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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P.-14/2000 order sheet Pg-1
allowed date-11/01/01

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R.A/C.P No.
E.P/M.A No. 14/2000

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 6/2000

OF 199

Applicant(s) Sri Bipin Kumar Mukherjee

Respondent(s) Union of India and Ors.

Advocate for Applicant(s) Mr. M. Chandra.

Mrs. N. D. Gogoi

Advocate for Respondent(s)

Mr. G. N. Chakrabarty.

Rd. Advocate.

| Notes of the Registry | Date | Order of the Tribunal |
|--|---------------------------------|--|
| <p>19.1.2000</p> <p>Issue notice on the respondents to show cause as to why this application should not be admitted. Returnable by four weeks.</p> <p>List on 21.2.2000 for show cause and consideration of admission.</p> <p>20.1.2000</p> <p>Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D</p> | <p>19.1.2000</p> <p>21.2.00</p> | <p>Issue notice on the respondents to show cause as to why this application should not be admitted. Returnable by four weeks.</p> <p>List on 21.2.2000 for show cause and consideration of admission.</p> <p>Application is admitted. Issue usual notices. Returnable by 22.3.00.</p> <p>Notice is duly served. No show cause filed. Pendency of this application shall not be a bar for the respondents to give relief to the applicant.</p> <p>List this case before the Division Bench on 22.3.00 for filing of written statement and order</p> |

Member

Member

22/2/2000

O.A. 6/2000

Notes of the Registry

Date

Order of the Tribunal

Notice issued to the
Respondents vide
D.No. 188 to 191 Dtd.
20.1.2000.

22.3.00

No written statement has been
submitted. Mr. G.N.Chakraborty prays for
adjournment on behalf of Mr. M.Chanda,
learned counsel for the applicant.

20.1.2000.

List for written statement and
further orders on 3.4.2000.

7-2-2000

Notice duly served
Served on R.No. 1, 2,
3 & 4.

trd

Member

3.4.00

No written statement has been
submitted. There is no prayer for
extension of time on behalf of the
respondents. The case will proceed
without written statement.

List for hearing on 26.6.2000.

Member

18-2-00

Show cause to not
be heard.

23-2-2000

trd

Notice & order

Dtd. 21.2.2000 prepared
and sent to D. Section
for issuing of the
same to the Respd.
Through Regd. post.
Vide D.Nos. 559
to 562 Dtd. 24.2.2000.

26.6.00

There is no bench today. Adjourned
to 11.9.00.

11.9.00

No bench. To be listed on
15.1.01.

15.1.2000

15.1.2000 is a holiday. Adjourned to 16.1.2001.

Service completed.

~~15.1.2000~~

On the prayer of learned counsel
for the applicant

16.1.01

On the prayer of Mr. M. Chanda
learned counsel for the applicant case
is adjourned to 6.2.01 for hearing.

Member

Vice-Chairman

lm

7.2.2001

Respondent submitted
by the applicant in reply to the
W/S submitted by the respondents
one copy.

PA 7/2/2001

(3)

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| Notes of the Registry | Date | Order of the Tribunal |
|--|---------------|--|
| | 6.2.01 | <p>Heard the learned counsel for the parties at some length. List it again on 8.2.2001 for further hearing.</p> <p><i>U. Shan</i> Member</p> <p><i>h</i> Vice-Chairman</p> |
| | trd 8.2.01 | <p>List again on 22.2.01 for further hearing.</p> <p><i>U. Shan</i> Member</p> <p><i>h</i> Vice-Chairman</p> |
| <p>20.2.2001</p> <p>Rejoinder submitted by the applicant in reply to the W/S submitted by the respondents only one copy.</p> | pg 22.2.01 | <p>Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.</p> <p>The application is xxx allowed in terms of the order. No order as to costs.</p> <p><i>U. Shan</i> Member</p> <p><i>h</i> Vice-Chairman</p> |
| <p><i>20/2/2001</i></p> <p><u>21.3.2001</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 Railway Advocate.</p> <p><i>U. Shan</i></p> <p>Judgment read vide D.No. 1112 or 1113 dt. 23.3.2001</p> <p><i>U. Shan</i></p> | | |

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------|------|-----------------------|
| | | |

6

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. . . 6 of 2000.

DATE OF DECISION .22-2-2001:

Sri Dilip Kumar Mukherjee

PETITIONER(S)

Sri M. Chanda.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)


Sri J.L.Sarkar, Railway standing counsel. ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Hon'ble Vice-Chairman



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 6 of 2000.

Date of Order : This the 22nd Day of February, 2001.

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

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

Sri Dilip Kumar Mukherjee,
Son of late Bimala Pada Mukherjee,
Village Ghogumati (Niranjan Nagar)
P.O.Ghogumati, Ward No. 36,
Siliguri-6,
Dist. Jalpaiguri, North Bengal.

. . . Applicant

By Advocate Sri M.Chanda.

- Versus -

1. Union of India
through the General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. Divisional Railway Manager(P)
N.F.Railway, Katihar,
P.O.Katihar, Dist. Purnia,
Bihar.
3. Senior Divisional Engineer,
N.F.Railway, Katihar,
P.O. Katihar, Dist. Purnia,
Bihar.
4. Assistant Engineer,
N.F.Railway, Siliguri Junction,
P.O. Siliguri, Dist. Jalpaiguri,
North Bengal.

. . . Respondents.

By Sri J.L.Sarkar, Railway standing counsel.

O R D E R

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 arising out of and directed against fixation of qualifying service for the purpose of retirement and also directed for deduction of penal rent for retention of Railway quarter for 4 months in the following circumstances.

2. The applicant was initially appointed in Railways as a casual Keyman in 1962 under the Executive Engineer,

contd..2

Survey and Construction, N.F.Railway, Siliguri Junction. He was thereafter selected as Keyman in the scale of Rs. 80-1-85-2-95-EB-3-110/- and appointed as such on temporary basis vide order dated 11.12.1964 with effect from 16.11.65. In the year 1968 the applicant was approved as Mate in the scale of Rs. 225-308/- and as per extant rules provident fund money was recovered from his salaries. By letter dated 27/29.8.79 the applicant was intimated that although he was approved as Mate in 1968 but reverted to the post of Keyman subsequently without showing any reason to the competent authority and direction was accordingly issued to restore promotion of the applicant as Mate. The applicant was again promoted to the post of Permanent Way Mistry in April 1988 and retired as such from the Railway with effect from 30.6.96 on attaining the age of superannuation. The applicant in this application claims that from 10.11.65, the date the applicant was substantively appointed as Keyman till the date of his retirement on 30.6.96 he rendering 30 years 7 months 20 days service and according to the applicant the said period was for all purposes to be counted for qualifying service. But the respondents authority in a most illegal fashion only counted 24 years of qualifying service as communicated vide letter dated 28.6.96. The aforementioned action of the respondents adversely affected the pensionary benefits of the applicant and against that decision the applicant submitted representation before the authority and failing to get any remedy from the administration moved this application challenging the aforementioned action. The applicant also indicated in his application that prior to his retirement from service he submitted application to Senior DRM(W), N.F.Railway, Katihar through proper channel for retention of his Railway quarter for 8 months on medical

contd...3

ground. The respondents authority however permitted the applicant only 4 months from 1.7.96 to 31.10.96. The applicant by his letter dated 28.1.97 intimated the Senior Section Engineer/Way, N.F.Railway, Siliguri about his intention to vacate the quarter under his occupation on 31.1.97 and requested for taking arrangement for the same. None came forward for taking over charge of the quarter and the applicant had to suffer adversely for illegal recovery of penal rent.

2. The respondents submitted their written statement by challenging, denying and disputing the claim of the applicant. The respondents first raised a preliminary objection as to the maintainability of the application on the ground that the applicant was a permanent resident of Jalpaiguri district and that the impugned actions were basically directed against the DRM, Katihar. As regards the period claiming for qualifying service according to the respondents the applicant was approved as Mate in the scale of Rs.225-308/- ^{and} temporarily appointed with effect from 1.9.79 and posted under PWI/ Siliguri in the open line. Hence accordingly he worked for 13 years 9 months and 15 days in the Construction Organisation for the period from 16.11.65 to 31.8.79. The benefit of service was not granted in full but only 50% of total service was taken into account for qualifying service. Thus 6 years 10 months and 22 days has been taken towards qualifying ^{service} for pensionary benefit of 23 years 8 months and 16 days and not 30 years as claimed by the applicant. Service benefit could not be extended in total as the service rendered in Construction organisation could not be taken as qualifying service for pensionary benefit in the open line. It is also stated the applicant's pay had been fixed as per recommendation of the Vth Pay Commission and difference so accrued

had also been paid to the applicant. The respondents further stated that normally four months time was granted to a retired employee for retention of his quarter. Retention of quarter beyond four months was treated as unauthorised occupation and hence penal rent was recovered from him and it was not the duty of the Railway authority to take over the same.

3. The basic controversy is for the qualifying service that was rendered by the applicant. Mr M.Chanda, learned counsel for the applicant submitted that the applicant was appointed in a substantive post of Keyman, a Grade IV employee. That appointment was made on the basis of selection and he was appointed with effect from 16.11.65. Thus the period of service rendered by the applicant was therefore ^{required to be} computed from 16.11.65 and not from 1.9.79. Referring to the appointment letter Mr Chanda submitted that survey and construction is also a part of the Railway and a permanent wing and therefore the applicant could not be denied the benefit of service rendered by him in the Railway on and from 16.11.65. Mr J.L. Sarkar, learned Railway standing counsel for the respondents first took a preliminary objection as to the maintainability of the application. Mr Sarkar referring to Rule 6 of the Central Administrative Tribunal (Procedure) Rules 1987 submitted that the application shall ordinarily be filed by applicant with the Registrar of the Bench within whose jurisdiction the applicant is posted for the time being or the cause of action, wholly or in part, has arisen. Since the applicant was not posted in the jurisdiction of the Bench nor any cause of action wholly or partly arisen, the application is not maintainable in the absence leave accorded as per the rules by the Chairman of the Principal Bench.

Countering the argument Mr Chanda, learned counsel for the applicant submitted that the head office of the zone is at Guwahati with jurisdiction of this Bench. The Siliguri branch is also under the N.F.Railway Head quarter. The pay fixation, more particularly, the Pension Payment Order which is the subject matter of this proceeding was also made by the FA & CAO, N.F.Railway, Maligaon, Guwahati and therefore the cause of action at least part of cause of action did arise within the jurisdiction of this Bench. The applicant rendered his service at Siliguri and also retired from Siliguri under the DRM, N.F.Railway, Katihar. The Katihar Division is a part of N.F.Railway and Headquarter is at Guwahati. The pension matters are also recommended from the headquarter. In the circumstances it cannot be said that this Bench has no jurisdiction over the subject matter. Now as to the key issue for computing the period from 16.11.65 to 31.8.79 as a qualifying period Mr Sarkar submitted that he came to the open line only on 1.9.79 prior to the aforesaid period, namely, period from 16.11.65 to 31.8.79 the applicant worked under the construction wing and that period cannot be computed. Mr Sarkar, learned standing counsel referring to Master circular under Board's letter dated 28.11.86 and 19.5.87 supported the above stand. As per the aforesaid circular Casual Labour who have attained temporary status are entitled to be paid in regular scale of pay plus Dearness Allowance, HRA and CCA wherever admissible, with annual increment, to contribute to the S.R.P.F and to count half of the service rendered (i) in the case of open line casual labour after 1.1.61 (after attaining temporary status) and (ii) in the case of Project casual Labour (after attaining temporary status) after 1.1.81, towards qualifying service for pensionary benefits on their eventual absorption in a

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regular post. According to Mr Sarkar the applicant was eventually absorbed in the regular post on 1.9.79 when he was approved as Mate in the scale of Rs.225-308/-. No such materials as such are produced before us save and except a bald statement made in the written statement by the deponent and that statement was verified as true to the knowledge of the deponent. The initial appointment of, the applicant that was made on 11.12.64 and in the order itself expressly mentioned it was ~~that~~ that the applicant would be governed by the rules applicable to the temporary Class IV Railway employees. Mr Sarkar submitted that appointment was made in Survey and Construction in N.F.Railway which was only a temporary department and the applicant rendered his service in the project and the Survey and Construction, N.F.Railway is distinct from the main establishment. In the absence of any materials on record it is difficult to accept the contention of Mr Sarkar. In other words according to respondents the period of service rendered by the applicant from 16.11.65 to 31.8.79, was that way as casual labour and that too in a project. Rule 2501 of the Indian Railway Establishment Manual defined Casual Labour as under :

"Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

The casual labour on railways should be employed only in the following types of cases, namely:

1) Staff paid from contingencies except those retained for more than six months continuously. Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a breakw/ will be treated as temporary after the expiry of the six months of continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

(iii) Seasonal labour who are sanctioned for specific works of less than six months' duration. If such labour is shifted from one work ~~xx~~ to another of the same type, e.g., relying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

Notes:-

2) Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (ii) above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature he does not lose his temporary status.

4) Casual labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status."

The appointment letter itself indicated that the applicant was appointed on the basis of selection. It also indicated that he will be governed by rules applicable to temporary Grade IV Railway employees. In the circumstances, it is difficult to treat such person as a casual labour. So also the plea that the service rendered by the applicant in Survey and Construction was not a part of the Railway. Survey and Construction is a department of the Railway and is seemingly a regular unit. It is a permanent unit and is not analogous or similar to that of a project. As was held by the Supreme Court in L. Robert D'Souza vs. Executive Engineer, Southern Railway and another, reported in

(1982) 1 SCC 645 in overruling the plea of the Railways the Supreme Court made the following observation, which are re-produced below :

"Rule 2501(b)(i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment. But reliance was placed on Rule 2501(b)(ii) which provides that labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment would be treated as casual labour. In order to bring the case within the ambit of this provision it must be shown that for 20 years applicant was employed on projects. Every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as work charged. The letter dated September 5, 1966 is by the Executive Engineer, Ernakulam and he refers to the staff as belonging to construction unit. It will be doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development. Therefore, the assertion that the appellant was working on the project is belied by two facts ; (i) that contrary to the provision in Rule 2501 that persons belonging to casual labour category cannot be transferred, the appellant was transferred on innumerable occasions as evidenced by orders Ex.P-1 dated January 24, 1962 and Ex.P-2 dated August 25, 1964, and the transfer was in the office of the Executive Engineer(Construction); (ii) there is absolutely no reference to project in the letter, but the department is described as (construction unit). If he became surplus on completion of project there was no necessity to absorb him. But the letter dated September 5, 1966, enquires from other Executive Engineers, not attached to projects, whether the surplus staff including appellant could be absorbed by them. This shows that the staff concerned had acquired a status higher than casual labour, say temporary railway servant. And again construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated to project. Therefore, the averment of the Railway Administration that the appellant was working on project cannot be accepted. He belonged to the construction unit. He was transferred fairly often and he worked

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continuously for 20 years and when he questioned the bona fides of his transfer he had to be re-transferred and paid wages for the period he did not report for duty at the place where he was transferred. Cumulative effect of these facts completely belie the suggestion that the appellant worked on project. Having rendered continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under Rule 2505."

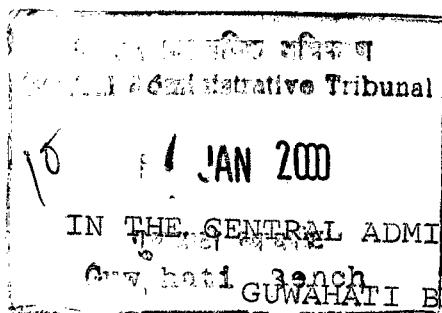
Mr J.L.Sarkar, learned Railway standing counsel in support of his contention referred to the decision of the Supreme Court in Ram Kumar and others vs. Union of India and others, reported in (1988) 1 SCC 306. The aforementioned decision was relating to the granting of pensionary benefits to casual labourers. The Supreme Court in the aforementioned case held that neither the casual labourer in Railway acquiring temporary status nor the temporary railway servants are entitled for retiral benefits as per the Railway Establishment Manual. The aforesaid decision was a decision pertaining to casual labour. Here is a case wherein the applicant was appointed on selection and the order itself indicated that he would be governed by rules of temporary servants. Therefore, the period between 16.11.65 to 31.8.79 could not have been excluded. We accordingly hold that the aforementioned period of service of the applicant in the Railway should be computed from 16.11.65 till superannuation for the purpose of retirement benefits. Since it is relating to grant of pensionary benefits, the respondents authority shall take necessary steps for giving pensionary benefits in conformity with the directions contained in the judgment as expeditiously as possible within a period of 3 months from the date of receipt copy of this judgment.

4. As regards other contentions for deduction of penal rent for occupying the quarter, the applicant is to make appropriate representation before the authority as per law and if such a representation is made, the authority shall consider the same as per law and pass a reasoned order and communicate the same to the applicant.

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

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

[Signature]
(D.N.CHOWDHURY)
VICE CHAIRMAN



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

Title of the Case : O.A. No. 6/2000

Sri Dilip Kumar Mukherjee : Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

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Date

Filed by

Advocate

Dilip Kumar Mukherjee

Filed by applicant
through advocate G.N.
Chakravarty on 6-1-2000. (Page 9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

BETWEEN

Sri Dilip Kumar Mukherjee
Son of late Bimala Pada Mukherjee
Village Ghogomati (Niranjan Nagar)
P.O. Ghogomati, Ward No.36,
Shiliguri-6
Dist. Jalpaiguri, North Bengal

..... Applicant

-AND-

1. Union of India
Through the General Manager
N.F.Railway, Maligaon,
Guwahati-781011 ;
2. Divisional Railway Manager (P)
N.F.Railway, Katihar X
P.O. Katihar, Dist. Purnia
Bihar
3. Senior Divisional Engineer,
N.F.Railway, Katihar X
P.O. Katihar, Dist. Purnia
Bihar.

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Contd.....

Dilip K. Mukherjee

4. Assistant Engineer
N.F.Railway, Siliguri Junction,
P.O. Siliguri, Dist. Jalpaiguri
North Bengal

..... Respondents

DETAILS OF THE APPLICATION.

1. Particulars of order against which this application is made.

This application is made :-

- (a) against wrong fixation of qualifying service as 24 years, as communicated by the Divisional Railway Manager, N.F.Railway, Katihar under letter No. E/ES/3 dated 28.6.96 (Annexure-4) as against 31 years of service rendered.
- (b) Arbitrary and whimsical action of the authority in the matter of granting permission of retention of Rly. accommodation only for 4 months (Annexure-7) against 8 months applied for and admissible under the rules.
- (c) Inaction of the authorities to take over possession of the Railway Quarters as requested under letter dated 28.1.97 (Annexure-8) and against illegal recovery of penal rent.

2. Jurisdiction of the Tribunal

That the applicant declares that the subject matter against which this application is made is within the jurisdiction of the Hon'ble Tribunal.

Atip Kumar Mishra

3. Limitation :

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

4. Facts of the Case

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights protections and privileges as guaranteed by the Constitution of India and the laws/rules framed thereunder. The applicant is a permanent resident of village Ghogumali, P.O. Ghogomali Ward No. 36, Siliguri, Dist. Jalpaiguri, North Bengal and now residing at Siliguri after retirement.

4.2 That the applicant was initially appointed in the Railway as a casual Keyman in the year 1962 under Executive Engineer, Survey and Construction (in short XEN S&C) N.F.Railway, Siliguri Junction.

The applicant thereafter was selected as ^{Keyman}~~Gang Mate~~ in the scale of Rs. 80-1-85-2-95-EB-3-110/- (authorised) and appointed as such on a temporary basis on pay of Rs. 80/- P.M. with effect from 16.11.1965 F.N. and posted under PW1 S&C/NJP, in terms of XEN/S&C N.F.Railway SGUJ's Office/ order No. 116/E15/Scale/1/3639 dated 11.12.1964.

A copy of the said letter dated 11.12.1964 is enclosed as Annexure-1.

4.3 That in the year 1968 the applicant was approved as Mate in the scale of Rs. 225-308 and was posted as such. Thereafter on completion of one year of service,

Contd.....

Dilip Kumar Mukherjee

as per extant rules, provident fund money was recovered from his salaries under deposit Account No. 118344 and ledger Folio No. 1259/P dated 4.12.1969.

Copies of the Provident Fund recovery slips dated 4.12.69 and 2.3.70 are enclosed herewith and marked collectively as Annexure-2.

4.4 That the applicant came to ~~know~~ know for the first time from the letter of Divisional Railway Manager (P) Katihar (for short DRM(P) KIR) bearing No. E/11/1(E) dated 27/29.8.79, addressed to AEN/SGUJ, with a copy endoresed to your applicant, to the effect that although the applicant was approved as Mate in the year 1968, but was subsequently shown as reverted to the post of Keyman without intimating any cause or reason whatsoever to the competent authority and as such a direction was issued to AEN/SGUJ to restore promotion of the applicant as Mate in scale of Rs.225-308/- without any further suitability test.

In this context it is stated that the applicant was not at all aware of any such **order** of reversion as no formal charge or any letter of reversion was ever issued to him informing him of such reversion.

A copy of the said letter of DRM(P) KIR dated 27/29.8.79 is enclosed herewith as Annexure-3.

4.5 That it is stated that due to sincere and devotional services and unblemished service records the applicant was promoted to the post of permanent Way Mistry

Contd....

Dilip K. Mishra

(in short PWM) in April 1988 in the scale of Rs.1400-2300 (Pre-revised) and retired as such with effect from 30.6.96 (AN) on attaining the age of superannuation.

4.6 That it is stated that although the applicant has rendered his service continuously without any break or interruption from 10.11.1965 till the date of his retirement. On 30.6.96, total period of service thus being 30 years, 7 months 20 days, to be rounded off and counted for 31 years of qualifying service rendered, as per normal rule, but most illegally and arbitrarily the total period of qualifying service has been computed and shown wrongly by the Railway Authority as 24 years of qualifying service as communicated by the DRM/KIR under letter No. E/ES/3 dated 28.6.96.

A copy of the said letter dated 28.6.96 is enclosed herewith as Annexure-4.

4.7 That being aggrieved with the wrong computation of qualifying service as communicated by the DRM/KIR under letter dated 28.6.96, the applicant under his letter dated 5.9.96 submitted a representation to DRM(P) N.F.Railway, KIR with a request to extend the service benefit to 31 years of qualifying service as against 24 years wrongly calculated, but no reply has yet been received.

A copy of the representation dated 5.9.96 is enclosed herewith as Annexure-5.

4.8 It is stated that consequent upon wrong, illegal and arbitrary fixation of qualifying service as 24 years as against 31 years, resulted in incorrect fixation of

Silip Kumar

pension and other retiral benefits affecting adversely the right and genuine claims of the applicant.

4.9 That it is stated here further that in terms of recommendation of the Vth Central Pay Commission the scale of pay of the applicant has been revised in the scale of Rs. 5000-150-8000/- with effect from 1.1.1996. Surprisingly enough although a period of 4 years is going to be elapsed, the Pay of the applicant has not yet been fixed in the revised scale of pay and his pension, relief to pension, Communitation, valuse of pension, retirment gratuity, leave salary and other benefits have not been fixed and paid in accordance with the instructions issued by the Railway Board. As a result of arbitrary, apathetic and indifferent attitude of the Railway administration the applicant is receiving less amount of pension and other ancillary benefit admissible in his ~~head~~ days of financial crisis. The applicant under his letter dated 12.8.98 submitted a representation to DRM/KIR praying interalia for fixation of his pay in the revised scale of Pay recommended by the Vth Central Pay Commission and accepted by the Govt. of India with effect from 1.1.1996 and to pay revised pension and other retirement benefits in conformity with the revised scale of pay but unfortunately all efforts proved to be abortive.

A copy of the representation dated 12.8.98 is enclosed herewith as Annexure-6.

4.10 Further it is stated that the Ministry of Railways, Railway Board, in sub para 1 of Para 3 of their letter No. F(E)/97/PNI/22 dated 29.10.1999 have directed

Shrip K. M. K. K. K.

as under :-

"The average emoluments based on the basic pay of the preceding ten months of those Railway Servants who had opted to come over to the revised scales of pay and had retired within a period of 10 months reckoned from January, Ist, 1996 shall be calculated as follows for the purpose of determining their pension entitlement.

A. For the period during which pay was drawn in the Pre-revised pay scales :

The total emoluments for the number of months for which pay was drawn in the pre-revised pay scales shall be calculated after taking into account the following :

- (1) Basic Pay (including increments, if any drawn during the intervening period).
- (ii) Dearness allowance upto CPI 1510, i.e. @ 148%, 111% and 96% of the basic pay as the case may be.
- (iii) The first and second instalments of Interim Relief appropriate to the Basic Pay drawn during the relevant period.
- (iv) Notional increase of the Basic Pay by applying the Fitment Benefit of 40 percent on the Basic Pay in the Pre-revised pay scale.

Silipho meekoya

- Ø. B. For the period during which pay was drawn in the revised pay scales.

The aggregate of the Basic Pay for the number of months for which pay was drawn in the revised pay scales. The average emoluments of the preceding ten months will thereafter be calculated by adding (A) and (B) and dividing the result by 10. Pension admissible will consequently be 50% of the average emoluments so calculated provided the Railway servant had rendered maximum qualifying service of 33 years and where the qualifying service rendered is less than 33 years the pension will be calculated proportionately."

It is really surprising and shocking too to state that for inaction and indifferent attitude of the authorities, the applicant has been suffering adversely for receiving less amount of pension and relief to pension.

4.11 That it is stated that the applicant had immediately before his retirement from service submitted an application to Sr DRM(W) KIR through AEN/SGUJ praying for permission for retention of his Rly. Quarters for 8 months on medical ground, in consonance and in conformity with the instructions/directives issued by the Railway Board. It is a matter of great surprising and shocking too, that after a long spell of time Senior Divisional Engineer/KIR under letter dated 26.11.97 addressed to DRM(P) FS NF Railway, Katihar with a copy

Silip ho mukhoj

docketed to your applicant, informed the applicant that retention of quarters has been granted only for 4 months from 1.7.96 to 31.10.96 without showing any cause or reason whatsoever, violating deliberately, capriciously and arbitrarily the instructions/guidelines/directives issued by the Railway Board in this regard.

Copies of the letters are enclosed herewith and marked collectively as Annexure-7.

4.12 That it is stated that the applicant under his letter dated 28.1.97 intimated Sr. Section Engineer/ Way N.F. Railway, Siliguri Junction, and all other concerned officers viz (2) Sr. AEN/SGUJ (3) Section Engineer (Works) SGUJ and (3) EC/A/SGUJ his intention to vacate the Railway quarter under his occupation on 31.1.97 with a request for making arrangement for taking over possession of the quarters on 31.1.97. It is a matter of great regret that despite acknowledgement of the letter aforesaid by all the concerned officers with seal and signature none came forward for taking over charge of the quarter and as a result, the applicant has been made to suffer for no fault of his and his interest has been suffered adversely for illegal recovery of penal rent.

A copy of the letter dated 28.1.97 is enclosed as Annexure-8. and a copy of the vacation/occupation certificate issued by the Junior Engineer (Electrical), N.F. Railway, SGUJ ~~is~~ enclosed as Annexure-9.

4.13 That this application is made bonafide and for the cause of justice.

Silipko Mukherjee

5. Grounds for Relief(s) with Legal Provisions.
- 5.1 For that wrong fixation of qualified service as 24 years against 31 years of qualified service rendered, is capricious, arbitrary, illegal and whimsical and as such bad in law and against the principles of natural justice and fair play.
- 5.2 For that fixation of pension, relief to pension, commutation value of pension, Death cum retirement Gratuity, Leave Salary and other retiral benefit on the basis of 24 years of service is illegal and arbitrary.
- 5.3 For that non-fixation of pay and other allowances in consonance and in conformity with the revised scale of pay came into force with effect from 1.1.1996, in terms of the revised scale of pay granted by the Vth Central Pay Commission, even within a period of 4 years is illegal, arbitrary, unreasonable, unfair and wholly unjustified.
- 5.4 For that non-fixation of revised pay in terms of Railway Boards letter No. F(E)111/97/PNI/22 dated 29.10.99 (only for those retired persons retired from 1.1.96 to 31.10.96) and non payment of pension and other retiral benefits on that basis is illegal and arbitrary.
- 5.5 For that granting of permission for retention of Railway accommodation only for 4 months as against 8 months as was prayed for, is illegal, arbitrary, and unreasonable.

Silip ko rukhopper

5.6 For that non-communication of the order granting permission for retention of quarter only for 4 months as against 8 months applied for and that too after a period of one and half year is whimsical and arbitrary, discriminatory and against the principles of natural justice and fair play.

5.7 For that failure/inability on the part of the authorities to take over possession of the quarters in time as requested, cannot be attributed to the applicant and penal rent recovered.

5.8 For that recovery of penal rent for retention of Railway Quarters beyond 4 months without notice is arbitrary, unreasonable, illegal, whimsical and violative of the accepted principles of natural justice and fair play.

6. Details of remedy exhausted.

The applicant states that there is no other remedy available under any rule. However, the applicant submitted number of representations but no reply has been received.

7. Matter not previously filed or pending with any other Court.

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other authorities or any other Bench of the Tribunal nor any such applica-

Dilip Kumar Roy

tion, writ petition or suit is pending before any of them.

8. Relief(s) sought for :

Under the facts and circumstances of the case stated above in paragraph 4 of this application, the applicant prays for the following reliefs :

- 8.1 The order/letter No.E/ES/3 dated 28.6.96 issued by the DRM/KIR fixing qualifying service for 24 years be set aside and quashed.
- 8.2 The qualified service of the applicant be counted with effect from 16.11.1965 to 30.6.1996, and the total period of 31 years of service be counted for all purposes and benefits incidental thereto be given. ✓
- 8.3 The fixation of pay and allowances including pension and other retiral benefits be computed on the basis of 31 years of qualifying service and difference accrued thereto be paid with interest @ Rs. 18% per annum.
- 8.4 The pay and allowances of the applicant be fixed in the revised scale of pay with effect from 1.1.1996, in terms of the recommendation of the Vth Central Pay Commission, and pension and other retiral benefits be granted on that basis with interest @ Rs. 18% per annum for the delayed payment.
- 8.5 The pay and allowances of the applicant be fixed in terms of Railway Board's instructions contained in their letter No. F(E)111/97/PNI/22 dated

Silip Kumar Mukherjee

29.10.99 and pension and other benefits be fixed and paid with interest @ Rs.18% per annum.

- 8.6 Refund of the amount recovered illegally as penal rent for retention of Railway quarters with interest @ Rs. 18% per annum.
- 8.7 Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case as may be deemed fit and proper by the Hon'ble Tribunal.

9. Interim order, if any prayed for :

Pending disposal of this application the applicant prays for an interim order directing the respondents to pay pension and relief to pension in the revised scale of pay as recommended by the Vth Central Pay Commission and accepted by the Govt. of India with effect from 1.1.1996.

10.

This application has been filed through advocate.

11. Details of I.P.O.

- i. I.P.O. No. : 09 456064
- ii. Date of Issue : 3-1-2000
- iii. Issued from : G.P.O., Guwahati.
- iv. Payable at : G.P.O., Guwahati.

12. Particulars of enclosures

As per Index.

Dilip Kumar Mukherjee

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

I, Dilip Kumar Mukherjee, son of late Bimala Pada Mukherjee, resident of village Ghogumali (Niranjan Nagar) P.O. Ghogumali, Ward No. 36, Siliguri, West Bengal do hereby verify that the statements in paragraph 1 to 4 and ~~xxxxx~~ 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 6th day of January, 2000.

Dilip Kumar Mukherjee
Signature

Office order no 1161

15

Annexure - 1
Annexure - A/1

Executive Engineer
Survey and Construction,
N.E. Railway, Siliguri Div.
Dt. 11 - 12 - 64.

In/From 90/S&C/CHD's Letter No. 1/1/0326/PRT dated 20/21-11-64

Sardipal Kumar Mukherjee s/o Bhupendra Kumar

As a labour having been selected for the post of Key Chair and on being found medically fit in category A/110 is hereby temporarily appointed in Scale Rs. 30-1.85-2.95 EPR-110 (authorized) with effect as gdy 16.11.65 on pay Rs. 20 from 16.11.65 P.M. and posted under PA/S&C/NJP. He will be governed by the rules-application to the temporary Class IV Railway employees.

He must clearly understand that the appointment is terminable on 14 days notice on either side except that no such notice is required if the termination of service is due to expiry of the sanction to the post he holds.

No. E/5/Scale/1/3039

(S.K. Basu)

Copy forwarded for information to:

Executive Engineer,
Survey and Construction,
N.E. Railway, Siliguri Div.
Dated- 11 - 12 - 64.

1. CE/S&C/Kurseong.
2. Dy. FA & CAO/S&C/Kurseong.
3. AEM/IX/S&C /SGHJ
4. AEM/II/S&C/SGHJ
5. AEM/S&C/AHB
6. PWI/S&C/NJP
7. PWI/S&C/KNE
8. IOW/S&C/-
9. Staff concerned.

Si

63-79

Screen & Selection

Spare copy for P/File.

Executive Engineer/S&C
Siliguri

He is in constn work

16.11.65 to 31.8.79

PPT Contrbution ver
U IV Staff - Goms
has in Temp. Saw Road

Period in
Pos 3 & W.S. The Case &
R.

Northeast Frontier Railway

Leger Folio No. 1259/P

Statement of Voluntary Non Contributory State Railway Provident Institution Account

Deposit account of Shri. *Dilip Kumar* *K. K. K.* *By No.* *115344*Deposit No. *115344* ✓ with the State Railway Provident Fund for and up to the end of the year 31st March, 1967.

A. B. :- Special attention is invited to Notes 1, 2 and 3 of this form.

| 1 | Subscription | | Details of withdrawals | Remarks |
|--|--------------|----|---------------------------|---------|
| | Rs. | P. | | |
| Balance on 1st April, 1968 | | | | |
| Add—Subscription during 1968-69 | 27 | 50 | | |
| Refund of Advance | | | | |
| Interest for 1968-69 @ 4.60% per annum | / | | | |
| Total | 27 | 50 | | |
| Less—Withdrawals as per Details in column 3 | | | | |
| | 27 | 50 | | |
| Balance on 31st March, 1969 | | | | |

NOTE-1 The accuracy of subscription is dependent on the maintenance of reliable declaration in this form and if any error has occurred which necessitates revision, the subscriber has not so far done so. The declaration form he should now sign one.

2. Subscribers should satisfy themselves as to the correctness of the statement and errors should be brought to the notice of the Accounts Officer within six months from the date of its receipt.

3. This return is for general information and in case they put more than one P. T. slip for any year they should immediately bring it to the notice of the Executive / Accounts Officer for consolidation of their accounts.

You are asked to preserve this statement for production if required.

P.S.~
KIR

4/12

1969

For and on behalf of the
Accounts Officer
 For and on behalf of the
 Accounts Officer

17

Form-A.1323.

N. F. RAILWAY

REN/SG05/NSP
Department.....

Ledger Folio No. 11/7/480
1259

Statement of Voluntary/Non-contributory State Railway Provident Institution Account.

Deposit account of Shri D. Mukherjee Designation Mat 344

T. No..... Depositor No. 118344 with the State Railway Provident Fund for and upto the end of the year 31st March, 1970

N. B.- Special attention is invited to Notes 1 & 2 of this form.

| 1 | Subscription 2 | | Details of withdrawals 3 | Remarks 4 |
|---|-------------------|----|--------------------------------|--------------|
| | Rs. | P. | | |
| Balance on 1st April, 1963 | 27 | | | |
| Add-Subscription during 19.63-70 | 132 | | | |
| Refund of advance. | | | | |
| Interest for 19..... | | | | |
| @ 5.25% per annum | 5 | | | |
| Total..... | 164 | | | |
| Less-Withdrawals as per details in column 3. | | | | |
| Balance on 31st March 1970 | 164 | | | |

Note :- (1) The attention of subscribers is drawn to the importance of revising their declaration in case any event has occurred which necessitates revision. If a subscriber has not so far signed the declaration form he should now sign one.
(2) Subscribers should satisfy themselves as to the correctness of the statement and errors should be brought to the notice of the Accounts Officer within six months from the date of its receipt.

You are urged to preserve this statement for production, if required.
..... 2.3.1971

D. Mukherjee
for P. A. & Chief Accounts Officer
Workshop Divn Accounts Officer.

Annexure A/3

NO E(11/1(E)

27 3 19
29

To

REN/SGVT

Subj: Sree Dulip K. Muthunja
Rope Master NO 4/SGVT

On going through the case it reveals that Sree Muthunja was approved as Mate in the year 1968 and subsequently reverted to the post of Key man. Pending decision as to how and when he was reverted from Mate to K/man, he may be promoted as Mate in Scale Rs. 225-308 strictly in order of Seniority without any further delay.

The system for his remuneration for posts as Key man is ~~being~~ ~~under~~ ~~consideration~~ ~~and~~ ~~will~~ ~~be~~ ~~introduced~~ immediately as already approved for.

For DRM/P/KIR

Copy to

1. Pw/SGVT for information & n/a plan
2. Pw/SGVT for concern through Pw/SGVT

True copy

[Signature]

Sd/- S.B. Chinnappa
For DRM/P/KIR

19

Amerari-4

पूर्वोत्तर सीमा रेलवे/N. F. Railway

कटिहार मंडल/Katihar Division

30

मंडल रेल प्रबंधक का कार्यालय,

कटिहार जं०

Divl Rly. Manager,

Katihar Jn.

सं० E/ES/3

प्रिय / My dear,

दिलीप कुमार मुखर्जी

मुझे प्रसन्नता है कि आप लगभग.....वालों की रेल सेवा पूरी करके उत्तम स्वास्थ्य के साथ निवृत्त हो रहे हैं।

I am glad, you are in the pink of health at the time of retirement after completing about...24.....yrs. railway service.

मैं आपको बहुमूल्य सेवा के लिए हार्दिक बधाई देता हूँ। मेरी शुभकामना है कि आपका और आपके परिवार का भविष्य सुखमय और शांतिमय रहे।

I extend my heart felt appreciation for the valuable services rendered by you the railways. I wish you and your family a very happy and peaceful retired life.

हार्दिक बधाइयों सहित

With warm appreciation

दिनांक/Date...28.6.76...

आपका/Yours Sincerely

Lm

मंडल रेल प्रबंधक

/DRM/KIR

आपकी पेंशन संबंधी सुविधायों का ब्योरा नीचे दिया गया है :—

The details of your pensionery benefits are as under :—

| देय/Dues | राशि/Amount | पत्र सं०/Letter No. |
|----------------------------|-------------|---------------------|
| भविष्य निधि (नि० अ०) | | |
| P. F. (Own contribution) | 28,70/- 00 | |

मासिक पेंशन

Monthly Pension

₹ 603.00

कमशः/Contd. Page—2

Allected
Jae
Sivrali

32

देय/Duesराशि/Amountपत्र सं०/Letter No.

मृत्यु व सेना निवृत्ति उपदान

D. C. R. G.

₹ 39,814.00 6 अं 5 अं

पेंशन परिणत मूल्य

Pension commutation value ₹ 25,230.00

सामूहिक बीमा

Group Insurance

₹ 7,092.00

छुट्टी नगदौकरण

Leave Salary

₹ 3,1281.00 , 22 अं 1 अं

सेवा निवृत्ति अनुदान

Retirement grant

अन्य/Others

आपकी सूचित किया जाता है आपसे/किया है निजी अंशदान/मृत्यु सेवा निवृत्त उपदान से सरकारी बकाये की निम्न धन राशि काट ली गयी है/अस्थायी तौर पर रोक ली गयी है। आपके विरुद्ध सरकारी बकाये की निम्न धनराशि की जाँच पड़ताल के पश्चात, यदि कोई बकाया धनराशि निकलेगी तो उसे वसूल करके शेष धनराशि के भुगतान की व्यवस्था की जाएगी।

It is to inform you the under mention amount of Govt. dues from your/DCRG has been deducted / with held temporarily. After verification of the amount of Govt. dues if any amount comes the same will be deducted and arrangement will be made to refund the balance amount.

१। रेल आवास खाली न करने के कारण

For not vacating the Rly. Qrts.

२। वाणिज्य संबंधी डेबिट

Commercial Debit

३। अन्य बकाया/Other dues

प्रवर-मंडल कामिक अधिकारी, कटिहार जं०
Senior Divisional Personal Officer
N. F. Rly. Katihar Jn.

To
Divisional Railway Manager(P),
N.F.Railway/Katihar.

Sir,

Sub:- Less service shown at
service certificate.

Most respectfully I beg to lay before you the following few lines for favour of your kind consideration please.

That Sir, after serving the Railway for nearly 31 years, I retired from Railway service on 30.6.96.

Sir, in the service certificate issued to me after superannuation my period of service has been shown as 16.11.65/29.8.79-30.6.96.

In this context, I like to submit that I was appointed as keyman on regular measure w.e.f.16.11.65. I was brought under P.F.Scheme during 1968-69, (P.I.No.118344, Ledger Folio No. 1259/P) (Annexure-I) I was promoted to mate in year 1968. and I enclose a copy of the order in support of this. But Sir, it is very painful to note on my part that I have been given service certificate indicating 24 years of service. My settlement benefit are also done on the basis of 24 years qualifying service. But Sir, actually I have completed 30 years 7 months service before my retirement.

I, therefore, request you to kindly look into the matter and please restored full service benefit to me.

Thanking you,

Dated:5.9.96.

Yours faithfully,

Dilip Kumar Mukherjee
(Dilip Kumar Mukherjee).
EX-PWM
under CPWI/SGUJ.

3 copy

hand to hand

Bib clom.

23.9.96

Recd - 5 copy
on 23.9.96

To
The Sr.DM(W)
N.F.Rly./R

Through ALN/SGUD

Sub : Permission for retention of Rly. Hrs.No.T/18/B Type -
I Subhashpally for 8(eight) months after superannua-
tion i.e. from 1.7.96.

Sir,

With due respect I beg to state that I am going to
retired from Rly. service on 1.7.96.

That Sir, due to my wife's sickness & Doctor's advice her
presence at Siliguri is required for treatment.

So, I therefore request your honour to kindly give permission
for retention of my Rly. Hrs for eight months i.e. 1.7.96 as per
extend rule & oblige by.

Devi Prasad Mukherjee
Your faithfully, *Devi Prasad Mukherjee*

DA One certificate.

23

To
The Divisional Railway Manager,
N.F. Railway/Katihar.

up

Sub: Wrongly calculated my pension as I am
getting less pension request for grant
the pension higher as per extent rule.

Sir,

With profound respect, I beg to lay before your
honour the following facts in the hope of getting your
sympathetic consideration and favourable orders please.

1. That I worked as PUM at Siliguri Jn. with entire
satisfaction to my superiors. My date of appointment
was 16.11.65 and I have been retired from service
with effect from 1.7.96. The total period comes to
more than 31 years.
2. That my pension as per rule would have been calculated
50% of the basic pay. My basic pay was 1680/- for
seven months and three months was @ Rs. 1720/-. This
has been increased by 5th Pay commission and accepted
by the Government. My pay on 1.1.96 should be as under:-

- a) Existing pay - 1680/-
- b) DA - 2486/-
- c) 2 IR - 268/-
- d) 40% - 672/-

Total Rs. 5,300/- to be fixed in scale Rs. 5000-150-8000/-

Accordingly the average of ten months should be
calculated. If 50% is taking to consideration. My
pension would have been Rs. 2650/- plus DR, this has
not been done.

3. That the service certificate issued to me where my
period of service has been shown as 16.11.65/29.8.79.
This is wholly in correct. My service was approved on
16.11.65 and that period should be counted for the
purpose of qualifying service. This has not been done.
This would be counted for the purpose of qualifying
service.
4. That I was approved as Mate vide XEN/S&C/Siliguri's
letter No.E/S/Suppl/526 of 6.4.68. It is not under-
stood how I was reverted to the post of Keyman. In
this context DRM(P)/KIR's letter No.E/11/E dt.27/29.8.79
is enclosed herewith for your ready reference.
5. That the qualifying service has been counted as 24 years
is not correct. This has to be verified from the official
records. No charge sheet was serve to me as a Major of
punishment nor any other letter was served, so my
reversion was irregular, ultravirous and unconstitutional
Therefore my qualifying service has to be counted
31 years and not 24 years, otherwise I should be
intimated in speaking terms that this period will not
be counted as qualifying service and rule to this
effect may kindly be communicated.

(contd....2)

6. That no arrears has been paid to me arising out of 5th pay recommendation nor any other retirement benefit has been assigned, specially the pension has to be increased.

In the circumstances it is requested kindly to increase my pension as per 5th Pay commission recommendation and arrange to pay the arrears at the early date so that I should not suffer financially.

~~Encl:~~

Yours faithfully,

Dated.

Dilip Kumar Mukherjee

(Dilip Kumar Mukherjee)
Ex.PUM/Siliguri.

My Address

Dilip Kumar Mukherjee

12.8.98

Sri Dilip Kumar Mukherjee,
Choghomali, Niranjan Nagar
Ward No.36, Durgam-2
C.O.Choghomali Bazar
Distt.- Jalpaiguri

Copy to : DRM(P)/KIR for information for kind attention
of Sri D.Kamait, APO/KIR

DF 12/8

Dilip Kumar Mukherjee

(Dilip Kumar Mukherjee)

DF. 12.8.98

N. F. Railway.

Office of the
Divl. Rly Manager (Works),
N.F.Rly, Katihar
Dated 26-11-1997.

No.W/235/Clearance/4x5 PWIs-IOWs/W-7

To
The Divl. Rly Manager (P), PS.
N.F.Railway, Katihar.

Subj:- Clearance certificate of Sri Dilip Kr. Mukherjee, Ex PWM
under PWI/SGW.

There is nothing outstanding against Sri Dilip Kr. Mukherjee who was
retired from Rly service on 30.6.96 and vacated Rly qrs on 4.4.97.
Retention of qrs was granted for the period 1.7.96 to 31.10.96 vide this
office L/No.W/38/O/Retention/W-7 dt. 5.3.97. He has deposited medical
card and identity card to Sr.SE(P.way)SGW.

No SFR/Vic/D&I case is pending against him.

Sr. Divl. Engineer,
N.F.Rly, Katihar.

Copy to: Sri Dilip Kr. Mukherjee, Ex PWM under Sr.S.R(P.way)SGW for
information please.

(Signature)
26/11/97
Sr. Divl. Engineer,
N.F.Rly, Katihar.

(Signature)

R 10

*After trial
for
Advocate*

Annexure-8

43

28

Date 28/1/97



To the Sr. Section Engineer/Work
N.F.Rly / Siliguri Jn.

Sub: Vacation Report of Rly Or No. I/18(B)
Type II electrified at Subashpally
colony/SGUJ.

Sir,

I would like to inform you that as I am
going to vacate the above mentioned Rly Or. being
31/1/97 due to self retirement during 30/6/96.

So, you are requested to arrange to take
over the same Rly Or & issue me clearance certificate
as soon as possible to payment the DCRG as earlier
please.

Yours faithfully,

Dilip Kumar Mukherjee

(D. K. MUKHERJEE)
Ex PWM/SGUJ

Copy to - Sr AEN/SGUJ for information please.

Section Engineer(Works) Siliguri Town
-for information please.

EC/N/SGUJ for information please.

Yours faithfully,

Dilip Kumar Mukherjee

(D. K. MUKHERJEE)
Ex PWM/SGUJ

28.1.97

Witnessed
28/1/97
Dilip Kumar Mukherjee
Advocate

Received
28/1/97

28/1/97

Received
28/1/97
for D.K. Mukherjee

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Annexure - 9.

पूर्वोत्तर सीमा रेलवे/Northeast Frontier Railway

पू० सी० ई० ई० 10/N. F. BE 10

विद्युत विभाग / ELECTRICAL DEPARTMENT

रेल भवनों के खाली करने या उसमें रहने का प्रमाण पत्र / Inventory of Electrical Equipments in Railway Building
vacation / Occupation Certificate

स्टेशन/Station..... SGUT इलाका/Locality..... Subhashpally भवन सं./Building No..... T/18(B) Type II
मीटर निर्माता/Meter-Maker..... VXL डी० सी०/D. C. ए० सी०/A. C अवस्था/Phase..... Single
अम्पियर/Amps..... 5 वोल्ट/Volts..... 220 सं०/No..... 809584

| क्रम सं० Sl. No. | सगे सामानों का विवरण / DESCRIPTION OF FITTINGS | दो/नौ गई मात्र Quantity Handed | टिप्पणी/Remarks |
|---------------------|---|--------------------------------------|-----------------------------------|
| | | over Taken | |
| 1 | स्विच अम्पियर टम्बलर/SWITCHES AMPS TUMBLER | 7 n. | over of 4-57 vide ADN |
| 2 | छत पंखा/CEILING-FANS-30" पंखार/SWEEP | 1 n. | |
| | " 56" 48" | 1 n. | |
| | " 50" 48" | 1 n. | |
| 3 | पंखा विनियामक/FAN REGULATORS | 1 n. | over of 4-57 vide ADN |
| 4 | तिन पिन का सॉकेट/THREE PIN PLUG SOCKETS | 1 n. | |
| 5 | तिन पिन का प्लग/THREE - PIN PLUG | 1 n. | |
| 6 | तिन पिन वाले प्लग का संयुक्त सॉकेट और स्विच THREE-PIN PLUG COMBINED SOCKETS & SWITCH | 1 n. | |
| 7 | विजली बत्ती लगाना/LIGHT FITTING ————— तिर्हनु/PENDENT | 3 n. | |
| | सकड़ी की पट्टी / BATTEN | 2 n. | |
| | हंस-गोम की ब्रैकेट / BRACKETS SWAN NECK | 1 n. | |
| | जलरोक ब्रैकेट / BRACKET WATER TIGHT | 1 n. | over of 4-57 vide ADN |
| | प्रतिदीप्ति एकतली / FLUORESCENT SINGLE TUBE | 1 n. | |
| | प्रतिदीप्ति गहरी तली / FLUORESCENT DOUBLE TUBE | 1 n. | |
| 8 | बत्ती का शेड / LAMP, SHADES (1) एनामल लोहा/ENAMEL IRON | 1 n. | |
| | (2) विशेष डिजाइन / SPECIAL DECORATIVE | 1 n. | over of 4-57 vide ADN |
| | (3) ओपल प्लास्टिक / OPAL PLASTIC | 1 n. | |
| 9 | विद्युत बत्ती / ELECTRIC LAMP (ग/ग) 15 वाट / W | 1 n. | |
| | H.S. Melo. 5 Amps (ग/ग) 25 वाट/W | 1 n. | over of 4-57 vide ADN |
| | Main Switches (ग/ग) 40 वाट/W | 1 n. | |
| | 200 2 way (ग/ग) 60 वाट/W | 1 n. | |
| | (ग/ग) 100 वाट/W | 1 n. | |
| 10 | विद्युत घंटी / ELECTRICAL CALL BELL | 1 n. | over of 4-57 vide ADN |
| 11 | दाव बटन स्विच / PUSH BUTTON SWITCH | 1 n. | |
| 12 | | 1 n. | |
| 13 | | 1 n. | over of 4-57 vide ADN |
| | | 1 n. | |

यदि हो तो पत्र को खाली कर दिया जायेगा / ADHIT DEULI LEM IF ANY, SHALL BE GIVEN OVER LEAF

१०००/P. F. O.

खाली करने/बसल करने पर मीटर वाचन/Meter reading on

4.487

Vacation

1717

Occupation

1. मौजूद विद्युत प्रतिनिधि का हस्ताक्षर/Signature of electrical representative present.....

2. नाम/Name

3. पदनाम/Designation

विद्युत कार्यभारी का हस्ताक्षर और कार्यालय मोहर

Signature and Official seal of Electrical

In - Charge

सुपुर्द/ Handed

1.

का तारीख/Over on

सुपुर्दगी लेने / Taken

2.

दखलकार का हस्ताक्षर/Signature of occupant.....

3.

नाम और पदनाम/Name and Designation

4.

बिल बनाने वाले का नाम/Name of Bill preparing

Officer

नोट/Note 1—यह प्रमाण पत्र दो प्रतियों में तैयार किया जाएगा जिसका एक प्रति दखलकार का दी जायगी और दूसरी प्रति विद्युत पर्यवेक्षक कार्यालय में फाइल की जायगी। This certificate is to be made out in duplicate one copy will be handed over to the occupant and the other copy file in electric supervisor's Office.

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In The Central Administrative Tribunal
Guwahati Bench :: Guwahati.

O.A. NO. 06/2000

Shri Dilip Kr. Mukherjee

Vs.

Union Of India & Ors.

In the matter of :

Written Statement on behalf of
the respondents.

Chief Personnel Officer
E. P. Rly. / Maligaon
Guwahati-78.

Filed by the respondents
through P. Chibrouk
For J.L. Somwar
Rly. Bongaiva

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 beg to state that the hon'ble tribunal has no jurisdiction to decide the matter involved in this original application for the reason that the applicant is a permanent resident of Chogomali in the District of Jalpaiguri (North Bengal) and also this application has been filed against the action done by Divisional Railway Manager, Katihar. So this application deserves to be dismissed on that count alone.

3. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.

That in reply to statements in paragraph 4.1 is stated that the applicant was engaged as a labour in the Construction Organisation under XEN/S&C/ New Jalpaiguri w.e.f. 16.11.65 and after completion of 6 months continuous service he had given authorised scale of pay in scale of Rs.75-95/- in the same organisation. Thereafter he was temporarily promoted as Mate w.e.f. 16.10.68 in the Construction Organisation. As regards the deduction of provident fund, it is deducted even by a temporary employee getting authorised scale of pay in Construction Organisation.

Further the applicant was reverted to the post of Keyman w.e.f. 23.11.69 and the reversion order was passed by Construction Organisation. DRM(P)/KTR had wanted to know how the applicant was reverted from the post of Mate. However the confirmation of promotion/reversion is the affairs of Construction Organisation and this does not count in the open line.

5. That in reply to statements in paragraph 4.6 it is stated that the applicant was approved as Mate in scale Rs.225-308 and temporarily appointed to officiate as Mate w.e.f. 01.09.79 and posted under PWI/Siliguri in the open line. Hence actually he worked as a Casual Labour for 13 years 9 months and 15 days in the Construction Organisation i.e. for the period from 16.11.65 to 31.08.79. The benefit of service rendered in Construction Organisation is not granted in full but only 50% of total service is taken into account for qualifying service. Thus 6 years 10 months and 22 days (50% of total service in Construction Organisation) has been taken towards qualifying service for pensionary benefits. Thus total qualifying service for

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✓
Chief Personnel Officer
E. P. Rly. / Maligaon
Guwahati. 11

pensionary benefit is 23 years 8 months and 16 days and not 30 years as claimed by the applicant.

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Chief Personnel Officer
M. P. Rly. / Maligaon,
Guwahati-78

6. That in reply to statements in paragraph 4.7 to 4.8 it is stated that no representation has been received by the respondents. It is also to state that the service benefit can not be extended for the reason that the total service rendered in Construction Organisation can not be taken as qualifying service for pensionary benefits in the open line. Only 50% of the total service in Construction Organisation has been counted for pensionary benefit and accordingly the fixation of pensionary benefit has been done.

7. That in reply to statements in paragraph 4.9 to 4.10 it is stated that pay of the applicant according to Vth Pay Commission has been revised in the scale of Rs.4500 - 7000/- w.e.f. 01.01.96 and not in the scale of Rs.5000 - 8000/- and difference so accrued has also been paid to him. As regards difference of pay, pension, commutation, DCRG and leave salary all have been paid to him in the new pay scale as per recommendation of Vth Pay Commission and in accordance with the rule.

8. That in reply to statements in paragraph 4.11 to 4.12 it is stated that normally 4 months time is granted to a retired employee after retirement. As the applicant was granted 4 months time after his retirement the retention of Rly. Quarter by him in excess of 4 months was treated as unauthorised occupation of Rly. quarter and hence penal rent was recovered from him. It is the duty of a retired employee to hand over the Rly. quarter and not the duty of Rly. Authority to take over the same.

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9 That in the facts and circumstances of the case the application deserves to be dismissed with cost.

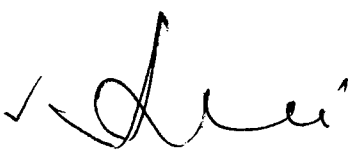
Verification

I,.....*A. K. Nigam*.....,working
as*C. P. O / A*.....,N.F.Rly, Maligaon, do
hereby verify that, the statements made in the paragraphs 1
to 9 are true to my knowledge.

Guwahati

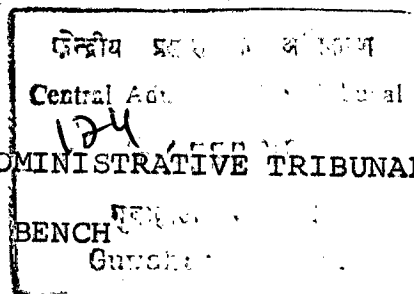
28 /12/2000

PI


Signature
Chief Personnel Officer
N. F. Rly, / Maligaon,
Guwahati-11.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH



Filed by the applicant
through M. C. Choudhury, Advocate
10/11/2000

O.A. No. 06 of 2000

Sri Dilip Kumar Mukherjee

-versus-

Union of India & Ors.

-And-

In the matter of :

Rejoinder submitted by the applicant
in reply to the written statement
submitted by the respondents.

The applicant abovenamed most humbly and
respectfully begs to state as under :

1. That your applicant categorically denies the statements made in paragraph 2 of the written statement and further begs to state that after his retirement presently he is residing in the village Choungaputa, P.O. New Bongaigaon, District Bongaigaon, Assam alongwith Shri Sukumar Bhattacharjee in the house of his son-in-law. As such this Tribunal has jurisdiction under the Administrative Tribunals Act, 1985 to deal with the case of the present applicant and moreover it is categorically stated the retiral benefit is finally liable to be settled with the approval of the Personnel Department, N.F. Railway office of the General Manager (P), Maligaon, as such the statement made in paragraph 2 of the written statement is not correct.
2. That the statements made in paragraphs 4, 5, and 6 of the written statement and categorically denies the same

and further begs to state that the respondents are put to strictest proof to establish their contention by records that applicant was not appointed as temporary Railway servant with effect from 16.11.65 and the applicant further reiterates the statement made in the Original Application. It would be evident from the Executive Engineer letter No. E/5/Scale/1/3039 dated 11.12.1964 of the Survey and Construction Wing of N.F. Railway, Siliguri Junction wherein it is stated that the applicant having been selected for the post of Keyman and on being fit ~~xxxxxxxxxx~~ medically ~~xxx~~ in category B/1(one) is hereby temporarily appointed in the scale of Rs. 80-1.85-2.95 EB-3-110 with effect from 16.11.65 (FN) and posted under PWI/NJP. This letter establishes beyond all doubts and makes it abundantly clear that the applicant was appointed temporarily with effect from 16.11.65. Therefore denial of the regular service benefit with effect from 16.11.65 to 1.9.79 to the applicant is highly arbitrary and unfair and the order of retiral benefits has been passed without computing the regular service period of the applicant with effect from 16.11.65 to 1.9.79. In this connection it is relevant to mention here that the respondents have computed arbitrarily the period of service with effect from 16.11.65 to 1.9.79 as casual worker and computed only 50% of the service of the aforesaid period towards pensionary benefit. As a result the applicant incurring financial loss towards pensionary benefits and other consequential service benefits. Therefore respondents are duty bound to take into consideration the entire period of service i.e. with effect from 16.11.65

to 30.6.96 towards pensionary benefit treating the same as regular service. The applicant urged to produce a copy of the order dated 11.12.64 passed by Shri S.K. Basu, Executive Engineer, Siliguri. ~~However~~ at the time of hearing. The said letter could not be annexed as the ~~condition of the letter~~ letter could not be xeroxed. The Hon'ble Tribunal further bepleased to direct the respondents to produce the order issued by Sri S.K. Basu, Executive Engineer, dated 11.12.64 and further be pleased to direct to produce the letter No. E/II/1(E) dated 27/29.8.79 i.e. Annexure 3 to the application. It is also stated that the respondents have deducted his Provident Fund from his salary after regular appointment to the post of Keyman with effect from the due date after his joining to the post of Keyman on 16.11.65. That also establishes the fact the the applicant was regular temporary employee of the Railways. Therefore denial of pensionary benefit with effect from 16.11.65 to the applicant is highly arbitrary, illegal and contrary to the rule.

2. That with regard to the statement made in paragraph 7 the applicant is entitled to revise fixation of pensionary benefit taking into account the entire service period of the applicant with effect from 16.11.65 and the respondents are liable to be paid the balance amount with 18% interest. It is further stated that the gratuity amount of Rs. 52, 680/- was paid to the applicant only on 28.12.98 whereas the applicant retired from service on 3.6.96. Therefore the amount of gratuity has been paid

to the applicant after a lapse of two years as such respondents are duty bound to pay interest at the rate of 18% to the applicant for delayed payment of gratuity. Moreover the payment of commutation amount to the applicant only on 18.8.98 to the tune of Rs. 60,626 the said amount also paid after a lapse of two years when the applicant retired from service in the month of June 96 as such respondents are liable to pay interest on the commutation amount.

3. It is further stated that as regard to the statement made in paragraph 8, the applicant states that he is entitled to retain the quarter at least for a period of eight months after expiry of four months periods. After his retirement on completion of four months unfortunately permission was refused for further four months on medical ground permission was refused without assigning any reason and the respondents recovered of damage rent without disposing the application for permission for extending their period. The said action of the respondents is highly arbitrary, unreasonable as such the applicant is entitled to get refund back to damage rent already recovered from the applicant.

In the facts and circumstances stated above, the application is allowed with costs.

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

I, Sri Dilip Kumar Mukherjee, son of late Bimalapada Mukherjee, aged about 63 years, resident of village Choungaputi, Bongaigoan, and applicant in the O.A. No. 06/2000 do hereby verify that the statements in paragraphs 1 to 3 are true to my knowledge and belief and I have not suppressed any material fact.

And I sign this verification on this the 6th day of February, 2001.

Dilip Kumar Mukherjee
Signature