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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

3

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 28/2000
R.A./C.P No.
E.P./M.A No.

1. Orders Sheet OA-28/2000 Pg. 1 to 2
2. Judgment/Order dtd. 02/02/2000 Pg. No. separate order disposed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....28/2000 Pg. 1 to 14
5. E.P/M.P.....NIL Pg.....to.....
6. R.A/C.P.....NIL Pg.....to.....
7. W.S.....NIL Pg.....to.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4
(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 28/2000 OF 199

Applicant(s) *Ramala Kaata Swargiam*
Respondent(s) *Union of India and Ors.*
Advocate for Applicant(s) *Mr. B. S. Basumatary,*
Advocate for Respondent(s)

Rly. Advocate.

Notes of the Registry	Date	Order of the Tribunal
<p>09-456816 Dated 20.1.2000 AY 25/1/2000 25/1/2000</p>	2.2.00	<p>Present: Hon'ble Mr G.L. Sanglyine, Administrative Member</p> <p>Learned counsel Mr B.S. Basumatary for the applicant and Mr S. Sengupta, learned Railway Counsel for the respondents.</p> <p>The application is taken up for disposal at the admission stage itself.</p> <p>The applicant is a Deputy Station Superintendent, Guwahati Railway Station. He was transferred from Guwahati to Jatinga Railway Station. In this application he has impugned the transfer order dated 28.10.1999, Annexure 1.</p> <p>Heard Mr Basumatary and Mr Sengupta. I am of the view that this original application is to be disposed</p>

Notes of the Registry	Date	Order of the Tribunal
<p>2.2.00</p> <p>8/2/2000</p> <p>Copy with application has been sent to Despatch Section for issuing to the L/Horo. to the parties.</p> <p>NS 8/2/2000.</p> <p>Issued vide memo No. 411 dated 8.2.2000</p> <p>NS 8/2/2000</p>	<p>2.2.00</p>	<p>of with direction. According to the applicant, he submitted representation dated 5.11.1999. The Divisional Railway Manager (P), N.F. Railway, Lumding, communicated to the applicant by letter dated 3.12.1999 that his "retention at Guwahati has not been considered by the competent authority." and therefore, he was to carry out the transfer order immediately. The applicant further submitted representation dated 2.12.1999. This is pending disposal of the respondents. From the letter dated 3.12.1999 mentioned above it also appears that the respondents did not even consider the representation of the applicant.</p> <p>In the above circumstances, this application is disposed of with direction to the competent authority of the respondents to pass a speaking order disposing of the representation dated 5.11.1999 submitted by the applicant as well as his representation dated 2.12.1999. The applicant shall be communicated a speaking order within fortyfive days from the date of receipt of this order. Till a fresh order is issued, the operation of the impugned order dated 28.10.1999 shall be kept in abeyance.</p> <p>Liberty is given to the applicant to agitate if he is still aggrieved with the order of the respondents.</p>

[Signature]
Member

nkm
NS
3/2/2000

Central Administrative Tribunal
24 JAN 2000
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ::::: GUWAHATI BENCH

GUWAHATI.

(An Application under Section 19 of the Administrative Tribunals Act, 1985).

TITLE OF THE CASE : O.A.NO. 28 OF 2000.

Shri Kamala Kanta Swargiary : Applicant

-Versus-

Union of India(Rly)& Ors. : Respondents.

: I N D E X :

Sl.No.	Annexure	Particulars	Page No.
1.	---	Original Application	1 to 8
2.	---	Verification	8
3.	1	Order No.E/39-20-SS/PVII(T) dtd. 28.10.99	9
4.	2	O.M.No.T/61/1/LM dated 26.10.99.	10
5.	3	Doctor's Certificate.	11
6.	4	Applicant's representation dated 2.12.99.	12-13
7.	5	Memo No.ES-185-K(T) dated 3.12.99(signed on 6.12.99).	14

Date :

Filed by

Bhoban Singh Basumaty
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH
GUWAHATI.

(An Application under Section 19 of the Administrative Tribunals
Act, 1985).

O.A. NO. 28 OF 2000.

BETWEEN

Shri Kamala Kanta Swargiary,
Dy. Station Superintendent, Guwahati Rly Station,
S/O Sri Banshidhar Swargiary, presently under
transfer from Guwahati to Jatinga Rly. station.

.....APPLICANT.

A N D

1. The Union of India,
represented by Divisional Rly. Manager(P),
N.F. Railway/Luding.
2. The Chief Operating Rly. Manager,
N.F. Rly./Maligaon.
3. Sr. Divisional Operating Manager,
N.F. Rly./Luding.
4. Shri V. Subramaniam,
Divisional Rly. Manager(P), N.F. Rly./Luding.
5. Shri M.P. Mehta,
Sr. Divisional Operating Manager,
N.F. Rly./Luding.

.....RESPONDENTS.

DETAILS OF APPLICATION.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The Application is directed against the Orders :

- (a). Order No. E/39-20-SS/PVII(T) dated 28.10.99 issued under the
hand of Divisional Rly. Manager(P), N.F. Rly./Luding in pursu-

Contd.....2/-

5
Filed by -
Kamala Kanta Swargiary
Rough
Bhaben Singh Bhowmury
Advocate
21/1/2000.

pursuance of which the applicant is transferred from Guwahati Rly. Station to Jatinga Rly. Station on Administrative ground.

(b). Memorandum No. T/61/1/LM dated 26.10.99 issued under the hand of Shri M.P. Mehta, Sr. Divisional Operating Manager, N.F. Rly./Lumding by which it was proposed to impose minor penalty under Rule-II of the Rly. Servants (Discipline & Appeal) Rules, 1968.

(c). Memo No. ES-185-K(T) dated 13.12.99 (signed on 6.12.99) by which the representation of the applicant has been disposed of by way of rejection.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India as such he is entitled to all rights, privileges and protections guaranteed by the Constitution of India.

4.2 That the applicant was recruited as Assistant Station Master (in short ASM) way back in the year 1977 and posted at Lumding. In 1983 he was posted at Silghat Town and in 1986 he was posted as LR/ASM at Senchoa. Thereafter he was posted as LR/ASM at New Guwahati in the year 1992. The applicant was promoted to the post of Dy. Station Superintendent and posted at Guwahati Rly. Station in year 1996. The applicant since the joining his department has been

Kamala Kant Swargiary

discharging his duties with complete satisfaction to all.

4.3 That the applicant respectfully states that vide an Order No.E/39-20-SS/PVII(T) dated 28.10.99 issued for and on behalf of Divisional Railway Manager(P),N.F.Rly./Lunding this applicant has been transferred from Guwahati Rly.station to Jatinga Rly.station and shown to have been transferred on administrative ground.

A photostat true copy of the aforesaid Order dated 28.10.99 is annexed herewith and marked as ANNEXURE-'1' hereof.

4.4 That the applicant respectfully states that prior to issuance of transfer order dated 28.10.99 an Office Memorandum No.T/61/1/LM dated 26.10.99 under the hand of Shri M.P. Mehta,Sr.Divisional Operating Manager,N.F.Rly./Lunding was issued to the applicant whereby it was made known that this applicant is going to be inflicted minor punishment under Rule-II of the Railway Servants(Discipline & Appeal)Rules 1968 due to failure in ensuring timely delivery of bed rolls in 5626 DN Guwahati-Bangalore Express on 17.10.99.

A photostat true copy of the aforesaid Office Memorandum dated 26.10.99 is annexed herewith and marked as ANNEXURE-'2' hereof.

4.5 That the applicant respectfully states that he has three school going children who are studying at Central School,Maligaon and the eldest son is appearing Matric Exam this year.Perhaps it is not out place to mention here that the session ending examination of Central School begins in the month of March every year.

That apart the father of the applicant is old aged and a heart patient who requires random treatment as well as nursing.

Kamala Kantawariya

A photostat true copy of
Doctor's certificate is anne-
xed herewith and marked as
ANNEXURE-'3'hereof.

4.6 That the applicant respectfully states that keeping
in view my sufferings at the stage owing to his transfer
at the mid school session of the children and due to want
of Hospital facility for treatment of his old aged ailing
father he submitted a representation praying, inter alia, re-
vocation of the impugned transfer order dated 28.10.99 vide
his representation dated 2.12.99.

True photostat copy of the aforesaid
representation dated 2.12.99 is anne-
xed herewith and marked as ANNEXURE-
'4'hereof.

4.7 That the applicant respectfully states that the appli-
cant's representation praying revocation of his transfer order
was disposed of vide No.ES-185-K(T) dated 3.12.99 under the hand
of Respondent No.4 and his prayer was turned down

A photostat true copy of the aforesaid
letter dated 3.12.99 (signed on 6.12.99
is annexed here with and marked as ANNE+
XURE-'5'hereof.

4.8 That the applicant respectfully states that he has been trans-
ferred by the Respondent No.4 with malafide intention to appease
someone at the behest of some vested interests. In this connection
it may further be stated here that on 17.10.99 5626 DN Guwahati Ban-
galore Express left Guwahati Rly. station without Bed roll for which
it is proposed to take disciplinary action against the applicant
under Rule No.3.1(ii) & (iii) of Railway Service Conduct Rule 1966.

Kamola Kanta Swarajy

It is pertinent to mention here that for loading and unloading of Bed roll on the nominated train the responsibility mainly rests on Dy. Station Superintendent, Commercial and the Chief Ticket Inspector. Curiously enough on 17.10.99 Shri Tusta Mohan Biswas, Dy. Superintendent was on duty as over all incharge being senior the applicant and Shri Keshab Ch. Kalita, Chief Inspector of Tickets was also on duty. However, no disciplinary action has been initiated against Shri Tusta Mohan Biswas and the applicant has been chosen for penalisation as such discriminatory treatment has been meted out to the applicant in violation of Articles 14 and 16 of the Constitution of India.

4.9 That the applicant respectfully submits that the facts and circumstances relating to the transfer of applicant clearly show that he has been transferred by way of punishment which is against the established law as well as in conflict of service jurisprudence.

4.10 That the applicant respectfully submits that as per established procedure as well as on principle of service jurisprudence transfer should not be done at the mid session of the children, however, in the case of instant applicant it has been done with malafide intention and ill motive as such the Respondents have violated the established norms as regards the transfer of an employee.

4.11 That the applicant respectfully submits that considering suffering of the old aged ailing father of the applicant the transfer order, on humanitarian ground, ought to have not been issued by the Respondents.

Be it further stated that to facilitate treatment and nursing of his ailing old aged father applicant is on leave as such he has not carried out the impugned transfer order dated 28.10.99.

Kant Swarajy

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5.GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the impugned order dated 28.10.99 is violative of established law inasmuch as the impugned transfer order has been issued by way of punishment.

5.2 For that the impugned transfer order has been issued in violation of norms with regards to transfer of an employee inasmuch as the impugned transfer order has been issued in the mid school session of the children.

5.3 For that the impugned transfer order has been issued with a malafide intention at the behest of vested interests.

5.4 For that the impugned transfer order is discriminatory in-as-much as the applicant has been singled out to put for sufferings.As such the impugned transfer order is violative of Article 14 and 16 of the Constitution of India.

5.5 ~~That~~ that the impugned transfer order is bias inasmuch as the same has been issued to appease some one by way of accommodating in the place of applicant at the behest of some vested interests.

5.6 For that the impugned transfer order is bad in law inasmuch as the same is hit double jeopardy since prior to issuance of the transfer order initiation has been started to inflict minor punishment and simultaneously impugned transfer order has been issued by way of punishment for the same cause of action that too at the mid school session of the children as such the impugned transfer order is not sustainable in law and liable to be quashed.

6.DETAIL REMEDIES EXHAUSTED :

That the applicant respectfully states that he has exhausted all other remedies open to him as provided under the rules prior to approaching the Hon'ble Tribunal and now there is no other alternative and efficacious remedy than to file this application before the

Kamala Kant Swargiary

Hon'ble Tribunal. Representation against the impugned transfer order was filed before the Divisional Rly. Manager/Lumding, the Respondent No.4, however, the same was disposed of vide order dated 3.12.99 (signed on 6.12.99) and prayer of the applicant was rejected.

7. That the applicant further declares that he has not filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority of any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR :

Under the facts and circumstances of the present case, it is, therefore, most respectfully prayed that Your Lordship would graciously be pleased to admit this application, issue notice calling upon the Respondents to cause as to why the impugned transfer order dated 28.10.99 (ANNEXURE-1) shall not be rescinded and quashed, call for the records and after cause or causes, if any, shown by the Respondents, hearing the parties and on perusal of the records the following reliefs may kindly be granted -

8.1 The impugned transfer order issued by the Respondent No.4 vide No.E/39-20-SS/PVII(T) dated 28.10.99 (ANNEXURE-1) may kindly be rescinded and quashed.

8.2 Your Lordship may be pleased to pass any other order or orders to the effect as Your Lordship may deem fit and proper.

8.3 Costs of the case.

9. INTERIM RELIEF SOUGHT FOR :

Further, the applicant most respectfully prays that

Kamala Kant Singh

pending disposal of this Original Application, the impugned transfer Order dated 28.10.99 (ANNEXURE-1) may kindly be kept abeyance.

10. This application has been filed through Advocate.

11. PARTICULARS OF THE IPO :

i. I P O No. : OG 456816
ii. Date of issue : 20.1.2000
iii. Issued from : G.P.O., Guwahati.
iv. Payable at : G.P.O., Guwahati.

12. LIST OF DOCUMENTS/ENCLOSURES :

As stated in the Index.

: V E R I F I C A T I O : N :

I, SHRI KAMALA KANTA SWARGIARY, Dy. Station Superintendent, Ghy. Railway Station, N.F. Railway son of Shri Banshidhar Swargiary, aged about 45 years now under transfer to Jatinga Rly Station, do hereby solemnly affirm and state that the statements made in this verification as well as those have been made in paragraphs 1, 4.1, 7 of the Original Application are true to the best of my knowledge and belief and those have been made in paragraphs 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 6, 10 are true to my information which have been derived from the records and the rests are my humble submission before the Hon'ble Tribunal.

AND I verify and sign this verification.

Kamala Kanta Swargiary
21/1/2000

SIGNATURE OF THE APPLICANT.

ES/III/T/64/99

Annexure - 1

SS/GHY/10

NORTHEAST FRONTIER RAILWAY.

DRM(P)'s Office/LMG.

Dated 28-10-99

OFFICE ORDER.

The following transfer and posting orders are issued to take immediate effect:-

- 1). Shri K.K.Swarglary, DY.SS/GHY in scale Rs.6500-10500/- who has been ordered to be transferred and posted at PNB as DY.SS vide this office order No E/39-20-SS/PVII(T) dated 2-2-98, is hereby transferred and posted at JTG as DY.SS on administrative ground on his existing pay and scale vice Shri P.B.paul, DY.SS/JTG - transferred to- (item No. 2 below).
- 2). Shri P.B.paul, DY.SS/JTG in scale ~~Rs.6500~~ Rs.6500-10500/- is hereby transferred and posted at KTX as RG-DY.SS at his own request on his existing pay and scale vice vacancy.
- 3). Shri R.K.Prasad, DY.SS/JRBM in scale Rs.6500-10500/- who has been ordered to be transferred and posted at KTX as RG-DY-SS vide this office order No. ES-573 -S(T) dated 2-9-99, is hereby transferred and posted at DJB as DY.SS on administrative ground on his existing pay and scale vice vacancy.

Transfer pass, transfer allowance and joining time are admissible in the cases of item No. 1 and 3.

This issues with the approval of Competent authority.

for Divisional Rly. Manager (P),
N.F.Railway/Lumding.

No.E/39-20-SS/PVII(T)

Dated 28-10-99

Copy forwarded for information and necessary action to:-

- 1). Staff concerned thro:- proper Channel.
- 2). SSS/GHY, JTG, KTX, JRBM & DJB. They will please advised this office when the above changes are given effect to.
- 3). SS/PNB.
- 4). DAO/LMG.
- 5). Sr.DOM/LMG for information please in reference to his office Note No.T/Transfer & posting/LM dt. 26-10-99.
- 6). APO/GHY.
- 7). SR ARM/GHY.
- 8). AM/BPB.
- 9). OS/ET/Bill at Office.
- 10). Spare copies for P/Cases and ~~xxxxxxx~~ Transfer grant file.

for Divisional Rly. Manager (P),
N.F.Railway/Lumding.

*Attested
by
Private*

[Handwritten signature and date 28/10/99]

STANDARD FORM NO. 11,
STANDARD FORM MEMORANDUM OF CHARGE FOR IMPOSING MINOR
PENALTIES RULES II OF RL (D) & (A) RULES - 1968

N. F. RLY.

Place of issue- DM(O)/LMG's office.

Date 26/10/99.

No. T/61/1/LM.

MEMORANDUM.

Shri K.K. Sawrgiary, Designation Dy. SS/Platform/GHY
(Office in which working) SS/GHY is hereby informed that
the undersigned propose(s) to take action against him under Rule-II
of the Rly. Servants (Discipline & Appeal) Rules 1968. A statement of the
imputations of misc conduct or misbehaviour on which action is proposed
to be taken as mentioned above is enclosed/appended.

2. Shri K.K. Sawrgiary is hereby given an opportunity
to make such representation as he may wish to make against the proposal.
The representation, if any should be submitted to the undersigned within
10 days on receipt of this Memorandum.

3. Shri K.K. Sawrgiary fails to submit his representation
with the period specified in para-2, will be presumed that he has no
representation to make and will be liable to be passed against
Shri K.K. Sawrgiary exparte.

4. The receipt of this Memorandum should be acknowledged by
Shri K. K. Sawrgiary.

(M.P. Mehta)
Sr. DOM/Landing.
Signature

Name & Designation of the
Competent Authority.

To
Shri K.K. Sawrgiary, Dy. SS/Platform/GHY

(Name & designation of the Rly servant) Dy. SS/GHY P. Railway, GHY

STATEMENT OF ALLEGATION.

Bed Roll is an important passenger amenity item, to be ensured
without fail for AC Coaches of all Primary maintenance station trains.
5626 DM GHY - Bangalore Express, which left GHY on 17-10-99, is such a
train of GHY. It has been reported that the train left without loading
of the bed Roll at GHY. Instructions exist vide joint Procedure order
dt. 29/7/99 that there should be absolutely no failure to load the bed
Rolls in the nominated train and that, even if there is failure on
the part of Commercial staff, the train should not start unless the
Guard gets confirmation that the Bed roll has been loaded. There has
been an all round failure, with the result that the passengers had to
suffer without bed rolls for their entire journey stretching over
62 hours from GHY to Bangalore.

While Shri K.K. Sawrgiary, was on duty Dy. SS/Platform/GHY he failed
to ensure timely delivery of bed rolls in above train at an important
station like GHY. He is held responsible for such irregularities.
Hence, he is charged for neglect of duty for violation of Rule No. 3.1
(ii) & (iii) of Rly. Service Conduct Rule, 1966.

1/ See
Pl. delivery of bed rolls
[Handwritten signatures and initials]

(M.P. Mehta)
Sr. DOM/Landing.



-11- ✓ *Auxure - 3* ✓

GNRC Heart Institute

Super Speciality Hospital in Cardiology & Cardiothoracic Surgery

TO WHOMSOEVER IT MAY CONCERN

It is certified that Mr. Bangsidhar Swargiary, 70 years old.
Father of Mr. K.K. Swargiary of Maligaon is suffering from Hypertension.
Moderate aortic regurgitation. He needs regular follow-up in a well equipped
hospital.

(DR. A.K. BORO)

SENIOR CONSULTANT & HEAD OF
THE DEPARTMENT OF CARDIOLOGY

To,
The DRM/Lumding,
N. F. Rly.

- 125

Annexure - 4/16

Sub :- Appeal for cancellation of Transfer order and to
remain at GHY station.

Ref :- DRM(P) LMG's office order No. B/39-20-SS/PVII(T)
Dt. 28-10-99.

Sir,

Most humbly and respectfully I beg to state the
following few lines for your kind consideration and
favourable orders.

That Sir, I have given transfer order from GHY
to JTG in the same scale and Pay vide DRM(P)'s office
order No. cited above.

That Sir, all my three school going children are
studying at Central School Maligaon. One of whom is a
Matric Candidate. Session ending examination of Central
School beings in the months of March every year. In the mid
session it is impossible to carryout transfer order in my
part for education of children.

That Sir, you have given me transfer order at
Jatinga where school is not available. The life of my
children and family will be ruined if I carryout at
JTG Station. In ~~such~~ such a crucial time of building
up career my attachment with family is highly necessary.

That Sir, my old aged father who is a heart patient
who is under the treatment of heart specialist at GHY need
my regular attachment.

That Sir, I am belonging to a poor family of ST
community. In terms of Rly Board's letter No. 95E/SCT/1-43/1
dt. 24-12-85 circulated vide CPO's No. E/227/Resv/0/Pt III
dt. 10-2-86, I may be considered for retaining at my Present
posting place.

That Sir, it would be worth mentioning were that there
are so many staff in my capacity who are already order for
transfer from GHY to other station are performing their
duties at GHY. But in my case you are issuing messages to
spare me from GHY.

Contd....p/2.

Therefore, under the circumstances cited above I request your honour kindly to consider my case and review my transfer order and arranged to remain at GHY. So that I can attachee with my family member i.e. at the time of extreme need in building career of my school going children as well as to serve my age old father who is a about to heavenly abode and feel oblige thereby.

Your's faithfully,

Kamala Kantar Swargiary

Date :- 02-12-99

Place :- Guwahati

Dy SS / GHY

14 Threo: SS/GHY

Annexure - 5

NORTHEAST FRONTIER RAILWAY.

DRM(P)'s Office/LMG.

No. ES-185-K(T)

Dated 3-12-99

57e
Del/wn

To
Shri K.K. Swargiary, Dy. SS/GHY
Through SS/GHY.

9/12

Sub:- Your application dt. 5-11-99 for review of your transfer order to JTG and your retention at GHY addressed to Sr. DOM/LMG.

In reference to your application on the subject, this is to inform you that your request for review of your transfer order to JTG and your retention at GHY has not been considered by the competent authority.

Hence, you are advised to carry out your transfer order to JTG issued under this office order No. E/39-2-SS/PVI(T) dt. 28-10-99 immediately.

for Divisional Rly. Manager (P),
N.F. Railway/Lumding.

Copy to:-

- 1). The Branch Secretary, AISCTREA/Guwahati for information please in reference to his letter No. AISCTREA/NF/GHY/11/99 dt. 6-11-99 addressed to ADRM/LMG.
- 2). SS/GHY. He will please spare Shri Swargiary to carry out his transfer order to JTG immediately.

for Divisional Rly. Manager (P)
N.F. Railway/Lumding.