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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 384/2000

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 384/2000

Gajendra Mishra Applicant.
Versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. D.C. Borah
Mr. D. Borah

For the Respondents.
R.L. Advocate.

NOTES OF THE REGISTRAR	DATE	ORDER
------------------------	------	-------

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

This application is in form but not in time
Condonation Petition is
filed / not filed C.F.
for Rs. 50/- deposited
vide IFG/30 No. 503824
Dated 8.11.2000

[Signature]
Dy. Registrar. 10/11/2000
[Signature]

Requisite Copies filed.

[Signature]

[Signature]
10/11/2000

17.11.2000

Copy of the order along with application has been sent to the D/Sec for issuing the to the L/Advocate for the Railway.
[Signature]

This application is directed against the order of transfer and posting of the applicant with the Office Order No. ES-56-G(T) dated 21.7.2000. The legitimacy of the order is being challenged as arbitrary, discriminatory and in violation of the established norms. Learned counsel for the respondents submitted that as the order of transfer and posting is passed in exigency of service and that too as far back as 21.7.2000 and there is no illegality or infirmity in the order of transfer, therefore no interference is required by the Tribunal. The applicant has already preferred an appeal before the authority against the order of transfer. In addition, the applicant ^{has} also questioned ^{the} correctness of the order of penalty imposed upon him. Since the appeal has been filed the authority concerned is required to consider and decide the issue. Mr. D. Baruah learned counsel for the applicant has drawn my attention to the Annexure-E to the O.A. containing the appeal dated 25.8.2000 addressed to the Divisional Railway Manager, N.F. Railway,

Contd..

O.A. 384/2000

14.11.00

Contd.

Lunding.

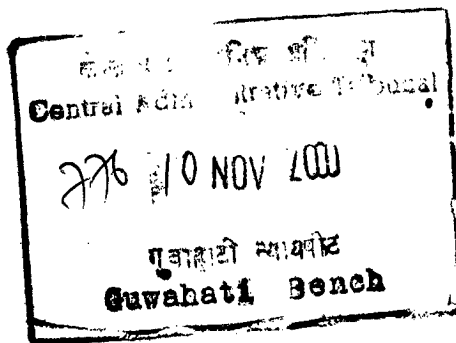
On hearing the counsel for the parties and on consideration of the materials on record the respondents are directed to dispose of the appeal of the applicant by giving a reasoned order preferably within three months from the date of receipt of the copy of this order. Till completion of the aforesaid exercise the order of transfer and posting dated 21.7.2000 shall be kept in abeyance.

With the above directions, the application is disposed of. No order as to costs.

Vice-Chairman

trd

(571)



IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BRANCH

Application Under Section 19 of the Administrative
Tribunal Act, 1985.

OA NO. 384 /2000

Shri Gajendra Misra

... APPLICANT

-Vs -

Union of India & Others.

... RESPONDENTS

I N D E X

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Date of filing
9-11-2000
Date of receipt
by post :

Sukip Ch. Borah
Alwar
BY Signature of Applicant

Registration No: 384/2000

Registrar

Filed by -
Gajendra Mishra
-- Applicant
Through -
Ajay Chandra
-- Advocate
9-11-2000

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BRANCH

Application Under Section 19 of the Administrative
Tribunal Act, 1985.

O.A. No. 384 / 2000

Shri Gajendra Misra

Son of Late Nageswar Misra

Village & P. O. : Loma Via Jhandahar

P. S. : Tisianta

District : Baisali, Bihar

Presently working as Deputy Station
Superintendent (Leave Reserve)

.... APPLICANT

- Versus -

1. The Union of India
represented by the General Manager,
N. F. Railway, Maligaon.
2. The Divisional Railway Manager,
N. F. Railway, Lumding.
3. The Senior Divisional Operation Manager,
N. F. Railway, Lumding.
4. The Chief Railway Operating Rly. Manager,
N. F. Railway, Maligaon.
5. The Chief Personnel Officer, NFR,
N. F. Railway, Maligaon.

... RESPONDENTS

Gajendra Mishra

X

1. Details of Application:

1. Particulars of the order against which the application is made :

a) The application is directed against the order No. ES 56-G(T) dt. 21.7.2000 issued under the order of the Divisional Railway Manager(P) N. F. Railway, Lumding transferring the applicant from the present place of posting as Deputy Station Superintendent, Guwahati Railway Station and presently working in the Cabin of New Guwahati Railway Station to a station named LJO (Longlousha Jhao) in the Hill Section of Lumding-Badarpur Railway line.

b) Order No. T/134/1/Sr DCM/LM Dt. 25.7.2000 issued by the Sr. Divisional Operational Manager, N. F. Railway, Maligaon reducing the pay of the petitioner to three stages lower in the same time scale of pay for 3(three) years with cumulative effect.

(c) The appeal petition filed by the Applicant against these orders before the Divisional Railway Manager (P), NF Railway, Lumding which is yet to be disposed of.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order as mentioned above against which he wants redressal is within the jurisdiction of the Tribunal.

Contd..... 3

3. Limitation:

The petitioner further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case

The humble petition most respectfully stateth:

- 1) That the applicant is a citizen of India as such he is entitled to all the right, privileges and protections guaranteed by the Constitution of India.
- 2) That the petitioner was recruited as Assistant Station Master in the year 1965 and joined as Assistant Station Master in Cabin of Guwahati Railway Station on 30th November, 1965.
- 3) That the petitioner was duly and timely promoted to Senior posts such as Sr. Asstt. Station Master and then Deputy Superintendent of Station as respective period of time without any impediments.
- 4) That during this long period of service i. e., nearly 35 years' of service, the petitioner served the cause and welfare of the Railway with utmost sincerity and dedication and that to the fullest satisfaction of the high-ups in the higharcy of the Railway authority.

5) That during this long period of service, the petitioner had never been charged for any dereliction of ~~service~~ duties or disobedience; on the other hand, he w could be able to earn the confidence and blessings of all the senior officers under whom he had to work.

6) That for sheer misfortune, the petitioner had to be victimised due to certain arbitrary, whimsical and malafide attitude of certain higher officer, may be due to some jealousy and with vested interests.

7) That, a most unfortunate incident happened at 1-20 A.M. of 15.9.99, when the Divisional Railway Manager, N. F. Railway, Lumding accompanied by 4(four) other officials, knocked door of the West Cabin of the New Guwahati Railway Station, levelled a baseless, imaginary false and fabricated charge that the petitioner was found in deep sleep during the duty Hours on a very colourful and impossible hypothesis, that it took nearly one or two minutes to open the closed door after knocking. But surprisingly enough the D. R. M., Maligaon could not sieze any sleeping materials such as (1) Tusak, (2) Blanket, (3) Pillow or any kind of bed-materials etc.

8) That, more and more, the petitioner had given a clearance pass-signal as required for a running train at 1-15 AM on 15.9.99 which can be ascertained

from the 'Register of ^{Training} Signal' maintained in the Cabin. ⁸
As such, no human being of at the age of 56 years' or so,
as the petitioner, could go to a deep-sleep within a
minute or so after undergoing such a risky strenuous
job like, train-passing.

9) That, thereafter, on the aforesaid- false,
vendedicated and fabricated and frivolous charge, the
petitioner was placed under suspension in terms of the
threatening word which the D.R.M. himself uttered on
that fateful day on 15.9.99 at 1-20 A.M.

ANNEXURE -- 'A'

10) That, the aforesaid suspension order was
revoked subject to drawal of Departmental proceedings on
21.7.2000.

ANNEXURE - & 'B'

11) That, during the pendency of his depart-
mental proceedings which is yet to be finalised the
petitioner got an order like a 'bolt from the blue'
by transferring him from his place of posting i.e. at
Cabin of the New Guwahati Railway Station to a tiny
Station Viz LJO(Longlonga Jhai) in the hill section of
Lumding-Badarpur line on the same day on which
suspension order was revoked.

ANNEXURE- 'C'

12) That, thereafter, to further astonishment
of the petitioner, he got another order passed by the

Contd...6

Sr. D. O. M., N. F. Railway, Lumding dt. 25. 7. 2000 by which the pay of the petitioner had been reduced to 3 stages lower in the same scale of pay with cumulative effect for three years on the Departmental proceedings which was pending for a longtime.

ANNEXURE 'D'

13) That, on immediately getting the above mentioned order the petitioner filed an Appeal Petition before the competent authority inter alia agitating against the punishment order as well as transfer order.

ANNEXURE - 'E'

14) That, the above-mentioned Appeal petition is still lying pending with the concerned authority.

15) That, the petitioner had to face two punishments for a non-existent, imaginary, speculative, false and fabricated offence brought against the petitioner out of ~~jealousy~~ jealousy, vested interest and with ulterior motive of harming the petitioner and at a time when the petitioner had just been preparing for and coming nearer to the date of superannuation.

16) That, more the mere, the petitioner had been completely demoralised and frustration had been hovering over his head, in such a way that instead of offering a dedicated and committed service to the authority during ~~his~~ this long Innings of ^{his} service, he had to ~~do~~

suffer humiliation for no fault of him which had induced the petitioner to go even on voluntary retirement leaving back a reasonable period of service nearly 4(four) years.

17) That, the petitioner most respectfully states that various kind of problems relating to his health including some ailments which normally peep at advanced age, begin to haunt. At the same time his wife is a chronic Asthamatic patient who wants a proper medical care and check-up very frequently. As the place to which the petitioner has been being transferred is located in the hill section of the Lumding-Badarpur line, the facilities for medical and health care which is generally required by an sufficiently ageing man are hardly been available. In that case, the petitioner had to suffer a very pathetic deterioration in the condition of his and wife's health which might result untimely end to life.

ANNEXURE - 'F'

(Wife's ailment certificate)

18) That, the petitioner's son who resides with him in joint family is a totally physically handicapped one. As such, if the petitioner's transfer order dt. 21.7.2000, transferring him to a far-off place like LJA is not rescinded or cancelled, the family of the physically handicapped son might have to face a situation which is beyond description and imagination.

ANNEXURE - 'G'

(Son's handicapped certificate)

5. Grounds of Relief with legal provision:

a) The petitioner most respectfully bet to state that the impugned order dt. 21.7.2000 transferring the petitioner after a long dedicated faithful and relentless service from the present post of Deputy Superintendent in the Cabin of New Guwahati Railway Station to a very far off and tiny station Viz LJA, in the Hill Station of Lumding-Badarpur line which is devoid of proper medical facilities which is ^a must for a man of old age ^h like the petitioner and his old and ailing wife may lead to an untimely end of his life alongwith that ^{of} his wife. ^h This said transfer order had been done without any due human consideration but done with an ulterior motive of malign and jealousy and is liable to be set aside.

b) The impugned transfer order has been issued in complete violation of the instruction issued under Memo No. E(NG)11/77/TR/21 dt. 10.6.77 which has been issued under caption 'Master Circular No. 24', a compendium on transfer of Non-Gazetted Railway Servants issued under Memo No. E(NG)1/90/TR/46 dt. 8.4.91.

ANNEXURE - 'H'

c) As the petitioner who was born as A. S. M. in the Cabin in the year 1965, was along working in the Cabin and on that fateful day i.e. on 15.9.99, the petitioner was serving as Deputy Superintendent, Cabin at New Guwahati Railway Station at which he was posted. That

as provided in the above mentioned instructions
(Annexure-'H') issued by the Railway Authority (Ref. Rule 103(51)- Indian Railway Establishment Code Vol. I, 1985), although certain categories of Railway employees holding sensitive posts and who come into contact with public or/and contractors/suppliers etc. should be transferred after every four years appending a list of Railway employees ~~xxxxxx~~ who fall under this category of transferable employees unambiguously excludes the Railway employees working in the Cabin at Serial 'J' at page- 5 of Annexure- 'H'.

d) The petitioner most respectfully begs to state that, as Railway employee working in the Cabin, the petitioner had never to come into contact with any public or/and contractors/suppliers etc. and as such the petitioner is well out of the list of transferable Rly. employees who are liable to be transferred as per this guidelines. It is therefore, stated that the impugned transfer order dt. 21.7.2000 which was issued transferring the petitioner is nothing but vindictive and malicious and in total violation of standing instructions in this regard, shall be liable to be set aside.

e) The impugned transfer order dt. 21.7.2000, which was issued at the direction and command of the Respondent No. 2 who was the man behind in false and fabricated, maligned and outrageous change of dereliction of duty by the petitioner, is definite a punishment

Contd....10

Gajendra Mishra

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transfer which was being issued at the instance of the Respondent No. 2 out of enraged and jealous state of mind.

f) The petitioner further begs to state that out of malice, whims and jealousy, the Respondents brought out a false and fabricated charge of dereliction of duty on the part of the petitioner, a suspension order dt. 15.9.99 (Annexure - 'A') placing the petitioner under suspension with immediate effect was issued subject to drawal of Departmental proceedings. But, thereafter, in a total confused state of mind, when the Respondent No. 2 & 3, had failed to complete the process of Departmental proceedings in stipulated time and after ~~maxxing~~ having realised what a folly they had committed, revoked the said suspension order vide order dt. 21.7.2000 (Annexure - 'B'). But that, the Respondent No. 2 was so vindictive and hostile to the petitioner that on the same day i.e. on 21.7.2000, the impugned transfer order dt. 21.7.2000 was issued transferring the petitioner to a far-off and tiny station like LJA by way of punishment, even though the so-called alleged Departmental proceedings were pending.

g) Further, that the Respondent No. 2 & 3 were infected with vicious and maligned attitude against the petitioner that the due and legitimate subsistence allowance at rate of 75% of the petitioner's pay & allowances as have to be paid as per existing circulars

Gajendra Mishra

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issued by the Railway authority from time to time, had not yet been paid to the petitioner which also amounts to another kind of punishment.

h) That, the petitioner most humbly begs to state that, another order dt. 25.7.2000 (Annexure 'D') had been issued by the Respondent No. 3 as most expectedly at the behest of Respondent No. 2, inflicting a major punishment by reducing the pay of the petitioner lowering the pay at 3(three) stages below in the time scale with cumulative effect w.e.f. 25.7.2000. Thus, the petitioner had to forbear 3(three) major punishments for a calculated, fabricated and malicious and unrealistic charge of dereliction of duty- the punishments viz.

1. Transfer to such a place where the petitioner had to face a dire threat endangering his and his wife's life also throwing the entire family of the petitioner's physically handicapped son into a turmoil of sudden collapse.

2. Withholding the due subsistence allowance at 75% of his pay and allowances leading to the petitioner to face a situation like "fish out of water" for the sake of acute financial earnings to meet the requirements in running day to day life including medical expenditure at such a later stage of life of both the petitioner as well as his wife.

Contd....12

3. The major punishment which was inflicted upon the petitioner by the Respondent No. 3, at the instigation of the Respondent No. 2, which is the most fatal whereof the petitioner, out of sheer frustration and depression had even prepared to go on voluntary retirement leaving back nearly 4(four) years of service.

Thus from the above misdeeds and jealous act of the Respondents No. 2 and 3, the very principle of "double jeopardy" as has been provided in the Constitution of India had been hit and as such the above impugned order dumping the petitioner into the untold misery and dejection, be liable to be set aside.

i) For that, after getting these aforesaid impugned punishment orders, for no fault of the petitioner and even after rendering dedicated and unqualified devoted service to the authority, the petitioner got totally perplexed and could not bear the shock out of them and fell in severe sickness due to which the petitioner had to go on sick-leave and is still on sick-leave and as such he was not released nor handed over charge of the Cabin of New Guwahati Railway Station where he had posted.

j) The petitioner, further, most respectfully begs to state that in a similar case of such transfer, the Hon'ble Central Administrative

Gajendran Mishra

Tribunal, Guwahati Branch had recently passed an order keeping the order of transfer in abeyance in Case No. 28/2000, between

Kamala Kanta Swargiary

-Vs-

Union of India & Others

the copy of which is annexed as ANNEXURE- 'I'.

k) Under the circumstances as stated ^{in the} above mentioned paras it is the humble *submission* of the petitioner that so-called arbitrary malicious impugned order dated 21.7.2000 passed out of sheer false and fabricated charges is prima-facie a colourful exercise of powers and in complete violation of standing circular by the Railway authority in this direction, be liable to be set aside.

1) The petitioner further most humbly begs to state that the impugned orders dt. 25.7.2000 passed by the Respondent No. 3 at the behest of the Respondent No. 2 basing upon a non-entitled, fancied and a frivolous charge against the petitioner of alleged dereliction of duty, and also in complete violation of "the Railway Servants(Discipline and Appeal) Rules, 1968 is nothing but a result of malign attitude of the Respondent No. 2 against the petitioner, be set aside.

m) Further, that the impugned order dt. 21.7.2000 reducing the pay of the petitioner by 3(three) stages below in the same time-scale has been passed in

total violation of Rule of natural justice as provided in the Article 14 of the Constitution of India, also a cryptio, sketchy and not a proper speaking order in its true sense of term which as per ample of judicial decisions in this respect shall be liable to set aside outright,

6. Details of Remedies exhausted:

The applicant declares that he had availed of all the remedies under the relevant Rules and submitted representation/ Appeals to the concerned competent authority who had not only disposed of the same but also paid an unsympathetic and defiant attitude.

7. Matters not previously filed or pending with any Court,

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

8. Relief sought:

In view of the abovementioned facts and circumstances, the applicant most respectfully prayed that Your Lordships be so gracious enough to admit the

application issue notice calling upon the Respondents to show cause as^{why} to the impugned orders dt. 21.7.2000 and dt. 25.7.2000 at Annexures- C & D respectively shall not be rescinded or quashed and after cause or causes if any shown by the Respondents, hearing the parties the following relief may be bestowed upon the petitioner.

(a) The impugned transfer order No. ES 56-G(T) dt. 21.7.2000 (Annexure- 'C') transferring the petitioner to a far-off and tiny station viz LJA (Longlongajhao) in the Hill Section of Lumding-Badarpur Railway line, be & rescinded/cancelled.

(b) The impugned punishment order dt. 25.7.2000 (Annexure- 'D') by which the pay of the petitioner had been reduced to 3(three) stages below in the same time-scale of pay with cumulative effect w. e. f. 25.7.2000.

(c) Necessary direction may be issued to the concerned authority to pay the due 75% of the pay and allowances which shall have to be paid to a suspended employee after a lapse of 3(three) months if the Departmental proceeding has been completed within the period.

9. Interim Relief :

Pending final decision on this petition the petitioner seeks the following interim relief:

(a) There is every likelihood that the Respondents No. 2 and 3, who are already pre-occupied with total anger and vengeance against the petitioner, may at anytime, go to the extent of releasing the petitioner and thereby forced the petitioner to undergo further deterioration of mental condition in so far as the impugned transfer order dt. 21.7.2000, unless the Hon'ble Court interferes. It is therefore, humbly prayed that the said impugned transfer order dt. 21.7.2000 may kindly be kept in abeyance till disposal of this petition.

(b) The above-mentioned punishment order dt. 25.7.2000 against which the humble petitioner preferred an appeal before the competent authority be stayed till the process of disposal of Appeal and Review petition before the competent authorities finalisation.

(c) Further, the humble prayer is that, the due subsistence allowance @ 75% of the pay and allowances to the petitioner be ordered to pay.

10. The application is being filed at the office of the Tribunal and the applicant undertakes to take all information from the office.

11. Particulars of Postal Order filed in respect of application fee.

Postal order No 26 503824 of Rs 5000
at G.P.O Guwahati.
drawn in favour of Registrar, Central Administrative
Tribunal, Guwahati Branch.

Contd.... 17

12. List of enclosures

1. Annexure - 'A' : Suspension order.
2. Annexure - 'B' : Revocation of Suspension order.
3. Annexure - 'C' : Transfer order dt. 21.7.2000
4. Annexure - 'D' : Punishment order dt. 25.7.2000
5. Annexure - 'E' : Appeal petition.
6. Annexure - 'F' : Wife's ailment certificate.
7. Annexure - 'G' : Certificate relating to Son's Handicappedness.
8. Annexure - 'H' : Instructions vide Master Circular.
9. Annexure - 'I' : Hon'ble G. A. T., Guwahati Branch's order in Case No. OA 28/2000.

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

I, Shri Gajendra Misra, Son of Late Nageswar Misra, aged about 56 years, working as Deputy Superintendent in the Cabin of New Guwahati Railway Station, now on sick-leave do hereby verify that the contents of para 2, 3, 4, 5, 6, 7, 8, 14, 15, 16, are true to my knowledge and belief and paras 1, 9, 10, 11, 12, 13, 17, 18, are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 9-11-2000
Place : Guwahati

Gajendra Mishra
Signature of the Petitioner

24/9/99

ANNEXURE 'A' 2

M. F. Rly.

STANDARD FORM-1.

STANDARD FORM OF ORDER OF SUSPENSION.
(RULE 5(1) OF THE RS(D&A) RULES 1968).

No. T/ MISC EX /LM (TD)

Dt. 15/09/99.

Name of the Rly. Admn. N.E. RLY/LMG.

Place of Issue :- Lumding.

ORDER.

Whereas a disciplinary proceeding against Gajendra Mishra, (Missra)/DY.SS
(Name & Design. of Rly. servant) is contemplated/pending. GHY, Wkg at NCC.Now, therefore, the undersigned (the Authority competent to place the
Rly. Servant under suspension in terms of the Schedules I, II and III
appended to RS(D&A) Rules, 1968/an Authority mentioned in provision to
Rule 5(1) of the RS(D&A) Rules 1968) in exercise of the Powers conferred by
Rule-4/proviso to rule 56(1) of the RS(D&A) Rules, 1968, hereby places the
said Shri Gajendra Missra, under suspension with
immediate effect/.It is further ordered that during the period this order shall remain
in force, the said Shri Gajendra Missra, shall not leave the
head quarters without obtaining the previous permission of the
competent authority.

*(By order and in the Name of the President)

(Signature)

(Name)

M.P. MEHTA, Sr. DOM/LMG.

Designation of the suspending authority.

(Secretary, Railway Board, where Railway Board is the suspending authority)

(Designation of the officer authorised under article 77(2) of the
Constitution to authenticate orders on behalf of the President, whereas
the President is the suspending authority).Copy to:- Shri Gajendra Missra, DY. SS/GHY Wkg. at NCC.(Name & Design. of the suspended Rly. servant), orders
regarding subsistence Allowance, Admissible to him during the period
of suspension will issue separately.

Copy to:- ET/Cadro at office, SM/GHY & APO/GHY (Bill office)

(M.P. MEHTA)

Sr. DOM/LMG.

By Order, Operations of...

M. F. Rly. Lumding

Certified to be true...

Sh.

NO.T/ 03 00/00 (20)

Date- 12/1/81

(Name of the Railway Administration) ~~Sub~~ ~~Name/No.~~

ORDER.

Whereas an order placing Shri... ~~Major Gen. Fisher, 5235/101 Reg. 24 500~~

(Name & Designation of the Rly.servant) under suspension made/

was deemed to have been made by U.S. Mail on 10/17/59

Now, therefore, the under signed the authority which made or is deemed to have made the order of suspension of any other authority to which that authority is subordinate) in exercise of the powers conferred by clause(c) of sub-rule (5) of Rule 5 of the RS(D&A) Rules, 1968, hereby revoked the said order of suspension with immediate effect.

Designation of the authority making this order.

Copy to:- Shri. Gajendra Mishra, Dy. Secy. Thro-SH(OA2.)/OMY.

Copy to: ET/III, ET/Bills & SM/ for information and
necessary action.

Copy to- NS/SEC, Sec, NS/ASL, SEC/AC, SEC/AM & SEC/UNIT (INTL
Office) for information & necessary action.

Copy to: WHIP/ADA BY ROUTE OF OFFICE for information.

CONFIDENTIAL

*** Divl Operations Manager

ॐ नमो भगवते वासुदेवाय ।

॥ श्रीगणेशाय नमः ॥

Exhibited to be true

(B) ANNEXURE C
Thru SS/GHY 20
25

NORTHEAST FRONTIER RAILWAY.

DRM(P)'s Office/LMG.

OFFICE ORDER.

Dated 21-7-2000

Shri Gojendra Misra, DY.SS/GHY at NGC in scale Rs. 6500-10500/- is hereby transferred and posted at LJO as DY.SS on administrative ground on his existing pay and scale vice vacancy with immediate effect.

Transfer pass, transfer allowance and joining time are admissible in this case.

This issues as per orders of competent authority.

(N.B. Das)
APO/1/LMG

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

No. ES-56-G(T)

Dated 21-7-2000

Copy forwarded for information and necessary action to:-

- 1) Shri Gojendra Misra, DY.SS/GHY at NGC thro:- CYM/NGC & SS/GHY.
- 2) SS/GHY, CYM/NGC & SS/LJO.
- 3) DAO/LMG.
- 4) SR.DOM/LMG for information in ref. to his office note No.T/Misc/LM(TD) dated 21-7-2000.
- 5) DOM/NGC at GHY & SR.ARM/GHY.
- 6) APO/GHY.
- 7) OS/ET/Bill at Office.
- 8) Spare copy for P/case and transfer allowance file.

(N.B. Das)
APO/1/LMG

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

Contributed to be one
Sh

15.9.99 Sus
21.7.2000 Sus

Received on
17/07/2000 at
YS/NGC's Office

ANNEXURE 'D'

21
Gajendra Mishra, Dy. SS/GHY
at West Cabin/NGC
Thru- YS/NGC

NOTICE OF IMPOSITION OF PENALTIES UNDER
RAILWAY SERVANTS DISCIPLINE & APPEAL RULES - 1968.

NO. T/134/I/Sr.DOM/LM.

Dt/- 25.7.2000.

From:- DRM(O)/LMG.

To :- ✓ Shri Gajendra Mishra, Dy. SS/GHY at West Cabin/NGC.
(Through):- YS/NGC.

With reference to your explanation to the Memorandum No. Even
dtd. 5.11.99 you are hereby informed that your explanation
considered satisfactory, hence not accepted.

Since the charges have been established by the P.O, I have decided
to impose upon you the penalty of reduction of your pay to three
stages lower in the same time scale of pay for 3 (Three) years,
with cumulative effect, S.I.S.

(M. P. Mehta)
SR.DOM/LMG.

Signature Designation and the
Disciplinary Authority.

W. Railway, London.

*When the Note is signed by an authority other than the
authority here quote the authority passing the order.
***Here quote the acceptance or rejection of explanation and the
penalty imposed.

Copy to : E/III/IV(T), E/Pass. section of this office and
SE/SN for information & necessary action.

INSTRUCTION :- (1). An appeal against this order filed to (Next
immediate superior to the Authority passing
the order). DRM/LMG.

Copy to : IRM(P)/ET/Cadre/LMG and APO/GHY for information.

SR.DOM/LMG.

Divl. Operations Manager
W. Railway, London

Authenticated to be true
Sh



To

The Divisional Railway Manager,
N.F. Railway,
Lumding.
(Through Proper Channel)

Subject:- Appeal against unjust and arbitrary punishment.

Reference:- Sr. DOM/LMG'S Notice of imposition of penalty vide letter No. T/134/1/
Sr.DOM/LM/ dtd. 25.07.2000 received on 17.8.2000.

Sir,

With due deference and utmost constraint, I have the honour to submit the prayer mentioned herein under for favour of your honours benign and judicious decision thereby exonerating me from the above cited unjust and undeserved punishment at the fag end of my service.

That, Sir, in support of submission regarding unjust and arbitrary punishment, ibid, I lay before your honour the following irrevocable infirmities and irregularities which rendered the proceedings of the inquiry under D.A. Rules totally void and ultravires.

That, Sir, although, my defense counsel informed the Inquiry Officer about his inability to attend the inquiry at LMG on 22.05.2000 owing to his preoccupation in the court of Labour Commissioner (Central) Guwahati requesting him to fix up another convenient date, the Inquiry Officer ignored the said request of the Defence Counsel and threatened me that he would continue, the inquiry and submit the exparte findings. Thus having no option left for me, I attended the inquiry on 22.05.2000 by submitting a written objection to the Inquiry Officer a copy of which, is enclosed for your kind perusal.

Sir, this arbitrary action of the Inquiry Officer has violated the stipulations of the DA Rules, in regard to affording reasonable opportunities to the charged official and as such the entire DA proceeding has been vitiated from the sanctity of the inquiry and is, therefore, liable to be treated as highly irregular and void ab-initio.

That Sir, I had exhaustively replied to the allegations of charges parawise in my defence dtd. 09.06.2000 on Article I & II and asserted therein that both the Article of charges had any foundation and deposition of the two prosecution witnesses were contradictory to each other, particularly in respect of finding me sleeping in that, witness No.1 Sri B.N. Bardoloi, TI/Guwahati deposed that he did not find me sleeping while the other witness, Sri B.C. Deka, Head Constable/RPF/ Guwahati deposed that he found me sleeping hence the allegation about myself being found sleeping remained not only uncorroborated in as much as the Inquiry Officer ought to have relied upon the deposition of Sri Bardoloi as he is a far more dependable witness due to himself being a very responsible and reliable senior subordinate while the other one is a R.P.F. Constable. A Photocopy of my above mentioned defence is enclosed for your kind perusal.

Authorized to be true
[Signature]

Further, Sir, since the alleged charges emanated from the surprise inspection Note No. Z/166IM/D/M dtd. 21.09.2000, the deposition of DRM/LMG before the Inquiry Committee and extending opportunity to the charged employee to cross-examine him was inescapably essential and failure of the Inquiry Officer in this regard has rendered the DA proceedings against me as incomplete and established beyond reasonable doubt about his prejudicial and premotivated bias against me which prompted him to hold me guilty of charges.

Surprisingly, Sir, it will be evident from the observation of the Inquiry Officer in regard to non-seizure of relevant Train passing documents and his assumption that all the missing gaps were filled up after said inspection was nothing but figment of his imagination and conjecture and not at all a substantiated fact.

It may be appreciated, Sir, that had there been any lacunae in the relevant Train passing documents, the highly responsible officer like DRM/LMG and Sr. ARM/GHY with T.I. Mr. Bardoloi must have seized them as a reliable document to establish charges against me.

Surprisingly enough, the Inquiry Officer arbitrarily observed in his findings against Article II, quote "only one charge is sustained and proved i.e., he used a separate piece of paper for taking down the train passing particulars which are actually required to be written on the Train Register instantly and immediately at the time of transaction/ communication of information etc." unquote.

Here also, the Inquiry Officer exposed himself as a prejudiced, imaginative and biased Inquiry Officer for the very fact that neither the said separate paper nor the Train Register were produced as exhibits which were essential documents to substantiate the aforesaid charge. My assertion in the enquiry proceedings that it has been the age old prevalent practices of ASM's all over the Railway system to note down the train passing particulars in a separate paper and enter them in train passing Register after couple of minutes to avoid erasing or overwriting. It was obvious that the Inspecting Officials viz. DRM/LMG and Sr. ARM/GHY with TI/GHY did not seize the separate piece of paper and the Train Register because of the very fact that they found the Train Register updated during their Inspection.

The conjecture of Inquiry Officer about non-seizure of the said Train Register and other relevant document was unsustainable rather fallacious and holding me responsible on this account was wholly unjustified because the law of the land, particularly the DA Rules 1968, ammended from time to time do not permit any Inquiry Officer to declare the charges as established on **assumption** and **presumption**.

Lastly I would crave your honour's indulgence to humbly submit that during my long 34 years of service, I was never charged for any dereliction of duty or disobedience. On the other hand I was the lone ASM not only on duty but also worked round the clock for three days in NGC Cabin and passed 16 trains during that period with the direction of the then Area Officer, Sri K.K. Choudhary and Sri G.N. Bhattachariya, the then Area Manager. To my good luck, I was able to earn the confidence and blessings of all the officers under whom I had the privilege to work including Sri Kranti Kumar, Sri A.K.Ghosh, Sri K.K.Choudhary now OSD/Safety/Railway Board, Sri M.C. Srivastav presently AGM/NF RLY/ Maligaon.

I am confident that your honour will please agree that keeping me under suspension for the alleged fictitious charge, *ibid*, that, too, on half of the basic pay for the entire period of 310 days was wholly unjustified and stemmed from bias and pre-motivation. This sort of humiliation at the fag end of my service has not only humiliated me to the worst extent but had also caused unwarranted serious mental agony and pecuniary hardships during these 310 days of suspension.

Under the above circumstances, I would most humbly urge on your honour to be gracious and benign enough to exonerate me for the unfounded and unestablished charges and treat the said suspension as null and void and cancel my transfer order thereby allowing me to go on premature retirement to retrieve my lost prestige and dignity and regain my mental peace of mind at this old age. I have about four years left for retirement on superannuation.

Yours faithfully,

Enclo:-(i) A photocopy of my objection
Notes to I.O. dtd. 22.05.2000
- - (ii) A photocopy of my final
defence dtd. 09.06.2000

(GAJENDRA MISHRA)
LR-DY.SS/GHY at NGC

A copy in advance is forwarded to Sri V. Subramanyam, DRM/LMG for favour of his perusal and early action thereon.

(GAJENDRA MISHRA)

Forwarded
12/18/1900
The Board of Trustees
of the University of California

Advised to be full

ANNEXURE 'F'

Dr. Kamal Kumar Jain
M.B.B.S., M.D.

Residence :

E-3, (2nd Floor) Sagar Apartment
Bye Lane Vrindavan Market
Sati Jaymati Road, Athgaon
GUWAHATI - 781 001
(t) : 543568

To whom it may concern

This is to certify that-

Shrimati Seshmani Mishra, 52 yr

wife of - Rajendra Mishra is

a patient of - Bronchial

asthma & she needs constant-

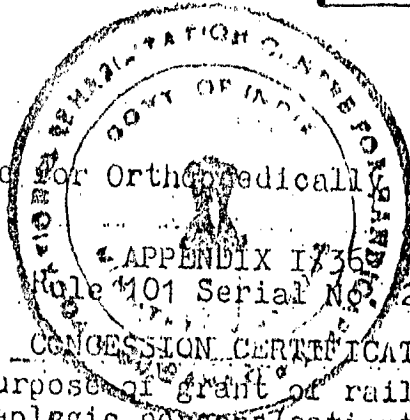
medical check up.

K. K. Jain
2/11/2000
Dr. Kamal Kumar Jain
M.B.B.S., M.D.

certified to be true
[Signature]



Concession Certificate for Orthopaedically Handicapped Paraplegic Person/Patients-



Form for the purpose of grant of rail concession to Orthopaedically Handicapped/Paraplegic persons/patients to be used by the Govt. Doctor.

This is to Certify that Sri/Pat/Miss RANISH PR. MISHRA whose particulars are furnished below, is bona fide orthopaedically Handicapped/Paraplegic Persons/Patient and cannot travel without the assistance of an escort.

Particulars of the Orthopaedically Handicapped /Paraplegic person/Patient.

(a) Address

:- RAILWAY COLONY,
BAMUNIMATARI ENRY-21

(b) Father's/Husband's Name: :- SRI. GATENDRA MISHRA

(c) Age:- 28 yrs. (d) Sex:- MALE

(e) Personal Identification Marks. 1. A black mole on the forehead
2. A scar on the left side of nose

(f) Signature or left handthumb impression of the person/patient

:- Ranish Kumar Mishra

(g) Nature of Handicapped

:- Temporary/Permanent

(h) Cause of disability in functional capacity:- Stroke in the left lower limb

Date:- 22/1/97

Place:- Guwahati

Clear Seal of Govt. Hosp./Clinic.
Strike out where not applicable:-

Signature of Govt. Doctor.

& (R. G. MAZUMDER)

1. Certificate should be issued only to those Orthopaedically Handicapped/Paraplegic person/patients who cannot travel without the assistance of the escort.

2. In the case of temporary handicapped/paraplegic persons, the Certificate will be valid for three years or less as certified by the Doctor from the date of issue. However in the case of person having permanent disability, the certificate will remain valid for whole life of the person. A true copy or a photostatic copy of this certificate shall be accepted for the purpose of grant of concession. However, the original certificate will be produced for inspection at the time of purchase of concession tickets and when demanded during the journey.

3. No alternation in the form is permitted.

Continued to be true
[Signature]

14.02.1955 24
No. 150/1/ (2S)(C) 15.

Malligaon, dated, 15-2-95

All Heads of Deptt.
All DPs.
All Deptt. & Asstt. Officers of
Non-divisionalised Offices.

Genl. Secy./NFIEN.
" " /NFIEN.

CS/INSTRUM. F. ZONE/Malligaon.
Malligaon.

Sub: Transfer of Group 'C' & Group 'D' Railway
Servants - MASTER CIRCULAR.

A copy of MASTER CIRCULAR NO.24 on the above subject received
under Rly. Board's letter No.E(NG)1/90/TR/46, dt.8-4-91 is forwarded herewith for
necessary guidance please.

Ms:-As above.

for CHIEF PERSONNEL OFFICER, M.R.

Sub: Transfer of Group 'C' & Group 'D' Railway
servants - Master Circular.

The instructions issued by the Railway Board from time to time
the subject of transfer of non-zotted Railway servants are contained in several
letters. It has now been decided by the Railway Board, to issue a consolidated
Master Circular, as below, incorporating all the instructions issued so far on the
subject for the information and guidance of all concerned.

2. Transfer means the movement of a Railway servant from one
headquarter station in which he is employed, to another such station, either

- (i) to take up the duties of a new post; or
- (ii) in consequence of a change of his headquarter.

(Ref: Rule 103(51) - Indian Railway Establishment Code Vol.I
1905).

Comp.
10/2/95
24/1/95

Contd...2.

authorized to be true

[Signature]

3. Transfer may be ordered either on a temporary basis or on a basis otherwise than temporary.

3.1. Moreover the transfer of a Railway servant is temporary, the same should be mentioned in the transfer order.

4. Transfers otherwise than on temporary basis are necessitated by administrative requirements or occasioned by consideration of requests received from the Railway servants. Transfer is not a punishment.

4.1. Transfer of a Railway servant, ordered as a result of his promotion, should be carried out by the employee as early as possible in his own interest.

4.2. (1) Whenever any curtilage in a cadre takes place and Railway servants have to be transferred, as a general rule the junior most employee should be transferred first.

(Ref: Board's letter No.E(NG)66/TR2/20 dt.27-7-66).

(11) If there is closure of activity on a particular station on a Railway like closing down a shed or a particular establishment necessitating transfer of Railway servants en masse, the matter should be discussed with the Labour, to help in proper arrangements being made for dealing with the human problems that might arise in such cases.

(Ref: Board's letter No.E(NG)11/77/TR/21 dt.10-6-77).

4.3. (1) Railway servants holding sensitive posts, and who come into contact with public or and contractors/suppliers etc., should be transferred out of their existing post/station as the case may be, after every four years.

(11) Posts in the different departments which have been identified as sensitive posts for the purpose of periodical transfer are as follows:

A. Accounts Department:

1. Staff passing contractors'/Firms' bills;
2. Staff dealing with claims/refund and wharfage/demurrage for general public;
3. Cheque writers;
4. Cashiers;
5. Staff dealing with Pension/PF claims;
6. Staff dealing with Passes/permissions of unpaid wagons; and
7. Staff dealing with post audit of paid vouchers and issue of acquittances.

Contd...3.

Advised to be true

- 3 -

B. Civil Engineering Department:

1. IOWs/PWIs in charge of stores;
2. Bill Clerks;
3. Material checking Clerk, Store Clerks;
4. Time Keepers;
5. Works Accountants;
6. Assistant Superintendents/Superintendents in charge of Stores Accounts;
7. Staff dealing with transfers/promotion/sanction of loans and advances/issue of Passes and PTOs, maintenance of leave accounts and local purchases; and
8. Draftsmen/Estimators in Divisional Drawing Office checking Contractors' bills.

C. Commercial Department:

1. Goods/Parcel/Baggage Clerks;
2. Enquiry/Reservation/Booking Clerks;
3. Ticket Collector/TTEs/Conductors;
4. Reservation/Goods Supervisors;
5. Staff dealing with Wharfage/Dormage cases;
6. Staff dealing with Goods/Parcel handling contracts and catering contracts;
7. Staff dealing with City Booking/Ext-agencies;
8. Staff dealing with claims; and
9. Sectional CTS & Sectional Claims Inspectors.

D.

1. Stores Clerk;
2. Establishment Clerk/Time Keepers;
3. Assistant Superintendent/Superintendent Stores in Divisional Office;
4. Assistant Superintendent/Superintendent Works in Divisional Office;
5. Air-conditioned coach in charge/coach attendant;
6. Foreman in charge of Shop;
7. Milage Clerk/Shop Notice Clerk;
8. Staff dealing with Tender/Contracts; and purchasing stores.

Contd...4.

B. Mechanical Department

1. Store Clerk;
2. Bill Clerk/Establishment Clerk;
3. T.
4. Shop Assistant / Fuel Issuer / Fuel Clerk in Shop;
5. Millage Clerk / Shop Notice Clerk in Shop; and
6. Staff dealing with Tender/Contracts, purchase of stores.

C. Medical Department

1. Pharmacists looking after the drug stores;
2. Staff in charge of Kitchen Stores; and
3. Staff writing out Sick/Fit certificates.

D. Personnel Department

1. Bill Clerk;
2. Staff dealing with settlement cases/advances; and
3. Cadet Section staff dealing with recruitment/promotion/transfer.

E. Stores Department

1. Tender Clerk/Disposal Clerk, Purchases Section in charge (Head Clerk/Assistant Superintendent), Demand Clerk dealing with operation of rano contract.
2. Assistant Comd. Tender Clerk/Tender Opening Clerk/Supply Clerk/Superintendent CTC.
3. Section in charge (H.C./A.S.), Registration Clerk in charge of general registration;
4. Sales section in charge (ASKP/DSKP) and staff working under them;
5. Receipt/Issue Supervisor Incharge (Ward Keeper, ASKP/LSKP) and Group 'C' staff working under them, local purchase staff;
6. Scrap yard/Returned Store Section Incharge, (ASKP/DSKP) Ward Keeper, and Group 'C' staff working under them; and
7. Staff in Purchase Section of EA/DHM or DCOS of Division.

F. P. R. Department

1. Inspectors/Staff dealing with revenue earning, Commercial Publicity.

Contd...5.

-5-

J.

Station Personnel

1. Station Administration Unit;
- ✓ 2. Stg/ASMs not working as Cabin St/ASM;
3. Station Clerk;
4. Train Clerk dealing with package work;
5. Stock Controller/Coachman; Controller in Control Room;
6. Staff on desks dealing with mileage bills, operating restrictions, distribution of uniforms, traffic etc and charge sheets, wagon allotment section dealing assistants in the office of DOSs/DCSs; and
7. Staff on desks dealing with Commodity Section and Stores Section in the COFSs office.

K.

1. Sts/TCs in charge of Stores;
2. Bill Clerk/The Cooper/Establishment Clerk;
3. Stores Clerk/Stores Issuer.

(Ref: Board's letter No. E(RG)II/79/TH/95 dt. 27-4-79, 1(RG)II/70/14/1 dt. 7-2-80, 3(RH)I/80/TH/23 dt. 22-8-80, 51-12-81, 12-86, 16-10-87 and 1(RG)I/57/TH/3/11-14/01/88 dt. 27-3-89).

4.4. For clerical staff working on sensitive posts/posts, rotational shifting from desk to desk will meet the requirements of periodical transfer.

(Ref: Board's letter No. E(RG)II/79/TH/95 dt. 27-4-79).

4.5.

Transfers are ordered in certain cases at the instance of the Vigilance Organisation/Special Police Establishment, to facilitate proper enquiries being made etc. In order to ensure that there is no harassment and/or victimisation on this account, the DRI in respect of Headquarters controlled staff and the CIO in respect of Headquarters controlled staff may hear representations of genuine grievances, if any made, before a final decision is taken to effect the transfer. This procedure will not, however, apply to the cases of transfer of office bearer(s) of the recognised Union, who are governed by a separate set of orders.

(Ref: Board's letters No. E(RG)II/77/TH/112 dated 6-2-78 and 27-5-78).

Contd...6.

4.6. As a measure to prevent a direct possible malpractice in the transfer, whenever the transfer order of a railway servant issued by the competent authority on the basis of complaint, Vigilance/CV enquiries etc., is proposed to be cancelled without the railway servant having actually carried out the transfer order or it is proposed to bring back the employee concerned to the original place of posting within one year, the competent authority should obtain the approval of the next higher authority, providing the full details of the case to the said higher authority and the reasons which justify the change in the original transfer orders. It should also be kept in view that a railway servant undergoing penalty as a result of a vigilance case is not posted in any post involving public dealings especially in areas prone to corruption.

(Ref: Board's letter No.E(NG)I/60/TR/28 dt.21-8-68).

4.7. Ticket checking staff, detected indulging in malpractices, should be sent on inter-divisional transfer, as a matter of policy. They may be transferred to an adjoining Division on the same Railway. They may also be transferred to a Division on another Railway adjoining their parent Railway, if they make a request to that effect. The ticket checking staff, who have been so transferred out of the existing Division on complaints of corruption and later exonerated or awarded a penalty of censure should not be brought back to the parent Division, even if they so desire.

(Ref: Board's letter No.E(NG)I/60/TR/28 dt.19-2-66).

G.Ms may, however, personally review cases of inter-divisional transfers of Ticket Checking Staff orders on suspicion of mal-practices if after proper enquiry, the staff are fully exonerated. The review will be done personally by the G.Ms and the powers in this regard should not be delegated to any other authority. Where the transfer has been ordered at the instance of the Board, a reference to the Board is necessary.

(Ref: Board's letter No.E(NG)I/60/TR/28 dt.13-4-69).

4.8. Transfer of railway servants from one unit of seniority to another unit of seniority on administrative grounds except on promotion/and to shrinkage of cadre/legal requirements etc., should be ordered rarely and in public interest only e.g. in cases where the conduct of an employee is under investigation or where in the interests of the Administration it is considered that the Railway servant should be kept at another station. In such cases of transfer, the Railway servants so transferred are given protection of seniority, causing hardship to the staff awaiting promotion in the unit to which they have been transferred. Therefore, such transfers should be ordered only when absolutely inescapable. Where an enquiry is pending against the Railway servant, the same should be processed expeditiously and the matter finalised as early as possible, so that the Railway servant may be transferred back to his original unit of seniority.

(Ref: Board's letter No.E(NG)I/60/SI6/28 dt.25-1-69).

Contd...7.

5.

Transfer of Railway servants on consideration of their requests

Transfer of Railway servants on consideration of their requests within the same unit, i.e. seniority does not entail loss of seniority to the Railway servants concerned. The requests are normally based family convenience or educational facilities, etc. Such requests should be registered as per the practice already prevalent and processed. Where there are unpopular stations from which the Railway servants have sought transfer, it should be ensured that such stations are manned to the full based strength by prescribing a minimum period of service at such stations as a prerequisite to transfer to popular station by registration.

(Ref: Board's letter No. E(NC)II/71/TR/14 dt. 1-10-71).

5.1. Where the requests involve transfer to a different unit of seniority/another Division on the same Railway/another Railway, transfer should be ordered after clearance from all sources and acceptance by the new unit. Such requests should be considered only from the Railway servants, who are in the initial recruitment grade(s) or in the intermediate grade(s), to which there is an element of direct recruitment. Such employees (those working in intermediate grades) when transferred should be set off against the vacancies reserved for Direct recruitment in the new unit. Railway servants seeking inter-Divisional, inter-Railway transfers need not possess the educational qualification(s) prescribed for direct recruitment. No transfer or personal requests should be ordered in intermediate grades where all the vacancies are filled entirely by the promotion of staff in the lower grade(s). Requests from Railway servants recruited against the Sports Quota for inter-Railway transfer, in any grade, should not be entertained.

(Ref: Board's letters No. E(NC)65816/31 dated 30-9-65, 29-1-66, 1-4-66 and E(NC)II/71/TR/1 dated 31-3-71, E(Rsp)1/29AE/12/C/115 dated 7-6-68).

5.2. Railway servants transferred at their request from the unit of seniority to another should be assigned bottom seniority in the relevant grade on the date they join the new unit i.e. they should be placed in the seniority list below all the existing staff, both permanent and regular in the relevant grade on the date they join the new unit irrespective of their length of service and status in the former unit.

(Ref: Board's letter No. E(NC)II/71/TR/1 dt. 31-3-71).

5.3. Apart from cases of individual requests made by the Railway servants, cases of two employees of different Divisions/Railways working in the same grade, submitting joint applications or separate individual applications seeking mutual transfer may also occur. Where such requests are allowed after processing the necessary formalities, the senior of the two employees will be assigned the place of seniority vacated by the other person i.e. the junior, who will be allowed to retain his former seniority and fitted into the seniority in the new unit below all the persons having the same seniority.

(Ref: Rule 230.R.I 1995 Edition).

Contd...0.

- 34 -

5.4. Transfer of a Railway servant allowed between a Company Railway servant and a Government Railway servant. It may also be allowed in intermediate grades, where there is no element of Direct recruitment.

5.5. To mitigate the hardships caused to the Railway servants seeking transfer from one unit of seniority to another, in the shape of loss of seniority, a Coll should be set up in the Headquarters Office of each Railway, where requests from Railway servants for transfer from one unit of seniority to another should be registered. Requests involving inter-Railway transfer should, thereafter be advised to the other Railways concerned, which should arrange to publish the requests in the Railway Gazette for the benefit of those who may be interested in mutual transfer, to enable them to apply. This will help in locating applicants, if any, in the other Railways with matching seniority, for purposes of consideration. The requests should be registered and processed on the basis of seniority among applicants once annually and the Coll should function as a clearing house for sorting out the transfers on the basis of mutual exchange.

(Ref: Board's letter No.E(NG)11/71/TR/1 dated 31-3-71).

5.6. While placing incident with the Railway Recruitment Boards, the extent of additional candidates required on the basis of the number of Railway servants in various categories who have applied for transfer to the other Division/Railways should be taken into account and recruited so that transfer may take place without hitch in the availability of replacements.

(Ref: Board's letter No.E(NG)1/70/RM/31 dt.11-1-71).

5.6. Transfer of Railway servants who are office bearers of recognised Trade Unions:

Any proposal to the transfer of an office bearer of a recognised Trade Union including its branches should be advised to the Union concerned and the Union should be allowed to bring to the notice of the Divisional Office and if necessary, later to the G.M. any objection that they may have to the proposed transfer. If there is no agreement at the lower levels the decision of the G.M. will be final. Sufficient notice should be given to the Union of a proposed transfer to enable the Union to make alternative arrangements for carrying on the work or for making a representation against the proposed transfer.

(Ref: Board's letter No.E(L)6041/31 dated 19-2-60).

6.1. In the case of usual periodical transfer, where it is decided, after consideration of the appeal by the General Manager, not to cancel the order, the transfer may be allowed to stand till the next election of the Union office bearers, subject to a maximum period of one year. This procedure will apply only in cases of periodical transfers as distinct from transfers ordered on other special considerations in public interest.

(Ref: Board's letter No.E(L)61/IE1/43 dt.31-7-61).

Contd..9.

(a) When a transfer is necessary to comply with statutory obligations under the RHA, the Railway should comply with the usual procedure, by conveniently planning the transfer.

(b) For transfers not in accordance with statutory obligations under the RHA, it is enough if the Union is only informed about the proposed transfer and it is not necessary to consult the Union unless the Railway wishes to refuse promotion. A senior employee need not be transferred in preference to the one practised in order to accommodate the Union office bearer at the same station. Transfer of an office bearer who has been reached surplus at a particular station should be treated on the same lines, as given herein.

(Ref: Board's letter No. E(L)6001/113 dt. 6-10-64).

6.3. (a) If an office bearer of the Union ^{has} to be transferred because of involvement in a SPE case, the Union concerned may only be advised of the transfer. Any representation the Union may make may be considered, but it is not necessary to keep the transfer in abeyance for the purpose.

(Ref: Board's letter No. E(L)6001/113 dt. 21-11-64).

(b) In case of transfer from one section/Department to another in the same office there is no need to give notice to the Union before hand. However, the Union may be informed about the transfer at the time of effecting such transfers. For transfers to another office located at a distance but within the same area at the same station, usual procedure may be followed.

(Ref: Board's letter No. E(L)6001/113 dt. 21-11-64).

(c) The usual procedure should be followed for transfers from one administrative jurisdiction to another at the same station i.e. say transfer from a Workshop to a loco shed.

6.4. The usual procedure need not be followed in a case where the transfer of an office bearer of the Union is considered necessary by the SPE/Vigilance organisation of the railway. In such a case, papers should be seen by the G.M. personally, before the transfer is decided. The Trade Union need not be given any notice but should only be advised of the transfer. The same procedure should be followed in the cases where the Civil and Police authorities recommend immediate transfer of the railway servant, who is an office bearer of a recognised Union, on the ground that the individual is indulging in undesirable activities, detrimental to the efficient functioning of the Railway.

(Ref: Board's letter No. E(L)7501/16 dt. 2-8-75).

Contd...10.

36
41
contained in...
strict compliance.

(Ref: Board's Letter No. 15/1/79/UTR/1 dt. 16-1-80).

7.

Transfer of Railway Servants

Any Railway servant employed in the Department shall not be eligible for employment in any other establishment without the previous consent of the Head of the Department in which they are employed. That such prior consent, the Head of an Office or Department shall not confer anyone, either temporarily or permanently, if he knows or has reasons to believe that he has no belongings to another establishment under the Government. A Railway servant who takes up an employment without the consent of the Head of the Department, committing breach of discipline and is liable to be punished. DMC concerned may, however, transfer Gr. 'D' Railway servants (Pons, Chappan, Khatias, Unskilled and Semi-skilled etc.) from one Department to another or from one Division to another without consulting the Head of the Department.

(Ref: Board's Letter No. 40/1/79/4 dated 18-7-66 and Para 26-3.1. 1985 Edition).

8.

Transfer of Railway Servants

to another, the transfer document of the Railway servant concerned, complete in all respects, should be forwarded within ten days from the date of his relief, to the office to which he has been transferred, ensure that no hardship/difficulty is experienced by him due to non-receipt of the documents.

(Ref: Board's Letter No. 84/ACU/21/2 dated 25-8-84).

9.

Transfer

Ordinarily, a Railway servant shall be employed throughout his service on the Railway or the Railway establishment to which he is posted on first appointment and he shall have no claim, as of right, for transfer to another Railway or establishment. In the exigencies of service, it shall be open to the President to transfer a Railway servant to any other Department or Railway or Railway establishment including a project in or out of India. In respect to Group 'C' and Group 'D' Railway servants, powers to transfer shall also be exercised by the General Manager or by a lower authority to whom the powers have been delegated.

(Ref: Para 26-3.1. 1985 Edition).

7.1. A competent authority may transfer a Railway servant from one post to another, provided that the Railway servant shall not be transferred substantively to one, except in a case of dual charge, appointed to officiate in a post carrying pay less than the pay of the post in which he holds a lien or would hold a lien had it not been suspended. This provision will not, however, apply, where a Railway servant has to be transferred.

- (1) On account of inefficiency or misbehaviour or
- (2) on his written request.

(Ref: para 27-R.1. - 1995 Edition).

9.2. High-class transfers of Railway servants should be kept down to the minimum necessary in the interests of administration.

9.3. While transferring Railway servants from one station to another, the fact of an employee's spouse having been posted at a particular station should be kept in view. Requests for transfer to a station where a Railway servant's spouse is working should also be considered sympathetically as far as possible, having regard to the administrative convenience and the merits of each case.

(Ref: Board's letter No. E(NC) 17/77/TH/19 dated 1/10/71 & E(N) 1/75/TH/14 dated 6-1-80).

9.4. Views of the Supervisory staff should be given due consideration, wherever possible, while considering transfers of Railway servants working under their charge.

(Ref: Board's letter No. E(NC) 1/81/IM1/246 dt. 8-12-81).

9.5. Transfers of Railway servants to Special and Scheduled Caste employees belonging to these categories in their initial appointment/promotion/ transfers should as far as practicable be confined to their native district or adjoining districts or places where the Railway Administration can provide the quarters subject to their eligibility.

(Ref: Board's letters No. E(SCT) 70CM15/3 dt. 19-11-70, E(SCT) 74CM15/58 dt. 14-1-75, 76-E(SCT) 15/25 dt. 6-7-79 & 85-E(SCT) 1/43 dated 22-12-85).

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10. The Master Circular for Railway Services, and the members of the Railway Protection Force and Railway Protection Special Force is governed by the provisions of the R.P.F. Rules, 1937.

11. (i) While referring to this Master Circular, the original letters mentioned herein should be read for a proper appreciation. The Master Circular is only a consolidation of the existing instructions and should not be treated as a substitution to the original circulars. In case of doubt, the original circulars should be relied upon as authority;

(ii) The instructions contained in the original circulars referred to, have only prospective effect from the date of their issue, unless indicated otherwise;

(iii) If any circular on the subject, which has not been superseded has been lost sight of in the preparation of the Master Circular, the said circular which has been missed through oversight, should not be ignored, but should be treated as valid and operative.

12. The letters and other references on the basis of which, the Master Circular has been prepared are indicated in the ~~enclosure~~ enclosure.

Sd/-
(K. D. LALL.)
JOINT DIRECTOR, ESTABLISHMENT (N)
RAILWAY BOARD.

AB/16-9.

Continued to be true

[Signature]


In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 28/2000 OF 199

Applicant(s) Kamala Kanta Sarma
Respondent(s) Union of India and Ors.
Advocate for Applicant(s) P. K. Sarma
Advocate for Respondent(s)

K. L. Advoca.

Notes in the Registry	Date	Order of the Tribunal
	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>

Admitted to be true
JH

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Date	Order of the Tribunal
2.2.00	<p>pf, with direction. According to the applicant he submitted representation dated 5.11.1999. The Divisional Railway Manager (P), N.P. 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>

Sd/MEMBER (Adm)

Certified to be true Copy
 प्रमाणित प्रतिलिपि

Section Officer (J)
 अनुमान शास्त्र, न्यायिक शाखा
 Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय
 Guwahati Bench, Guwahati-8
 गुवाहाटी न्यायालय, गुवाहाटी-8

Certified to be true

