

30/600

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A. No. 365/2000

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 365/2000

Sri. P. Jush. Kooi. Guda APPLICANTS
versus.

Union of India & ors Respondents.

FOR THE APPLICANT(S) *Mr. H. Rahman*
ADVOCATE *Mr. N. Barua*

FOR THE RESPONDENT(S) *N. F. Rly.*

Notes of the Registry

DATE

COURT'S ORDER

31.10.2000 Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

Heard Mr. H. Rahman, learned counsel for the applicant. Mr. J.L. Sarkar, learned Railway counsel is also present.

Application is admitted. Call for the records. Issue usual notice. Returnable by six weeks.

List on 13.12.00 for written statement and further orders.

[Signature]
Vice-Chairman

Adjudged to 3.1.2001

No written statement so far filed.
List on 2.2.2001 for filing written statement and further orders.

[Signature]
Vice-Chairman

2-2 Explicit bench at Shillong
Adjudged to (2.2.2001)

Mr. A. A. 2-2

for
IPC/13
Dated...

503782
30.10.2000
Vy. Registrar 31/10/2000

Notice prepared and sent
to D/S for copy the prescribed
N 1 to 3 vide DINo 2542/1
2544 dtd 9/11/2000
6/11/2000

Under PR No 2929 dtd.
9/11/2000
16/11/00

2-1-2001

① Service report are still awaited,

② No. u/s has been filed.

21-2-2001

Notice duly served on
RN 183, 2nd by hand.
Sled Service completed
N do
4/11/01.

DA 3657 2000

No written statement
has been filed.

By
15.3.01

12.2.01

List on 16.3.2001 to enable the
respondents to file written statement.

Vice-Chairman

pg

16.3.01

No written statement so far filed.
There is no representation on behalf
of the parties.

List on 9.4.01 for order.

pg

9.4.2001

Four weeks time allowed to the
respondents to file written statement. List it
for orders on 10.5.01.

nkm

11.5.01

List on 8.6.01 to enable the res-
pondents to file written statement.

lm

8.6.01

Mr. S.Sharma, learned counsel for the
respondents has prayed for time to file written
statement.

List on 3-7-2001 for order.

mb

3.7.01

Written statement has been filed. It appears
that copy of the written statement has been sent
to the applicant.

The applicant may file rejoinder, if any.

List on 26-7-2001.

mb

23/5/2001
NS has been filed
on behalf of the
respondents.

NS
23/5/2001

No rejoinder has
been filed.

By
25.7.01

ICC Sharma
Member

Vice-Chairman

ICC Sharma
Member

Vice-Chairman

ICC Sharma
Member

ICC Sharma
Member

D.A.365 of 2000

Notes of the Registry	Date	Order of the Tribunal
	26.7.2001	<p>The case is ready as regards pleadings. Office may now post the matter for hearing on 6.9.2001.</p> <p><i>ICU Shabir</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>① Written statement has been filed.</p> <p>② No rejoinder has been filed.</p> <p><i>3/9/</i> <i>16.10.01</i></p>	<p>bb</p> <p><u>6.9.2001</u></p>	<p>There is no Division order today. The case is adjourned to 11.10.2001.</p> <p><i>ML</i> <i>Asht</i> <i>6.9.</i></p>
	11.10.2001	<p>List again for hearing on 19.11.01 to enable the learned counsel for the parties to obtain necessary instructions in the matter.</p> <p><i>ICU Shabir</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
	19.11.2001	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is dismissed. No order as to costs.</p> <p><i>ICU Shabir</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><u>23.11.2001</u></p> <p>Copy of the Judgment has been sent to the Office for issuing the same to the Applicant as well as to the Rly. Standing Counsel for the Respondent.</p> <p><i>HS</i></p>		

4

Notes of the Registry

Date

Order of the Tribunal

6

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 365. of 2000

DATE OF DECISION 19.11.2001

Shri Pijush Kanti Guha APPLICANT(S)

Mr H. Rahman and Mr N. Barua ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others RESPONDENT(S)

Mr J.L. Sarkar, Railway 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 ?

x.

Judgment delivered by Hon'ble Vice-Chairman



X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.365 of 2000

Date of decision: This the 19th day of November 2001

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

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

Shri Pijush Kanti Guha,
T.T.E., N.F. Railway,
Lumding.

.....Applicant

By Advocates Mr H. Rahman and Mr N. Barua.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Railway,
Maligaon.
2. The General Manager,
N.F. Railway,
Maligaon, Guwahati.
3. The Divisional Railway Manager (P),
N.F. Railway,
Lumding.

.....Respondents


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

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The applicant, an LR TTE, was appointed as Ticket Collector and posted at Silchar with effect from 9.9.1962. He was allotted with a Railway Quarter No.T/34 (B) at Silchar. On his option he was promoted as Guard (C) and posted at Badarpur. He did not vacate his quarter at Silchar for which a disciplinary proceeding was conducted against him. He was dismissed from service with effect from 26.7.1982. The order of dismissal was modified to an order of removal. The applicant assailed the order of removal before the High Court in Civil Rule No.584 of 1983. The High Court dismissed the aforementioned Civil Rule on 2.5.1983. The applicant went upto the Supreme Court by way of a Special Leave



Petition. By order dated 1.9.1986 the Supreme Court passed the following order:

"The learned counsel for the respondent has placed before us a letter from the General Manager, Northeast Frontier Railway, Manigaon, Gauhati stating that punishment of dismissal has been changed to removal from service of the petitioner. He has also been offered fresh appointment. In view of this letter no orders are necessary in this Special Leave Petition, which is accordingly dismissed."

2. The applicant was finally appointed as Ticket Collector with effect from 17.11.1986. He preferred an application for condonation of the period of unemployment as 'Dies non'. The applicant retired from service on 28.2.1999. The concerned authority also recommended his case. The respondents, however, by order dated 1.10.1999 turned down the representation of the applicant. Hence this application assailing the aforesaid order dated 1.10.1999.

3. We have heard the learned counsel for the parties at length. Mr H. Rahman, learned counsel for the applicant, in his usual persuasive manner submitted that the applicant was unlawfully removed from service for his alleged unauthorised occupation of a Railway quarter. Referring to a number of decisions, Mr Rahman submitted that for unauthorised occupation of a Railway quarter, a separate procedure was provided under the Public Premises Act. The learned counsel for the applicant submitted that the impugned order of removal in the facts and circumstances of the case was uncalled for and also disproportionate.

4. Mr J.L. Sarkar, learned Railway Counsel, countering the arguments of the applicant, submitted that the issue raised in this application is hit by the plea of res judicata and accordingly the application is liable to be dismissed.

5. We find it difficult to accept the contention of Mr Rahman and to go into the legitimacy of the issue of removal of the applicant on the face of the decision passed earlier. The removal order was adjudicated upon by the High Court, which finally went up to the Supreme Court and at that stage the applicant was offered with a fresh appointment. The Hon'ble Supreme Court in view of the fresh appointment

of.....

of the applicant dismissed the Special Leave Petition filed by the applicant. The applicant was given a fresh appointment. In the circumstance it would not be appropriate for us to go into the same question which had attained its finality.

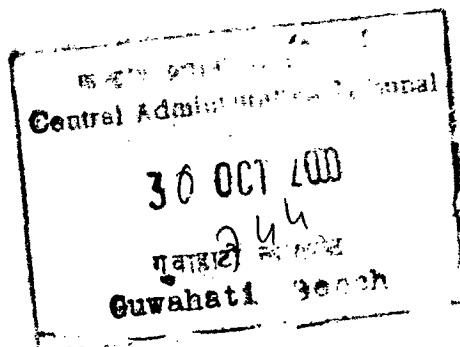
6. In view of the above the application is dismissed. There shall, however, be no order as to costs.



(K. K. SHARMA)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
AT GUWAHATI.

(An application U/s.19 of the Administrative Tribunal
Act, 1985).

ORIGINAL APPLICATION NO. 865 OF 2000

Shri Pijush Kanti Guha ... Applicant.
Versus
The Union of India & Ors. ... Respondents.

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Filed by -

Advocate.

Date of Filing : 30.10.2000
Registration No:

REGISTRAR.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI : BENCH
: GUWAHATI

An application under section 19 of the Central Administrative Tribunal Act, 1985).

O.A. NO. 365 OF 2000

BETWEEN

Shri Pijush Kanti Guha,
Son of Late P.B. Guha,
T.T.E., N.F. Railway,
Lumding.

... APPLICANT

-VERSUS-

1. Union of India.

Represented by the Secretary to
the Govt. of India, Ministry of
Railway, Maligaon,
Guwahati.

2. The General Manager,

N.F. Railway,
Maligaon, Guwahati.

3. The Divisional Railway Manager (P),

N.F. Railway,
Lumding.

... RESPONDENTS

Contd.../-

11
Pijush Kanti Guha
Applicant -
Hooch
Nihilpa! Barua, Advoc
20/10/2000

Pijush Kanti Guha

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I. PARTICULARS OF THE ORDER AGAINST WHICH THIS
APPLICATION IS MADE :

This application is directed against the impugned letter No.ES/154-P(T) dated 1.10.99 issued under the signature of the Divisional Railway Manager (P) N.F.Railway, Lumding, rejecting the appeal filed by the applicant.

II. LIMITATION

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

III. JURISDICTION

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

IV. FACTS OF THE CASE:

a) That the applicant is a citizen of India and as such he is entitled to all the rights privileges and protections guaranteed by the Constitution of India and laws framed thereunder.

Contd.../-

Pijush Sanku Guha

b) That the applicant was appointed as a Ticket Collector in the year 1962 and posted at Silchar Railway Station under the Divisional Commercial Superintendent, N.F.Railway, Lumding. The applicant was also allotted a quarter at the Tarapur Railway Colony on a much later date.

c) That the applicant begs to state that in the year 1977 he was promoted to the post of Guard (C) and was posted at Badarpur Station. However, due to his ill health the applicant was not in a position to move outside Silchar and accordingly he submitted a representation seeking reversion to his earlier post of Ticket Collector at Silchar.

It is pertinent to mention herein that the applicant had not vacated the quarter allotted to him at Silchar due to his ill health, and he had submitted an application before the authorities to allow him to stay at Silchar.

d) That the applicant begs to state that his representation for reversion to the post of Ticket Collector at Silchar was rejected by the authorities on the ground ~~that~~ option once exercised cannot be ^{altered.} ~~allowed.~~ The applicant thereafter filed an appeal before the General Manager (O), N.F.Railway, Maligaon but, the same was also rejected.

Contd.../-

Pijush Jeant. Guha

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e) That the applicant begs to state that on 20.1.79 a Memorandum for major penalty under the Discipline and Appeal Rules with a charge that he had disobeyed the orders of the administration which amounts to gross misconduct was served upon him. The applicant thereafter submitted his reply to the charge by denying the same.

f) That the applicant begs to state that thereafter an enquiry was conducted to enquire into the charges levelled against him and finally on the basis of the report filed by the Enquiry Officer, he was dismissed from his service on the ground of misconduct for retention^{of} railway quarter after his transfer from Silchar to Badarpur.

g) That the applicant begs to state that being aggrieved by order of dismissal passed against him, he filed an application under Article 226 of the Constitution of India before the Hon'ble Gauhati High Court challenging the impugned order of dismissal from service. However, the said application was rejected by the Hon'ble High Court by its order dated 2.5.83.

h) That the applicant begs to state that thereafter he filed a Special Leave Petition before the Hon'ble Supreme Court of India against the Judgement and

Contd.../-

Rajesh Kantu Mishra

order dtd. 2.5.83 passed by the Hon'ble Gauhati High Court in Civil Rule No. 584 of 1983. The said SLP was registered and numbered as SLP No. 11453 of 1983.

i) That the applicant begs to state that during the pendency of the aforesaid SLP before the Hon'ble Supreme Court, the General Manager, N.F.Railway, Maligaon, Guwahati was pleased to pass an order stating therein ~~that~~ the punishment of dismissal from service of the applicant has been changed to removal from service. By the same order the applicant was also offered fresh appointment in the N.F.Railway.

j) That the applicant begs to state that in view of the aforesaid order passed by the General Manager, N.F.Railway, Maligaon, Guwahati, the Hon'ble Supreme Court by an order dated 1.9.86 was pleased to dismiss the SLP filed by the applicant.

A type copy of the aforesaid order dated 1.9.86 passed by the Hon'ble Supreme Court is enclosed herewith and marked as ANNEX-
URE-I.

k) That the applicant begs to state that accordingly on 17.11.86 he joined his service as Ticket Collector at Badarpur Junction under N.F. Railway.

Contd.../-

Prakash Kantu Anha

1) That the applicant begs to state that after joining his services as Ticket Collector at Badarpur Junction under N.F.Railway he submitted an appeal dated 13.11.89 before the General Manager, N.F.Railway with a prayer that he may be reinstated in his service w.e.f. 22.7.82 instead of re-appointment on 17.11.86 and for condonation of the period of unemployment as "DIES NON". However, since the said appeal was not disposed of, the applicant had time and again submitted various appeals dated 8.5.90, 28.8.91, 3.2.92, 16.3.92, 29.3.93 and 18.4.96 but, the same were also not disposed of by the authorities for reasons best known to them.

m) That the applicant begs to state that the Divisional Railway Manager, N.F.Railway, Lumding while forwarding the appeals filed by him have time and again recommended that the appeal filed by the applicant may kindly be considered so as to encourage him to work more efficiently in the rest period of his service life.

Type copies of the aforesaid recommendations are enclosed herewith and marked as ANNEXURES-II & IIA.

n) That the applicant begs to state that since, inspite of the aforesaid recommendations of the respondent No.3, the respondent No. 2 did not dispose of the

Contd.../-

Piyush Kant. Chakraborty

appeals filed by him, he filed another appeal on 25.11.98 to the General Manager, N.F.Railway, praying for reinstatement in service w.e.f. 22.7.82 and for condonation of the period of unemployment as "DIES NON".

A copy of the said appeal dated 25.11.98 is enclosed herewith and marked as ANNEX-
URE-III.

o) That the applicant begs to state that the Divisional Railway Manager (P) N.F.Railway, Lumding by his letter No.ES/154-P(T) dated 1.10.99 communicated the applicant since he was removed from service w.e.f. 26.7.82 and subsequently re-appointed as T.C. as a fresh entrant the intervening period from 27.7.82 to 16.11.86 cannot be treated as "DIES - NON". In other words the appeal filed by the applicant was rejected by the competent authority.

A copy of the aforesaid letter dated 1.10.99 is enclosed herewith and marked as ANNEXURE-IV.

V. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

a) For that, the General Manager, N.F.Railway, Maligaon while rejecting the appeal filed by the appli-

Contd.../-

Rijust Kanti Anka

cant failed to take into consideration past as well as the present service record of the applicant.

b) For that, the General Manager, N.F. Railway, Maligaon while rejecting the appeal of the claimant acted beyond jurisdiction by misinterpreting the facts as well as the legal provisions.

c) For that, the authorities having realised the penal rent from the applicant for retaining the departmental quarter cannot punish him once again for the same offence by removing him from service.

d) For that, the applicant having admitted his guilt the authorities ought to have taken a lenient view while disposing of the appeal filed by the applicant.

e) For that, the applicant will be deprived of from availing the benefit of pension after his retirement in the year 2001 inspite of his long service career.

f) For that, the appellate authority while disposing of the appeal filed by the applicant did not pass any reasoned or speaking order by dealing with the contentions and submissions made by the applicant.

Contd.../-

Pijus Kanti Guha,

g) For that the appellate authority while deciding the appeal filed by the applicant failed to appreciate the meritorious service rendered by the applicant both prior to and after his re-appointment.

h) For that, the illegal and arbitrary action of the respondent authorities will deprive the applicant of his basic right to life inasmuch as he will not be entitled to any post retirement benefits of his superannuation in the year 2001.

i) For that, the respondent authorities by not condoning the break in service of the applicant has put the applicant in great uncertainty as he will not complete the qualifying period of service to enable him claim the past retirement benefits inspite of the fact that he has put in about 20 years of service prior to his removal and about 14 years of service after his re-appointment.

j) For that in any view of the matter the impugned action of the respondent authorities in rejecting his appeal is liable to be set aside and quashed.

VI. DETAILS OF REMEDIES EXHAUSTED

That the applicant declares that he has

Contd.../-

Pijush Kanti Gubla.

exhausted all the remedies available to them and there is no alternative remedy available to him.

VII. MATTERS NOT PREVIOUSLY FILED OR PENDING
IN ANY OTHER COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other such application, writ petition or suit is pending before any of them.

VIII. RELIEF SOUGHT FOR.

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

i) To quash the impugned letter No.ES/154-P(T) dated 1.10.99 issued under the signature of the Divisional Railway Manager (P) Lumding rejecting the appeal filed by the applicant.

ii) To direct the respondents to re-instate the

Contd.../-

Pooja Kant Anha

applicant in his services w.e.f. 22.7.82 and treat the intervening period from 22.7.82 to 16.11.86 as "DIES NON".

IX. INTERIM ORDER PRAYED FOR

Nil.

X. PARTICULARS OF THE I.P.O.

- i) I.P.O. No. : 503787
- ii) Date : 30-10-2000.
- iii) Payable at : Guwahati.

XI. LIST OF ENCLOSURES:

As stated above in the index.

Contd.../-

Prjnt Kant. Ruka.

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VERIFICATION

I, Sri Pijush Kanti Guha, son of Late P.B. Guha, aged about 59 years, presently working as T.T.E., N.F. Railway, Lumding in the district of Nagaon, Assam do hereby solemnly affirm and verify as follows:-

1. That I am the applicant in the present application and as such fully acquainted with the facts and circumstances of the case.

3. That the statement made in this verification and in paragraphs 4(a) to 4(i) & 4(i) are true to my knowledge and those made in paragraphs 4(j), (m) (n) (o) being matters of record are true to my information derived therefore.

And I sign this verification on this the 30th day of Oct' 2000 at Guwahati.

Pijush Kanti Guha

DEPONENT:

ANNEXURE-I

Item No. 3

Court No. 6

Section XIV.

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 11453
OF 1983 A/N

(From the Judgement and order dated 2.5.83 of the High
Court of Gauhati in Civil Rule No. 584/83).

Pijush Kanti Guha

...

Petitioner

Versus

Union of India & Ors.

...

Respondents

(with office report)

Date : 1.9.86 : This petition was called on for hearing
today.

CORAM: Hon'ble Mr. Justice O. Chinnappa Reddy

Hon'ble Mr. Justice M.M. Dutt

For the petitioner(s) : Mr. H.K. Puri, Adv.

For the Respondent(s) : Mr. G. Das, Sr. Adv. Mr. G.V. Subba

Rao and Mrs. C.K. Sucharita, Advs.

Upon hearing counsel the Court made the following

ORDER

[The learned counsel for the respondent has placed

Contd.../-

*Miss
Bann
30/10
Advocate*

before us a letter from the General Manager, Northeast Frontier Railway, Maligaon, Gauhati stating that punishment of dismissal has been changed to removal from service of the petitioner. He has also been offered fresh appointment. In view of this letter no orders are necessary in this Special Leave Petition, which is accordingly dismissed.]

Sd/- K.C.Sethi
Court Master.

*Missed
ASAM
30/10
ASAM*

Contd.../-

ANNEXURE-II

N.F.Railway
Office of the Divisional Railway Manager (P)
N.F.Railway, Luming.

No.ES/154-P(T)

Dated 9.2.90

To

General Manager (P),
N.F.Railway-Maligaon.

Sub: Mercy Appeal preferred by Shri Pijush Kanti Guha,
LR.TC for TTE/LMG for condonation the period of
unemployment as "DIES NON".

Shri P.K. Guha, LR TTE/LMG was appointed as Ticket Collector and joined this Railway on 9.9.62. While he was working at Silchar Station, he was allotted with a Rly. Qrs. but he did not vacate the said Qrs. after his transfer from Silchar Station. DAR enquiry was instituted against Shri Guha for unauthorized retention of Rly. Qrs. at Silchar. Subsequently after completion of the DAR proceedings, he was dismissed from service. Later in terms of the verdict of Hon'ble Supreme Court of India he was removed and on appeal re-appointed as Ticket Collector in Scale Rs. 950-1500/- (RPS) w.e.from 17.11.86.

Shri Guha has preferred an mercy appeal for condonation of the period of his unemployment as ' Dies Non' which is sent herewith. Shri Guha will retire from service on 28.2.99 his date of birth being 1.3.1941.

Contd.../-

W. K. Guha
ASAM
30/10
Advocate

During the period after his re-appointment from 17.11.86 it has been found that he is a sincere worker as his performance towards ticket checking is remarkable amongst the highest earners. During 1989 Shri Guha was awarded five times for having top position in the list of highest earners. His services was judged to be sincere and effective for which he was also awarded with a cash of Rs. 500/- and one Medal as Hd. Qrs. level in 1989.

It is recommended that his appeal may kindly be considered so as to encourage Shri Guha to work more efficiently in the rest period of his service.

This issues with the approval of Sr. DCS/LMG.

DA:-Mercy appeal in original with
enclosures (.i.e. total 9 sheets)

Sd/-Illegible,
9.2.90

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

*Willestis
G. B. B. B.
20/10 Advocate*

Contd.../-

ANNEXURE-III

N.F.Railway
Office of the Divisional Railway Manager (P)
N.F.Railway, Lumding.

No.ES/154-P(T)

Dated 31.5.93

To

General Manager (P),
N.F.Railway-Maligaon.

Sub: Mercy Appeal preferred by Shri Pijush Kanti Guha,
LR.TC for TTE (NOW TTE/LMG for condonation
the period of unemployment as "DIES NON".

Ref: This Office letters of even No. dt. 9.2.90, 26.10.90
14.3.91 and D.O. letter of even number dt. 23.8.91
and your letter Nos. E/74/III/46(T) LMG dtd. 4/5.9.90
and D.O. letter Nos. E/74/III/46(T) LMG dt. 8.8.91.

Shri P.K. Guha, LR TTE/LMG was appointed as
TC and posted at SCL w.e.f. 9.9.62. He was allotted with
a Rly. qrs. No. T/34 (B). Subsequently on his option he
was promoted as Gd.(C) and posted at BPB. But he did not
vacate the said qrs. at SCL and placed under DAR and in
consequence of the same he was dismissed from the service
w.e.f. 26.7.82. And again he was removed from service
w.e.f. 26.7.82 and at last he was re-appointed as TC in
scale Rs. 950-1500/- w.e.f. 17.11.86.

Shri Guha has preferred an mercy appeal for
condonation of the period of his unemployment as ' Dies
Non'. But the reply is still awaited. Now Shri Guha has
again represented for regularisation vide his appeal

Contd.../-

*Walter
ASam
30/10 Advocate*

dtd. 29.3.93 along with a copy to Secy. Railway Board which is sent herewith in original for disposal please.

Sri Guha is a very sincere in his service and he is free from any punishment other than the punishment of removal from service and re-appointment as TC in scale 950-1500/-. Sri Guha after his re-appointment w.e.f. 17.11.86 as Ticket Collector and subsequently as LR TC for TTE he rendered service to the Rly. in an exemplary manner and in recognition to that he was awarded with rewards in a No. of occasion both in Rly. level and Divisional level for his highest earning.

From the whole record of service, it is felt that the DAR action caused to Sri Guha was an accidental issue in his service career. You are therefore requested to consider the appeal in question by Sri Guha conveniently so as to improve his further efficiency.

Sd/-Illegible,
For Divisional Rly. Manager(P)
N.F.Railway/Lumding.

Copy to : Sri P.K.Guha LR TTE/LMG
(Three CTTI/1/LMG) for
information please.

Sd/-Illegible,
For Divisional Rly. Manager(P)
N.F.Railway/Lumding.

Contd.../-

*Witnessed
ASAM
30/10
Advocate*

ANNEXURE-IIA

From : Pijush Kanti Guha, TTE,
N.F.Railway, Lumding.

To The General Manager, N.F.Railway,
Maligaon, Guwahati-781011.

Through : Proper channel.

Subject: Praying for re-instatement w.e.f. 22nd July,
1982 instead of re-appointment joined on 17th
Nov.88 and condonation the period of Unemploy-
ment as "Dies Non".

Reference: DRM(P)'s LMG's No.E-39-24 (TC) of 16.10.1986,
and my appeal No. NIL dated 13th Nov.89m 8th
May'90 28th Aug'91, 3rd Feb'92 16th Mar'92,
29th March-1993 and 18th April'96.

Sir,

With due respect, I am hereunder submitting
before your honour the following lines for your perusal
and sympathetic consideration.

That Sir, the order dated 22nd July, 1982
where by an order of dismissal from service with
immediate effect was passed by then the Addl. Division-
al Railway Manager, N.F.Rly. Lumding on the ground of
Mis-conduct for retention of Rly. quarter, T/34 B,
Silchar.

That Sir, I carried out my duties to the
entire satisfaction of my Superior, and on 18th Decem-
ber, 1977, I was promoted as a Guard posted at Badarpur
junction. In the meantime April, 1978, I developed
Hypertension due to outdoor duty. At this junction I was
asked to vacate the quarter allotted to me.

Contd.../-

*Missed
ABanner
30/10
Advocate.*

That Sir, I respectfully submit that in view of ill health and the object to improve my health, I decided to accept my earlier post as Ticket Collector at Silchar and I retained the Rly. Quarter at Silchar which had been allotted me before transferred to Badarpur.

Therefore, I submitted a representation to the authority seeking reversion to my earlier post at Silchar that I would not be out of Rly. shelter as well as I would get the better medical assistance in the Medical College, at Silchar as and when required.

That Sir, it was my ill-luck that after several correspondence was exchanged between me and authority I was posted as Ticket Collector at Karimganj junction, N.F.Railway instead of Silchar as prayed for and not even Badarpur where I was guard.

That Sir, thus on 20th January, 1979 was served with a charge sheet for retention of Rly. Quarter and thereafter on the basis of above said charge-sheet, an enquiry was held in 1982 in which the retention of quarter by me was considered to be act of insubordination and I was dismissal from the service.

That Sir, as a result, I took the shelter of Hon'ble Supreme Court where Railway authority had placed

Contd.../-

*Wish
Bham
20/10
Advocate*

before the Hon'ble Supreme Court to direct me to place a representation to them the General Manager with a prayer for re-instatement. But it was my ill fate that the Railway authority has placed before the Hon'ble Supreme Court a letter from the General Manager, N.F.Rly. station that punishment of dismissal had been changed to removal from service of the petitioner and offered fresh appointment. In view of this letter no order was passed in this special leave, petition which was accordingly dismissed. (a copy of order of Supreme Court enclosed)

That Sir, accordingly, I joined on 17th Nov. 86 as Ticket Collector at Badarpur Jn., N.F.Rly.

That Sir, now I respectfully submit that on the date of my dismissal, I had already put in about 20 years of service in railways with entire satisfaction for my sincere service to the administration.

That Sir, it is not out of place to mention herein that in support of above para for my sincere service to the administration before my dismissal from service and also after re-appointment in service, I received reward from the Railway.

Particulars are furnished below:

(Before dismissal)

Contd.../-

*Missed
29/10
Advocate*

(After re-appointment)

(3) Grant of Cash award Rs. 250/- for highest penalty cases for the month June/89 vide DRM(C) LMG's No.C/LM/OS/MISC/88 dt. 03.08.89 (Xerox copy enclosed)

(4) Grant of cash award Rs. 300/- for highest penalty cases for the month of July/89 vide DRM(C) LMG's No. C/LM/OS/MISC/88 Dt. 11.9.89 (Xerox copy enclosed).

A copy of letter D.R.M.(P) N.F.Rly. Lunding
No. ES/154-P(T) dt. 9.2.90 enclosed herewith, addressed
to G.M. (P) N.F.Rly. Maligaon.

That Sir, from the above fact and from service record revealed that I had only committed a mistake of non-vacation of Rly. Quarter which at that time I rather had to compelled to do so for my circumstances.

Contd.../-

Wilets
Diana
30/10
Advocate

That Sir, now, I would not get the proper pension after retirement from the service as according to my age now, I would not be able to fulfill the qualifying service needed for pension and I may face starvation for want of economical condition after retirement and also I would not be getting the due seniority for want of continuity of service for which I would not get the due promotion on account of re-appointment though I have served the Rly. administration sincerely.

That Sir, I would humbly pray to your Honour to condone me and you would kindly re-instate me w.e.f. 22nd July/1982 condoning the unemployment period in my service as "Dies non" before I joined as Ticket Collector as re-appointment w.e.f. 17th Nov. 1986 so that I may get the continuity of service with seniority.

That Sir, it is painful as well as my ill fate, I have not received any reply of my appeal till today from your end even after several reminders to your honour.

Under this, last part of my service life, I pray to your honour to pay personal attention in this regard and condone me sympathetically and re-instate me w.e.f. 22nd July 1982 from the date of dismissal for which act of kindness, I along with my family members will survive after superannuation and also remain ever grateful to you.

Contd.../-

*W. K. K. K.
30/10
Advocate*

Encl: 8(eight) Nos. Lumding

Dated : 25th November, 1998.

Yours faithfully,

Sd/-Pijush Kanti Guha
(Pijush Kanti Guha)

Copy to :

The General Manager (Commercial), Maligaon, N.F.Railway
for kind perusal of my above cited appeal for sympathetic
consideration and N/A please.

Encl: 8(eight) Nos.

Dated 25th November, 1998.

Yours faithfully,
(Pijush Kanti Guha)

Sd/-Illegible,
25.11.98
Travelling Ticket Inspector,
N.F.Railway/Lumding.

*Alleged
25/11/98
30/11/98
Advocate*

Contd.../-

ANNEXURE-IV

N.F.Rly.

Office of the Divisional Rly. Manger (P), Lumding.

No.ES/154-P(T)

Dt. 07.10.99

To

Shri P.K.Guha, TTE/LMG.
This CTTI/LMG.

Sub: Condonation of the period of unemployment as
"Dies Non".

Ref: Your Mercy appeal dtd. 28.11.98 addressed to GM/
N.F.Rly./MLG.

Please note that since you were removed from
service w.e.f. 26..7.82 and subsequently reappointed in
service as T.C. as fresh entrant w.e.f 17.11.86. As
such, the intervening period from 27.7.82 to 16.11.86
cannot be treated as 'Dies Non'.

—
This issues with the approval of the compe-
tent authority.

Sd/-Illegible
1.10.99
For D.R.M. (P) LMG.

*collected
30/10
Advocate*

Contd.../-

26 -

In The Central Administrative Tribunal

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C	ench

Guwahati Bench::Guwahati.

See
Chief Personnel Officer (A)
C. P. Rly. / Maligaon
Guwahati-11

O.A. No. 365/2000

Sri P. K. Guha

- Vs -

Union Of India & Others

In the matter of :

Written Statement on behalf of
the respondents.

*Filed by the respondents
through A. Chakrabarty
23/5/2001*

The respondents in the above case most respectfully beg
to state as under :

1. That the respondents have gone through the original application and have understood the contents thereof.
2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That the respondents begs to state that the application is barred by limitation and deserves to be dismissed on that count alone.
4. That in reply to statements in paragraphs 4(b) to 4(d) it is stated that the applicant was appointed as a Ticket Collector in the scale of Rs. 110-180/- w.e.f. 9-9-62 and was posted at Silchar under DRM(C)/Lumding. The applicant had submitted his option for the post of Guard/G and accordingly he was booked for training in Guardship

P/2.....

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du
Chief Personnel Officer (A)
L. P. Rly. / Maligaon.
Guwahati-11.

(Promotional course) at Zonal training School/Alipurduar. The training was started from 15-12-71 and the applicant successfully completed the training. Thereafter he was ordered for promotion as Guard (G) in the scale of Rs. 290-530/- by the Order No. E-39-9/1 PE. III(T) dated 3-12-73, but the applicant surrendered the promotion which was not accepted and he was promoted as Guard (G) and posted at Badarpur. He was spared from Silchar to carry out his promotion order and accordingly he joined at Badarpur as Guard (G) on 02-01-78. The applicant's joining in the post of Guard (G) w.e.f. 02-01-78 was informed to DS(P)/LMG by the SS/BPB his letter No. EPT/BPB/78 (III) dated 28-2-78.

It is stated that the applicant submitted a representation for surrendering the promotion of Guard (G) but it was rejected by ACDPS (G)/PNO and was communicated to the applicant by the letter No. E/39-9/1PE.III(T) dated 10-5-79. Thereafter the applicant submitted an appeal dated 8-2-80 which was accepted by the competent authority and he was posted as Ticket Collector at Karimganj by the Office Order No. E 39-24(IC) dated 30-6-80. But he did not carry out the above order dated 30-6-80. The applicant submitted an appeal for his posting either at Silchar or at Badarpur or at Lumding which was rejected for want of vacancy and was replied to him by the office letter No. ES-154-P(T) dated 4-8-80. Then the applicant carried out the above order and joined at Karimganj on 24-9-80.

5. That in reply to statements in para 4(e) to 4(f) it is stated that the applicant did not vacate the Rly. Quarter

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Chief Personnel Officer (A)
C. P. Rly. / Malgaon.

under his occupation after he was spared from Silchar.

A major penalty charge sheet dated 20/23-1-79 was served to him for non-vacation of Rly. quarters at Silchar and consequent upon the same he was dismissed from service w.e.f. 26-7-82 by DRM(C)/LMG's NIP No. CO/II/78 dated 22-7-82.

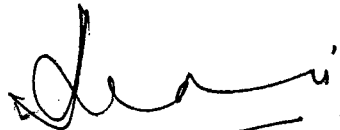
6. That in reply to statements in para 4(g) to 4(k) it is stated that in terms of Deputy Govt. Advocate, Ministry of Law and Justice, Department of Legal affairs, New Delhi letter dated 1-9-86 the applicant was appointed as Ticket Collector as fresh entrant with posting at Badarpur by the office letter No. E.39-24(TG) dated 16-10-86. The applicant resumed as Ticket Collector at Badarpur on 17-11-86 without any condition.
7. That in reply to statements in para 4(L) to 4(O) it is stated that the applicant submitted an appeal dated 25-11-98 for condonation of the period of un-employment as 'Dies Non' and the same was forwarded to (GM/MLG) for necessary order. The GM(P)/MLG by his letter No. F/74/III/46(T)/LMG dated 5-3-99 has intimated that the applicant was removed from service w.e.f. 26-7-82 and later on ~~xxx~~ he was appointed as Ticket Collector as fresh entrant w.e.f. 17-11-86. As such the intervening period between 27-7-82 to 16-11-86 can not be treated as 'Dies Non' and no further benefit under the rule is permissible. The applicant has been intimated the fact by letter No. ES/154-P(T) dated 1-10-99.
8. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

VERIFICATION

I, SRI A.K. NIGAM
working as CHIEF PERSONNEL OFFICER
N.F. Rly, do hereby verify that the statements made in
paragraphs 1 to 8 are true to my knowledge.

Guwahati

22 / 05 / 2001.



SIGNATURE

Chief Personnel Officer (A)
N.F. Rly, / Maligaon.
Guwahati-11.