.A. No. 20 OF 2000

Shri Gunindra Ojha.

..... Applicant
- Versus -

1. North East Frontier Railway

Maligaon.

2. Chief Operations Manager,

N.F. Railway, Maligaon.

3. Chief Personnel Officer,

N.F. Railway, Maligaon.

4. Deputy Chief Operations Manager,

N.F. Railway, Maligaon.

5. Divisional Railway Manager,

Alipurduar Junction Division,

N.F. Railway, Alipurduar,

West Bengal.

- AND -

IN THE MATTER OF

Written Statement for and on behalf
of the respondents :

The answering respondents most respectfully beg
to Sheweth as under :

1. That, the answering respondents have gone through
the copy of the application filed by the applicant and have
understood the contents thereof.

Received.
S. D. Ghosh
16.2.2001

2. That, the application suffers for want of valid cause of action and right for filing the application .

3. That, the application is not ~~maintainable~~ maintainable in its present form and is fit one to be dismissed in limine .

4. That, the application is premature .

5. That, the application suffers from defect of not making Union of India as a party in the case.

6. That, save and except those averments in the application which are borne on records, or those which are admitted specifically hereunder, all other averments of the applicant as made in the application are denied herewith and the applicant is put to strictest proof of same.

7. That, for the sake of brevity, the meticulous denial of each and every statements as made in the application has been avoided and the respondents have been advised to confine their remarks only on those points which are material and relevant for the purpose of decision in the case.

8. That, with regard to averments at paragraph VII of the application it is to state that the applicant belongs to the Alipurduar Division of the N.F. Railway . It is not correct that he was appointed initially as Supervising Assistant Station Master (in short S.A.SM) in the Alipurduar Division of the N.F. Railway . It is to state herein that the applicant while working as Assistant Station Master in Dhakiajuli Railway Station (ASM/DKJR in short) in scale Rs. 1400-2300/- joined at the Central Control (Head-Quarters)/ Maligaon on 9.5.94 against the temporary variation post of the ASM from Alipurduar Junction Division, ^{for} purely a specific temporary period . The averments of the applicant which are not borne on records are hereby denied .

6
Smt. Arunima Datta
C. D. Aly, / GMW
Circa 1999

9. That, with regard to averments at paragraph VI.3 to VI.15 of the application only those averments it is submitted that which are borne on record or are specifically admitted hereunder are admitted. In connection it is also to state herein that the applicants case always received sympathetic consideration which could be covered within the extant rules and within ambit of the permissible sanctioned cadre of the railways in different offices. By way of a temporary variation of 1(one) post of ASM of Alipurduar Junction Division the applicant was accommodated temporarily in the Headquarter offices/Central Control) at Maligaon . As the applicant was posted at the Central Control office on temporary basis he was holding his lien in his parent organisation and Division at Alipurduar Junction and his further service prospects and promotional avenue is from in the line of Assistant Station Master side. Question of his permanent absorption in the Central Control Office at Maligaon Headquarters or in any other offices does not arise in the circumstances of the case.

10. That, with regard to averments at paragraph VI.16 of the application, it is stated nothing are accepted except those which are borne on records. In this connection it is submitted that as his turn of promotion in his parent organisation in scale Rs. 5500-9000/- came as per his avenue of promotion in his parent cadre and parent division, i.e. Alipurduar Junction division, promotion order for posting him against higher grade post in the Alipurduar Division was issued by the Divisional Authorities i.e. his employer. However, on further consideration he was allowed to remain as a stop gap arrangement in Central Control, Maligaon in scale Rs. 5500-9000/- for some more temporary period against the post, variated vide GM(P)/Maligaon's

memorandum No. E/283/108/Pt.VIII(T) dated 2.6.99.

55
d
Chief Personnel Officer
G. V. Riv. / Maligaon
Custodian-91

A copy of the office order No. E/283/108/Pt.VIII(T) which dated 2.7.99 has already been annexed as Annexure-I to the application will reflect about it.

It is also to state herein that as the tenure of temporary variation of the said post for 6 months from Alipurduar Junction Division also has expired on January 2000, the further operation of the Alipurduar Junction Division's post at Maligaon Railway Headquarter office (which is not within the jurisdiction of Alipurduar Junction Division) is not possible under rules and on consideration of sanctioned cadre of the Division and further retention of the Applicant at Central Control office is not possible.

A copy of the memorandum No. E/283/108/Pt.VIII(T) loose dated 2/6.7.1999 issued by the G.M(P) N.F. Railway, Maligaon showing variation of post of ASM in scale Rs. 5500-9000/- from Alipurduar Junction Division for a period of six months from date of operation is annexed hereto as Annexure-I.

Further, it is submitted that such post variation of one division's post to another etc. resorted to for exceptional cases for temporary period cannot be made on permanent basis. As the staff belongs to Alipurduar Junction Division, his further avenue of promotion lies in his own cadre in that Division.

11. That, with regard to averments at paragraphs VI.17 to VI.20 of the application it is submitted that none of the averments as made in those paragraphs are admitted except those which are borne on records, or, are specifically admitted hereunder. It is admitted that an office order dated 29.10.99 was issued by the Deputy Chief Operations Manager (Goods), N.F. Railway whereby the applicant along with 10 others working

CANDIDATE FOR
CLERICAL STAFF
CL. D. RIV / MUL 388
EX-1

Central Control Maligaon and Computer Cell at Maligaon etc. were spared on 29. 10.99 with order to report to their respective original Divisions like Lumding, Katihar, Alipurduar Junction division etc. (Copy of that Office Order dated 29.10.99 annexed as Annexure - J to the application)

As regards the contention of the applicant that he was surprised and taken a-back by issue of such office order dated 29.10.99 it is submitted that such allegations are not correct and hence not admitted especially in view of the fact that in response to his previous prayer/ representation before the Railway Authorities for retaining him at Maligaon etc, the applicant was clearly intimated under GM/P/N.E. Railway, Maligaon letter No. E/283/108/Pt.VIII (T) loose dated 3.12.98 that it would not be possible to promote him and also retain him at Maligaon . The relevant extracts from that letter are also ^{put} herein below for ready perusal.

" It is not possible to promote Sri Ojha and also retain him at Maligaon in view of the cadre position. Either Sri Ojha has to refuse promotion and continue at Central Control in his existing post or carry out his transfer order to APDJ Division.

We can however, suggest to Sr. DOM/APDJ to post Sri Ojha in Bengal area or any other region if he chooses to move on promotion".

It is submitted that in view of cadre position ^{and} the

circumstances of the case, his present submission to allow him to continue at Central Control, Maligaon permanently a to absorb him in alternative job or will drawing the aforesaid office order dated 29.10.99, cannot be agreed to. There is also no sanctioned cadre of ASM's post in Central Control office at Maligaon.

In terms of the aforesaid reply of the Railway Administration under letter dated 3.12.98 it was for him to decide either to refuse the promotion and continue at Central Control in his existing scale Rs. 5000-8000/- or carry out the posting order at Alipurduar Junction division in his parent organisation. However, it is to mention herein that in the aforesaid reply dated 3.12.98 it was also made clear that it would not be possible to promote him and retain him at Maligaon in view of Cadre position and that Railway Administration shall endeavour to post him in Bengal area or any other region if he chooses to move on promotion. But he opted for neither and currency of the varied post is also over now and retention of him is not possible.

A copy of the said letter No. E/283/108/Pt.VIII(T) Loose dated 3.12.1998 is annexed hereto as Annexure-II.

Further, his posting at Maligaon was only for a temporary period by way of variation of post of Alipurduar Division and he has acquired no right for retention at Maligaon over any post.

12. That, with regard to the averments at paragraph VI.21 of the application it is submitted that the contention of the applicant to the effect that the office order dated 29.10.99 has not yet been given effect to, cannot be admitted. The applicant has already admitted in paragraph 18 that he had reported sick from 30.10.99 and joined on 28.1.2000 with medical fit

fit certificate No. 31/61 issued by Sr. DMO/IC/OPD/HIG Dated 28.1.2000 without carrying out the transfer order. It is also to submit herein that as the matter is subjudice before the Hon'ble Tribunal no further orders have also been passed by the respondents in this case, until further orders of the Hon'ble Tribunal.

13. That, with regard to averments at paragraph 22 of the application it is submitted that the Hon'ble Tribunal has already disposed of the O.A No. 351/99 and dismissed the application after due hearing of the application.

A copy of which of the Hon'ble Tribunal order in November, 2000 is annexed hereto as Annexure -III.

14. That, as regards the grounds and prayer made at paragraph VII and X of the application, it is submitted that in view of the fact and merit of the case and in view of the submissions of the respondents herein above, neither the grounds as put forward at paragraph VII of the application are sustainable nor, the relief as sought for by the applicant are admissible.

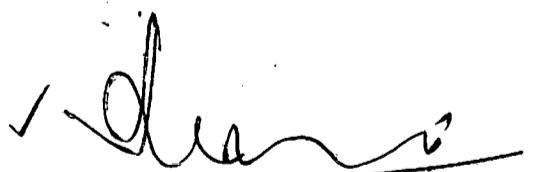
15. That, all the actions taken in the case are quite in consonance to the rules and procedures in vogue and also as admissible under rules and all actions are quite legal, valid and proper and have been taken after due application of mind and thorough investigation in to the case and also as the merit and fact of the case demanded and there has been no illegality, irregularity or arbitrariness in the case.

16. That, the respondents crave leave of the Hon'ble Tribunal to permit it to file additional written statement, if found necessary, for the ends of justice.

17. That, it is submitted that under the fact and circumstances of the case and legal information as mentioned herein before, the application is not maintainable and is also liable to be dismissed.

VERIFICATION

I, Sri A. K. NIGAM
aged about 47 years son of Late S.P. GAURHA
at present working as Chief Personnel Officer (Admin)
of the North East Frontier Railway do hereby state that what-
ever have been submitted at paragraph
is to true to my knowledge and those made at paragraphs 8, 9, 10, 11
12 and 13 are true to my information as gathered from records
of the case which I believe to be true and the rest are my
humble submissions before the Hon'ble Tribunal.


for and on behalf of

respondents.

Chief Personnel Office (A)
C. P. Rly, / Maligaon.
Guwahati-33.

NORTHEAST FRONTIER RAILWAY

DESPATCH

SA-70

MEMORANDUM

C.P.O. / R.F. BLY

Rly.)
OT.)
Rly.)
OT.)

COM/N.F. Railway, Maligaon has accorded his sanction to the variation of a post of ASM in scale Rs.5500/-9000/- from APPJ Division (earmarked for Sri Guindra Ojha) to Central Control Maligaon under COM/MBG for a period of 6 (six) months from the date of operation on public interest.

for GENERAL MANAGER (P)/MEG

No. E/283/108 Pt. VIII (T) Lease Dated 2-10-1999

Copy forwarded for information and necessary action to

- 1) COM/MLG.
- 2) CPTM/MLG.
- 3) PA & CAO/MLG.
- 4) DRM (P) /AFDJ.
- 5) Sr. DOM/AFDJ.
- 6) DAO/AFDJ.
- 7) CPO/Bill (in duplicate)

for GENERAL MANAGER (P)/M.G.

५८/-

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Attachment
S-10574

NORTHEAST FRONTIER RAILWAY.

Govt

OFFICE OF THE
GENERAL MANAGER (P),
MALIGAON : GUWAHATI-11.

No. E/282/108 Pt. VIII (T) 4000

Dated : 3 -12-1993.

To
Shri Gunindra Ojha,
SASM/CC/MuG.

Through Checkups

Sub: Prayer for posting at Central Control/
Maligaon in scale Rs. 5500-9000/-.

Re: Your representation dated 9-10-98.

Regarding your representation on the above subject the competent authority has observed as under :-

"It is not possible to promote Sri Ojha and also retain him at Maligaon in view of the cadre position. Either Shri Ojha has to refuse promotion and continue at Central Control in his existing post or carry out his transfer order to AP DJ Division. We can however suggest to Sr. DOM/AP DJ to post Shri Ojha in Bengal area or any other region if he chooses to move on promotion.

for GENERAL MANAGER (P) / M.G.

Copy to : DRM (P)/APDJ with reference to his office order endorsed under No. E/283/5 (T)/95 dated 17-8-98. He is requested to take necessary action as observed by the competent authority.

for GENERAL MANAGER (P)/M&G

db/ -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.351 of 1999

Date of decision: This the 11 day of November 2000

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

1. Shri Jagannath Chakraborty
2. Shri Prabir Dey
3. Shri Diptendu Bhowal
4. Shri Santosh Barua
5. Shri Partha Ghosh
6. Shri Pradip Kumar Dutta

.....Applicants

All the applicants employees of the
North East Frontier Railway, working in the
Computer Cell at N.F. Railway Headquarters, Mallaon.

By Advocates Mr N. Dutta and Mr U. Bhuyan.

- versus -

1. The North East Frontier Railway,
Mallaon, Guwahati,
Through the General Manager.
2. The Chief Operations Manager,
North East Frontier Railway,
Mallaon, Guwahati.
3. The Chief Personnel Officer,
North East Frontier Railway,
Mallaon, Guwahati.
4. The Deputy Chief Operations Manager(Goods),
North East Frontier Railway,
Mallaon, Guwahati.

.....Respondents

By Advocate Mr J.L. Sarkar, Railway Counsel.

O R D E R

Having regard to the cause of action and the nature of relief
prayed for and that the applicants have a common interest in the matter,
leave is granted to the applicants to join together and agitate the matter
in this single application under the provisions of Rule 4(5)(a) of the Central

Administrative Tribunal (Procedure) Rules, 1987.



2. All the applicants were appointed as Relieving Assistant Station Master under the respondents and working in their respective place of posting. A screening test for Computer Training was held on 21.12.1986. Those persons who were found suitable in the aptitude test were transferred and posted in Computer Cell vide Office Order dated 14.3.1989, Annexure C. In the aforesaid Office Order eight names surfaced which also included the names of the applicant Nos. 1, 2 and 5. Pursuant to the aforementioned Office Order the respondents also passed order of post variation transferring the post of Assistant Station Masters from the Division to Computer Cell. Subsequently, by orders dated 5.6.1995, 28.6.1995 and 27.7.1995 the applicant Nos. 3, 4 and 6 were also posted in Computer Cell/Central Control. The respondent No. 4, the Deputy Chief Operations Manager (G) passed order dated 29.10.1999, Annexure F to the application, pursuant to the order of the Chief Operations Manager spared eleven Assistant Station Masters including the six applicants. The legality of the action of the respondents by the aforesaid order dated 29.10.1999 is, therefore, assailed in this application as arbitrary and discriminatory.

3. The Railway Authority did not submit any formal written statement, but they have submitted an application praying for vacation and for discontinuance of the Interim order dated 15.11.1999 passed by the Tribunal, detailing its assertions and contentions. Mr J.L. Sarkar, learned counsel for the Railways submitted that the said application praying for vacation of the Interim order contains the reply of the authority and the same be treated as written statement of the respondents.

4. Mr N. Dutta, learned counsel for the applicants, questioning the impugned order submitted that the aforesaid order is unjust, unfair and arbitrary. The learned counsel submitted that the job of Assistant Station Master is a high risk job pertaining to the operational area and the Assistant Station Master has to remain in regular attachment and the same is placed in the essential category. The Assistant Station Master is required to be physically and mentally fit and therefore, such persons are.....

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are required to undergo periodic medical check-up and refresher course. The applicants were brought to the Headquarter, some from 1986 and some from 1995. All these applicants were rendering their service in the Computer Cell and lost touch with the operational affair. The respondent authority while passing the impugned order overlooked the public interest which itself was a relevant consideration. The learned counsel for the applicants submitted that the respondents in reverting back these applicants as Assistant Station Masters overlooked public safety of the commuters and public interest. The learned counsel further submitted that the decision of the respondents is fraught with hazardous consequences and these relevant considerations were given a go-by by the respondents in a most illegal fashion. The learned counsel also submitted that in other Railways, such as North Eastern Railways such persons posted in the Computer Cell have been absorbed on regular basis with appropriate designation. The learned counsel submitted that the applicants have already accomplished expertise in the Computer Cell. After going through a process of selection and the conduct of the applicants generated legitimate expectations to continue to work as such. The impugned decision in the circumstances suffers from the vice of arbitrariness.

5. Mr J.L. Sarkar, learned Railway Counsel, on the other hand submitted that the Railway Authority is in need of operating personnel. Referring to the Misc. Petition, Mr Sarkar submitted that the Computer Cell is not a permanent one and at certain stage the Railway Authority decided for transferring some posts from outside Headquarter, and the Expenditure Control Mechanism of the Railways did not permit creation and sanction of posts. The salaries for the staff were accordingly charged against the original posts. The arrangement was that the applicants were brought to the Computer Cell on temporary basis and the substantive posts they are/were holding in the rank of Assistant Station Master and the promotional avenue and panel of promotion is from the Assistant Station Master. The written tests are held for selection of Traffic Inspectors, a promotional avenue from Assistant Station Master. The applicant No.5 appeared in a selection test for selection of Traffic Inspector as promotional.....

promotional avenue from Assistant Station Master. Mr Sarkar cited two other similarly situated Assistant Station Masters who appeared in the selection test for Traffic Inspector and are working as Traffic Inspectors. Mr Sarkar submitted that there is acute need of persons for running the trains. For safety reasons of public interest the service of the applicants are necessary. Referring to the Misc. Petition the learned counsel submitted that there are a large number of vacancies for Station Masters and Assistant Station Masters. The respondent authority has already taken development works in the Region by introducing Broad Gauge System and the number of trains have also been increased. Therefore, there is need for Assistant Station Masters for manning the job. The Computer Cell can be looked after from other quarters where such posts become inevitable. Mr Sarkar also submitted that the Railway Authority after giving utmost consideration towards safety took the above decision.

8. From the materials on record it appears that three of the applicants, namely 1, 2 and 5 were working since 1986 in the Computer Division. Three others, namely Nos. 3, 4 and 6 came to the Computer Cell in 1995. All of them are holding the substantive post of Assistant Station Master. They were transferred and posted in Computer Cell as a temporary measure. No motive or arbitrariness is, as such, discernible. The respondents are free to take its own policy decisions though all policy decisions cannot be said to be *ipso facto* immune from judicial review. Judicial review is permissible if the policy is contrary to any law or violative of any constitutional rights. The respondents recalled the applicants to their substantive posts. It may not be flawed with arbitrariness. Such exercise of posting persons in relevant fields involves a balance of competing claims relatable to public safety and public interest. Such exercise is also relatable to public coffer and allocation of economic resources. These are the matters which have to be assessed by persons with degree of expertise. On consideration of the materials on record it is difficult for the Tribunal to find fault in the decision making process. In assessing such a situation, the Tribunal or Court, while exercising the power of judicial review, cannot but not be

mindful.....

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mindful to its own limits to evaluate the question of policy decisions involving public safety and allocation of economic resources on the face of competing claims. No infirmity, as such, is discernible requiring interference in the matter by the Tribunal.

7. In the facts and circumstances of the case, I decline to intervene in this matter and accordingly the application is dismissed. The dismissal of the application, however, shall not preclude the applicants to make appropriate representation before the authority for consideration of the individual cases and if such representation is made the respondents shall consider such representation on their respective merits in accordance with law.

No order as to costs.

Sd/- VICECHAIRMAN

TRUE COPY
कापिली

A. K. S.

Central Power Board
Central Electricity Board

15/11/2000