

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 105/01.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet..... O.A Pg..... 1 to 3
M.P 57/02 order Pg. 1 to 2 8/10/17-5/02

2. Judgment/Order dtd. 11/4/01 Pg..... to.....

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... 105/01 Pg..... 1 to 24

5. E.P/M.P. 57/02 Pg..... 1 to 6

6. R.A/C.P..... Pg..... to.....

7. W.S..... Pg..... 1 to 15

8. Rejoinder..... Pg..... to.....

9. Reply..... Pg..... to.....

10. Any other Papers..... Pg..... to.....

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

*Subh
7-12-17*

FORM NO.4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWATHI BENCH ::::: GUWAHATIOriginal ORDER SHEET
APPLICATION NO 105 OF 2001

Applicant (s) C. K. Hazarika

Respondent(s) U.O.I. Govt

Advocate for Applicant(s) Mr. M. K. Choudhury, Mr. A. Barkataky

Advocate for Respondent(s) Mr. N. Dutta

Railway advocate

Notes of the Registry	Date	Order of the Tribunal
This application is in form but not in original. Petition is filed vide M.P. No. C.P. for Rs. 50/- deposited vide IPO/BD No. 26 503692 Dated.....27.2.2001	14.3.01	Heard Mr. N. Dutta learned counsel for the applicant and also Mr. S. Parma learned counsel for the respondents.
		Application is admitted. Issue notice to show cause as to why interim order dated 9.2.2001 shall not be granted. List on 11.4.01 for orders.
		In the meantime the operation of the impugned order dated 9.2.2001 is suspended.
		16/3/01 Member
Service of notice issued to the respondents vide O. No. 980-84 dt. 16.3.01	11.4.01	List on 15.5.01 to enable the respondents to file written statement.
2-4-01 Notice duly served on respondents 1, 2, 3,	1m	Interim order passed earlier shall continue.

Vice-Chairman

Order dtd. 16/5/01
Communicated to the
parties concerned.

By
23/5/01

16.5.01 List on 20.6.2001 to enable the
respondents to file written statement.
Interim order passed earlier shall
continue.

No written statement
has been filed.

lm

Vice-Chairman

By
19.6.01

20.6.01

On the prayer of Mr. S. Sarma
learned counsel for the respondents
four weeks time is granted for filing
of written statement. List on 20.7.01
for orders.

No. Wps has been
submitted.

By
19/7

lm

20.7.01 List on 24.8.2001 to enable the re-
spondents to file written statement.

No. Wps has filed.

By
23.8.01

bb

Vice-Chairman

No. written statement
has been filed.

By
25.9.01

mb

Vice-Chairman

26.9.01

List again on 16.11.01 to enable
the respondents to file written
statement.

No. written statement
has been filed.

Vice-Chairman

By
15.11.01

16.11.01

None is present for the applicant.
Mr. S. Sengupta, learned counsel for the res-
pondents requests for time for filing of wri-
ten statement. Prayer accepted.

List on 4.1.2002 for further order.

No. Wps has been filed.

By
3.1.02

bb

Vice-Chairman
Member

Notes of the Registry	Date	Order of the Tribunal
No. written statement has been filed.	04.01.02	Post the matter for hearing. In the meantime, the respondents may file written statement, if any. List on 8.2.2002 for hearing.
<i>7.2.02</i>	mb	
	8.2.02	None is present for the applicant. Written statement has been filed to-day. The Respondents will serve the copy of the same to the learned counsel for the applicant. List on 13.3.02 for hearing.
	lm	<i>K C Usha</i> Member
	13.3.02	There is no representation on behalf of the applicant. The matter has been listed so many times. The Respondents have filed their written statement. The applicant has also not disputed the written statement. Accordingly, application is dismissed for default. No costs.
<i>13.2.2002</i> W/S submitted by the Respondents.	lm	<i>K C Usha</i> Member
<i>13.2.2002</i> Copied over to the parties.	12.4.02	Heard Mr. M. Dutta learned counsel for the applicant. List on 3.5.02 for hearing.
<i>13.2.2002</i> Copied over to the parties.	lm	<i>K C Usha</i> Member
<i>13.2.2002</i> Copied over to the parties.	17.5.02	Heard learned counsel for the parties. Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs.
<i>13.2.2002</i> Copied over to the parties.	lm	<i>K C Usha</i> Member

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./K.A. No. 89 of 2001 and 105 of 2001

DATE OF DECISION. 17-5-2002

1. Shri Balen Das
2. Shri Chandra Kanta Hazarika

APPLICANT(S)

(In O.A. No. 105/01 Mr. M. K. Choudhury, Mr. A. Borkataki, Mr. N. Dutta

In O.A. No. 89 of 2001 Mr. N. Dutta, Mr. U. Bhuyan, Mr. S. D. Bhuyan

ADVOCATE FOR THE APPLICANT(S)

—VERSUS—

Union of India & Ors.

RESPONDENT(S)

Mr. S. Sengupta, Railway counsel

ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

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

Judgment delivered by Hon'ble ADMINISTRATIVE MEMBER

[Signature]

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

1. Original Application No.105 of 2001

Date of Order: This the 17th Day of May 2002

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

Shri Chandra Kanta Hazarika, Commercial
Supervisor, (Coaching), Parcel, N.F.Railway,
Guwahati-1.

By Advocate Mr.M.K.Choudhury, Mr.A.Borkataki
Mr.N.Dutta .

-Vs-

1. Union of India, through the General Manager,
N.F.Railway, Maligaon, Guwahati-11.
2. The General Manager(P), N.F.Railway
Maligaon, Guwahati-11.
3. The Chief Commercial Manager(G)
N.F.Railway, Maligaon, Guwahati-11
4. The Station Master, Guwahati Railway Station,
N.F.Railway, Guwahati-1
5. The Senior Divisional Railway Manager(P),
N.F.Railway, Lumding
... Respondents.

By Advocate Mr.S.Sengupta, Railway counsel.

2. Original Application No.89 of 2001

Shri Balen Das,
Son of Sri Amrit Das,
Resident of Village -Bhattacharjee,
P.O.Bhattacharjee, P.S.-Azara,
Dist. Kamrup.

By Advocate Mr. Mr.N.Dutta, Mr.U.Bhuyan,
Mr.S.D.Bhuyan.

-Vs-

1. North East Frontier Railways,
Maligaon, Guwahati-11
Through the General Manager,
2. Chief Commercial Manager, North East Frontier Railway
Maligaon, Guwahati-11

lc Whan

contd/-2

3. General Manager(personnel)
North East Frontier Railway,
Maligaon, Guwahati-11
4. Divisional Commercial Manager,
Lumding Division,
North East Frontier Railway,
Lumding-782447

By Advocate Mr.S.Sengupta, Railway counsel

O_R_D_E_R.

K.K.SHARMA, MEMBER(ADMN):

These two applications are taken up together as the facts are common. The applicants have approached this Tribunal against the common transfer order dated 9.2.2001. The transfer order is reproduced below:-

"North East Frontier Railway

OFFICE ORDER

As desired by CCM vide his office note No.C/SS/PTS/94 dated 9.2.2001 the following staff of Lumding Division who were working at Guwahati parcel office are hereby transferred to Katihar Division on administrative ground with immediate effect. They may be posted at any station under KTR Division in the existing pay and grade.

<u>Sl.No.</u>	<u>Name</u>	<u>Designation</u>
1.	Shri C.K.Hazarika,	CPC/Ghy/Guwahati Parcel office.
2.	Shri B.Das,	Sr.CC/Ghy, -do-

This has approval of the competent authority.

For General Manager(P), MLG.

The applicants are Shri Balen Das, Sr.Commercial Clerk and Shri Chandra Kanta Hazarika, Commercial Supervisor(coaching). Both the applicants have been transferred from Guwahati Division to Katihar Division on administrative ground. Both the applicants have stated that they have been transferred on account of certain incident that took place on 7.2.2001. It is stated

U. Shaha
contd/-

that the transfer order has been made on an alleged complaint of harrassment to a customer. After the incident the applicants were called by the Chief Commercial Manager in presence of Dy.CCM who threatened the applicants that they would be transferred. The applicants have challenged the transfer order on various grounds. Both of them belong to the reserved category. They have been transferred without there being any administrative reason and without following the policy guideline in this regards. The applicants have not been posted against any particular post. The applicant's children are studying in the Assamese medium school therefore, in the event the applicants have to carry out the order of transfer, the education of the children would suffer. The applicants have also challenged the transfer order on the grounds of it being arbitrary and malafide.

2. The respondents have filed their written statement and Mr.S.Sengupta learned counsel appeared on behalf of the respondents. The respondents have disputed the averments made in this application. Mr.S.Sengupta learned counsel argued that the application is defective because of the Government of India has not been impleaded. Mr.S.Sengupta argued that the transfer order was made in exercise of powers and on administrative grounds. The transfer has been made due to shortage of commercial Department staff in Katihar Division. The Respondents have denied any such incident as mentioned in the O.As took place on 7.2.2001. The respondents have also denied that the applicants have filed any representation against the transfer order. Mr.S.Sengupta also produced a Note No.C/SS/pts/94 dated 9.2.2001 signed by Chief Commercial Manager. There are no details of any administrative ground for transferring the applicants to Katihar in this note.

contd/- *LC Ushan*

3. I have heard the learned counsel for the parties and have also perused the records. The objection of Shri S. Sengupta that applications should be dismissed for not making Govt. of India as respondents is not accepted. The application had been admitted as a valid application. The Records produced by the Respondents did not contain any material supporting the transfer of the applicants to Katihar. It is stated that only on administrative ground the applicants have been transferred. There is no material to justify the transfer of the applicants. The respondents have denied the receipt of any representation from the applicants. On perusal of the materials on record and on consideration of the submissions of the learned counsels for the parties I am of the view that the case of the applicants requires to be reconsidered. Both the applicants have stated that the transfer has been made on account of a complaint. The respondents deny any such complaint. The applicant in O.A. 57/2002 has mentioned the incident relating to the complaint of the customer in his representation. No material to support the transfer has been shown. The note of the CCM did not indicate the administrative reasons for the transfer. The applicants have filed the representations on 22nd Feb, 2001 and 10th Feb, 2001 which are yet to be disposed of. I direct the applicants to file fresh representations before the authorities narrating all the facts. If such representation are filed by the applicants the respondents are directed to dispose of the representation within 2 months from the date of receipt of this order. Till disposal of the representation the applicant shall not be disturbed.

4. The application is accordingly, disposed of. There shall however, no order as to costs.

K (Chhaya)
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

that the transfer order has been made on an alleged complaint of harrassment to a customer. After the incident the applicants were called by the Chief Commercial Manager in presence of Dy. CCM who threatened the applicants that they would be transferred. The applicants have challenged the transfer order on various grounds. Both of them belong to the reserved category. They have been transferred without there being any administrative reason and without following the policy guideline in this regards. The applicants have not been posted against any particular post. The applicant's children are studying in the Assamese medium school therefore, in the event the applicants have to carry out the order of transfer, the education of the children would suffer. The applicants have also challenged the transfer order on the grounds of it being arbitrary and malafide.

2. The respondents have filed their written statement and Mr. S. Sengupta learned counsel appeared on behalf of the respondents. The respondents have disputed the averments made in this application. Mr. S. Sengupta learned counsel argued that the application is defective because of the Government of India has not been impleaded. Mr. Sengupta argued that the transfer order was made in exercise of powers and on administrative grounds. The transfer has been made due to shortage of commercial Department staff in Katihar Division. The Respondents have denied any such incident as mentioned in the C.A.s took place on 7.2.2001. The respondents have also denied that the applicants have filed any representation against the transfer order. Mr. S. Sengupta also produced a Note No. C/SS/Pts/94 dated 9.2.2001 signed by Chief Commercial Manager. There are no details of any administrative ground for transferring the applicants to Katihar in this note.

contd/- *LC Ushan*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

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

Title of the Case : O.A. No. 105 of 2001

Shri Chandra Kanta Hazarika Applicant

- Versus -

Union of India & Ors. Respondents

I N D E X

Sl. No.	Particulars of the documents	Page No.
1.	Application	1 to 10
2.	Verification	11
3.	Annexure-1	12
4.	Annexure-2	13 to 14
5.	Annexure-3 series	15 to 22
6.	Annexure-4	23
7.	Annexure-5	24

For use in Tribunal's office :

Date of filing :	12.9.2001
Registration No. :	
	REGISTRAR

File No -
A. Bandalam (Admocd.)
12/3/2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

D.A. No. of 2001

BETWEEN

Shri Chandra Kanta Hazarika, Commercial Supervisor (Coaching), Parcel, N.F. Railway, Guwahati-1.

... Applicant

AND

1. Union of India, through the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The General Manager (P), N.F. Railway, Maligaon, Guwahati-11.
3. The Chief Commercial Manager (G), N.F. Railway, Maligaon, Guwahati-11.
4. The Station Master, Guwahati Railway Station, N.F. Railway, Guwahati-1.
5. The Senior Divisional Railway Manager (P), N.F. Railway, Lumding.

... Respondents

DETAILS OF APPLICATION

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

The instant application under Section 19 of the Administrative Tribunals Act, 1985 is directed against an order dated 9.2.2001 issued by the General Manager (P) by which the Applicant is sought to be transferred from Guwahati Parcel Office to Katihar Division.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant application for which he wants redressal is well within the jurisdiction of the Hon'ble Tribunal.

Mala fide -

2. LIMITATION :

The applicant further declares that the application is within the limitation period 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. He is presently working as Commercial Supervisor (Coaching), Parcel in the Guwahati Railway Station. The post of the Applicant was earlier designated as Chief Parcel Clerk (CPC).

4.2 That the Applicant has a blemish free service career and although his service career he has been rendering faithful and dedicated service to the satisfaction of all concerned. The Applicant was appointed in the Railways in 1978 and was posted at Lumding till 1998 when he was transferred to Guwahati and till date there has been no occasion on the part of any higher authorities to express dissatisfaction over any work performed by the Applicant.

4.3 That the Applicant in the instant case assails an order dated 9.2.2001 issued by the General Manager (P), Maligaon by which the Applicant has been sought to be transferred to Katihar Division purportedly on administrative ground. By the same order, another person viz. Shri B. Das has also been sought to be transferred to Katihar Division.

A copy of the impugned order dated 9.2.2001 is annexed hereto as ANNEXURE-1.

4.4 That the Applicant states that the impugned order dated 9.2.2001 has been issued by the authorities in colourable exercise of power for reasons other than bonafide. In fact, the impugned order has been issued as a measure of penalty to the Applicant for no fault on his part. Be it stated here that the Applicant was out of Guwahati on some official duty and came back on 6.2.2001. On 8.2.2001, the Applicant was summoned by the Senior Area Manager (ARM), Guwahati and asked him as to whether the Applicant knows anything about harassment caused to some customers by one Shri Balen Das in the Parcel Office. The Applicant pleaded ignorance and said that since he is in the first floor of the office and counters are in the ground floor, he does not know if any such case of harassment has taken place, nor the Applicant was intimated about any complaint made by any customer.

Thereafter, the Applicant was again called to the office of the Chief Commercial Manager where the CCM (G) and Deputy CCM were present. The said officers alleged that the Applicant failed to prevent harassment to the customers and therefore the Applicant should be shunted out from Guwahati. The Applicant urged before the said officers that no incident of any harassment was ever reported to him and in any event, he is not involved with any case of harassment. In fact, the allegation of harassment is against one Shri Balen Das who has also been transferred by the impugned order.

4.5 That thereafter the impugned order dated 9.2.2001 was issued and this fortified the fact that the Applicant has been sought to be transferred as a penal measure for the alleged occurrence of harassment.

4.6 That the Applicant, immediately thereafter filed a representation dated 19.2.2001 addressed to the Chief Commercial Manager, N.F. Railway, Maligaon praying for recalling the order of transfer. In the said representation, the Applicant narrated the incidence that preceded the order of transfer thereby pointing out that it was not in the administrative exigencies that the order of transfer was issued. The Applicant also took up the grounds ailment of the Applicant as well as his wife and the difficulties that would be faced by his daughters in their education in the event the order of transfer is to be carried out.

A copy of the representation dated 19.2.2001 is annexed hereto as ANNEXURE-2.

4.7 That the Applicant begs to state that as per the conditions of service of the Applicant, a competent authority may transfer a Railway servant from one post to another provided that except (1) on account of inefficiency or misbehaviour or (2) on his written request, a Railway servant shall not be transferred substantively. This provision finds place in clause 2 to 7 of the Indian Railway Establishment Code, Vol. I. The Applicant has never made any request for transfer nor he has misbehaved anyone nor there is any allegation of inefficiency on the part of the

Applicant. Therefore, the authorities could not have issued the impugned order of transfer.

4.8 That the Applicant states that a mere perusal of the impugned order of transfer would show that there is no administrative exigencies in the transfer. No other person has been sought to be posted in place of the Applicant and the Applicant has also not been posted against any particular post. By the impugned order, the Applicant has been sought to be transferred to Katihar Division without naming any post. This shows the malafide on the part of the transferring authority which calls for intervention of this Hon'ble Tribunal.

4.9 That the Applicant begs to state that he has three daughters. The eldest daughter Miss Pompi Rani Hazarika is studying in 1st year Higher Secondary at Panbazar Girls' Higher Secondary School. The second daughter Miss Dimpri Rani Hazarika is studying in the same school and is appearing in the HSLC examination commencing from 12.3.2001. The third daughter Miss Niha Hazarika is studying in Class V in the same school. All the daughters are studying in the Assamese medium and therefore in the event the Applicant has to carry out the order of transfer, the education of the daughters would suffer. Further on being transferred, the Applicant would not be allowed to retain the quarter at Guwahati which would add to the miseries of the family of the Applicant. It maybe pertinent to mention here that there is a policy of the Respondent authorities not to issue any order of transfer in mid-academic

session. The impugned order is thus in violation of the own guidelines of the Respondent authorities.

4.10 That the wife of the Applicant is ailing who requires constant medical care. She was referred to Apollo Hospital for investigation and further treatment is going on at Guwahati for her hypertension, heart disease and other ailments. Furthermore, the Applicant is also a chronic patient of gastro-enterologic trouble and hypertension. Therefore, if the order of transfer is required to be carried out, it would tell upon the health of both the Applicant and his wife.

Copies of documents of medical treatment of the Applicant and his wife are annexed hereto and marked collectively as ANNEXURE-3 series.

4.11 That although the transfer order has been issued, the Applicant has not yet been relieved from his post at Guwahati. The Applicant is presently on leave on medical grounds. Be it stated here that by an order dated 8.3.2001 issued by the Senior ARM, Guwahati, the Applicant was asked to hand over the charge. The Applicant has not handed over charge but has handed over the keys of the office almirahs so that the works in the office do not suffer as he is on leave. The Applicant accordingly intimated the authorities.

A copy of the order dated 8.3.2001 and the reply of the Applicant dated 8.3.2001 are annexed hereto as ANNEXURES-4 and 5 respectively.

4.12 That the Applicant begs to state that he belongs to Scheduled Caste community and therefore he is entitled to certain special privileges. It is the avowed policy of the Respondent authorities not to transfer an employee belonging to SC/ST community to a place outside his district or State. However, in the instant case, the authorities have sought to transfer the Applicant to Katihar without there being any administrative reason and without following the policy guideline in this regards.

4.13 That the Applicant states that the impugned order has been issued in colourable exercise of power and it is not in the public interest. Malafide is the foundation of the action of the authorities which call for immediate intervention of Your Lordships. Further the representation of the Applicant has also not been disposed of by the authorities. Be it stated here that no other person has been posted in place of the Applicant and therefore there is no impediment in granting the interim relief prayed for. On the other hand, in the event of refusal to grant the interim prayer, the Applicant would suffer irreparable loss and injury.

4.14 That the Applicant is a Group C staff. Being a low paid employee, the Applicant would suffer immensely if he is to maintain two establishments. The authorities have not considered this aspect of the matter and have passed the impugned order without application of judicious mind.

4.15 That the Applicant states that although he is working in Guwahati Parcel Office, he is a staff under the Divisional Railway Manager, Lumding. By the impugned order, the Senior DCM, Lumding has been asked to spare the Applicant. However, till date, the Applicant has not been spared by the Lumding office and therefore, there is no impediment in granting the interim prayer.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the impugned order has not been issued on administrative exigencies which is evident from the fact that no other person has been posted in place of the Applicant. This is also fortified from the fact that the Applicant was asked to explain regarding an alleged occurrence of harassment to a customer before the issuance of the order of transfer. Therefore, the impugned order cannot stand the test of judicial scrutiny and is liable to be set aside and quashed.

5.2 For that the authorities passed the impugned order during mid-academic session contrary to the policy guideline which would be detrimental to the academic interest of the wards of the Applicant.

5.3 For that the authorities did not consider the ailments of the Applicant and his wife.

5.4 For that the Applicant being a low paid employee cannot maintain two establishments. If he is to carry out the order of transfer, he would have to maintain two establishments by keeping his family in a rented

house. This would not only put the Applicant to great financial difficulties, but the same would also affect the education and family life of the Applicant as well as the treatment of the Applicant and his wife.

5.5 For that the impugned order is contrary to and in derogation of the policy guideline holding the field of transfer and therefore the order is not sustainable.

5.6 For that the competent authority violated the settled principles of service jurisprudence in issuing the impugned order of transfer. It failed to treat the employees fairly without any bias.

6. DETAILS OF REMEDIES EXHAUSTED :

That the Applicant states that he has filed a representation (Annexure-2) which has not yet been disposed of. The Applicant has no other alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

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

B. RELIEFS SOUGHT FOR :

On the facts, circumstances and premises aforesaid, the applicant prays for the following reliefs :

- (a) Quash and set aside the order No.E/41/157/Pt-IVII(T) dated 9.02.2001 issued by the General Manager (P), N.F. Railway, Maligaon.
- (b) Pass any other order or orders to which the applicant is entitled under the facts and circumstances of the case and as may be deemed fit and proper by this Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, Your Lordships maybe pleased to stay the order No.E/41/157/Pt-IVII(T) dated 9.02.2001 issued by the General Manager (P), N.F. Railway, Maligaon with further direction to the Respondent authorities to allow the Applicant to continue in his post at Guwahati Parcel Office.

10. *****

The application is filed through an Advocate.

11. PARTICULARS OF THE I.P.O. :

- (i) I.P.O. No. : 26 503692
- (ii) Date : 27/2/01
- (iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification....

VERIFICATION

I, Shri Chandra Kanta Hazarika, son of Late D.
Das, aged about 49 years, at present working as
Commercial Supervisor (C), Guwahati Parcel Office, N.F.
Railway, guwahati, do hereby solemnly affirms and
verify that the statements made in the accompanying
application in paragraphs 4.1, 4.2 and 4.3 to 4.15 are
true to my knowledge ; those made in paragraph 4.3
being matters of records are true to my information
derived therefrom and the rest are my humble
submissions before this Hon'ble Tribunal. I have not
suppressed any material fact.

And I sign this verification on this the 12th day
of March 2001 at Guwahati.

Chandra Kanta Hazarika

ANNEXURE-1

North East Frontier Railway

OFFICE ORDER

As desired by CCM vide his office note No. C/SS/PTS/94 Dt.9.2.2001, the following staff of Lumding Division who were working at Guwahati Parcel Office are hereby transferred to Katihar Division on administrative ground with immediate effect. They maybe posted at any station under KIR Division in the existing pay and grade.

Sl. No.	Name	Designation
1.	Shri C.K. Hazarika	CPO/Ghy, Guwahati Parcel Office
2.	Shri B.Das,	Sr.CC/Ghy, -do-

This has approval of the competent authority.

For General Manager (P), MLG

No.: E/41/157/Pt-IVII(T) Maligaon Dt. 9-02-2001

Copy forwarded for information and necessary action to :

1. FA&CAO/, MLG
2. CCM/PM/MLG
3. DRM(P)/KIR
4. DRM(P)/LMG - P/Case and S/Sheet of the concerned employees maybe sent to DRM(P)/KIR immediately.
5. Sr.DCM/KIR
6. Sr.DCM/LMG - He will please spare the staff concerned under intimation to this office.
7. DAO/KIR
8. DAO/LMG
9. Staff concerned.

Sd/- Illegible
For General Manager (P), MLG.

*Allected
A. Bantum (P.M.C.)*

To,

The Chief Commercial Manager,
N.F. Railway, Maligaon,

Through : Proper Channel,

Sir,

Sub:- PRAYER FOR REVIEW AND REVOCATION OF ORDER OF
INTER DIVISIONAL TRANSFER FROM GUWAHATI STATION
UNDER LMG DIVISION TO KIR DIVISION.

Ref:- GM(P)/Maligaon Office Order No.E/41/157/Pt-IVII(T)
dt. 09-02-2001.

With due respect and humble submission, I beg to submit my following representation for favour of your kind and sympathetic consideration.

01) I have been working as Chief Parcel Clerk in Parcel Office of Gauhati Railway Station with sincere and developed performance of duty. There has been nothing adverse remarks on record against me during the period of my service in the Railway.

02) The enclosed copy of the above Office order has spelled out that I have been transferred to Katihar Division as CPC on administrative ground. The attributed administrative ground of transfer is simmering punitive measures against me by the understandability of the following facts.

(i) One day earlier on 06-02-2001 I came back from NDLS after accomplishing assigned official duty. The reported complaints of one deliverer of parcel goods at Ghy. Parcel Office was said to have taken place on 07-02-2001. My duty hour was normally 8 hour from 8 A.M. to 6 P.M. on weekly days. I was quite ignorant about the reported incident of harassment to the party as the party did not report the alleged incident of harassment to me on the date.

If the party would have brought the matter to my notice I could have taken the remedial measures leaving no room for any complaints.

Later on, one day ARM/GHY summoned me to him and orally alleged to have harassed the party by Sr. Balen Das, Sr. CC/GHY Parcel Office.

Subsequently, I was summoned to CCM's chamber in presence of CCM(G) and Dy.CCM who told me that I should be transferred out from GHY Station to KIR Division.

(ii) The appraisal of my above statements by your excellency it may be convinced of that I am quite innocent as I am not involved in the matter of alleged harassment to the party.

Contd... p/2

*Attested
A. B. Gouram (Balen Das)*

03) I may be excused to submit before your honour that after my posting as CPC at Guwahati parcel Office I have streamlined the functioning of the Parcel Office on such footings that the leakage of Revenue of the Parcels have been unprecedentedly sealed.

If any difficulty by the deliverer's would have been brought to my notice as has been alleged in the case under reference the problem would have been solved to the entire satisfaction and convenience to the party leaving to room for a iota Complaint. But I was kept in dark in the matter. As such there may arise duty on my part. I reiterate my innocence before you for condonation. However I beg to submit before your honour the following personal and family troubles for favour of your kind sympathetic consideration.

I have 3(three) daughters who are being schooled at Guwahati in Assamese Medium School. In Katihar itself or in any Station in Katihar Division there is no Assamese Medium School. As such, the academic career of my above daughters will be doomed. Besides, there are blooming girls and as such it will be perilously imprudent on my part to leave them here along in rented house.

My wife is a Chronic Migran Paint Patient. Besides, she is a known hypertension with Ischemic Heart disease patient. She is under routine treatment of the local Special Clinics at Guwahati. She was referred to APPOLLO HOSPITAL for investigation and further treatment her medical investigation reports and prescriptions are enclosed for your kind personal sympathetic consideration.

I am a Chronic patient with the following diseases:

- a) Acute anaemia,
- b) Chronic Gastroenterologic Troubles.
- c) E.N.T. trouble with maxillary Congestion.
- d) Known hypertension with occasional severe palpitation.

At present I am under treatment of APPOLLO HOSPITAL. The copies of documents of Medical Treatment are enclosed for your kind personal and humanitarian consideration.

04) In the circumstances as stated above, I would request your goodself to be kind enough to consider my case from the angles of the above facts and kindly to reconsider the transfer order as prayed for below.

(i) Be gracious enough to review my case as elucidated above and kindly to revoke the order of transfer from Ghy to Katihar Division on compassionate and humanitarian ground as a very special case.

(ii) Be gracious enough to exonerate me as your Lordship is "Denial" of justice.

For this act of your kindness I shall remain grateful to you.

DA:- As above.

Yours faithfully,

Dated : 12.2.81

Chandra Kanta Hazarika
(C.K. HAZARIKA)
CPC/GHY. STATION.

Albert
A. Bawali (P.D. 200)

DEPARTMENT OF E. N. T.

Dr. P. GREENIVASULU REDDY

M.S., D.L.O. M.R.S.H (L.O.H.)

E.N.T. CONSULTANT

ANNEXURE - 3

-15-

Mr C. K. Hanuman

Cp. Dr. Hanuman

(2)

1-6-1998

(2)

25-6-1998

15-6-1998

Dr.

26-6-1998

Apollo Hospitals

21, Greams Lane, Off. Greams Road, Chennai - 600 008

Tel : 0293333 / 0290200 Fax : 01-44-0260761 / 0234420

Regd. Office : 19, Bishop Garden, Chennai - 600 028

E-mail:ahol@vsnl.com



21, Greams Lane
Chennai - 600 008
Tel : 0293333 / 0290200
Fax : 01-44-0260761 / 0234420
Regd. Office : 19, Bishop Garden, Chennai - 600 028
E-mail:ahol@vsnl.com
INTERNET

Attested
P. Ravindran (Revised)

DPL. OF GASTROENTEROLOGY

MCHAN A.T.
MD (Med) DM (G)

-16-

GASTROENTEROLOGY

To

16th September 2001

Mr. C.K. Hazarika

File no: 569-71

Dear Mr. Hazarika,

Use of ~~laxative~~ this medication sometimes causes constipation. However you may take Tab. Eldicet 1 tab. three times a day. You may use Cap. Farizym forte instead of Dipcp.

Yours

MCHAN

DR. MCHAN A.T.

Apollo Hospitals

21, Greams Lane, Off, Greams Road, Chennai - 600 006
Tel: 8293333 / 8290200 Fax: 01-44-8266701 / 8234449
Regd. Office: 19, Bishop Garden, Chennai - 600 026
E-mail: chennai@vsnl.com



*After test
B. Banerjee (MD 2001)*

Age:

Ass't No.

-17-

Chennai

ID. 569671

Date 24/95

Mr. Hazarekar

X

- T. GESOY 2-2-2
 - ② Once a day after food 1-0-0
- T. FAMTAC -
- ① Once a day before food 1-0-0
- SELACE
 - ① Once a day

MR

✓ AT/EREP

Mr. S. Ravindra

24, Greams Lane, Off Greams Road,
Chennai - 600 006
TEL: 6277447, FAX: 91-44-8146761
161, Apollo Hospital, 4th Flr, Adyar, 600 020
Office: 1st Bostop Garden, Chintadripet, 600 029
E-MAIL: apollo.shel.②goms.vsnl.net.in
INTERNET: http://www.apollo-hospitals.com.

Attached
Dr. Ravindra (Associate)

Muhan AT

MD (Wk) CM (Customer's) 100

1. *Leucosia* *leucosia* (L.)

120 *Environ Biol Fish* (2004) 67:119–125

ID: 579671

May 26 /2000

Mr. C. K. Hazarika

8

C. DI PES

2·2·2

② twice a day

1 - 1

T. UPILIV

① twice a day

115

green fox

Attested
A. Bawatoni (Preliminary)

30

Glindreakarstur. Hæðarhra. 1875

9.5 500

✓ Lyfionin 1 tab. 1 hr before
going to sleep. x

.Op

9. Melodizing 16s 1hr before 9+ 6min.
to sleep.

+ T. LIBOT 124P ① 6 leg at 9pm x 15 claps
night
6 leg x 15

Attala Co.
A. Bernstein (Advocate)

Patient's Name: H. K. Deka
Age: 38 yrs Sex: A (F)
Address: Panibazar
Phone No.:

1650000 • Extra Long Date
Date: 10.6.1995

Date: 26.9.96

Rx

① Stop Analgesic

migraine cont.

duration - 20 yrs

② Scopolamine 50 mg (q)

frequency - 2-3/wk

q: 1 tab

12 AM after 8 hrs.

③ adu CT scan brain.

④ P and C (migraine)

⑤ ESR / Hb

⑥ IRB ⑦

④ tab Migracil 10 mg

q: 1 tab q2h clinical x 3 wks.

Chloro
7/6/96

Paracetamol x 30 tab.

7/11/2000

⑦ ⑧ Cap 365 mg TID

⑨ adu PNS (ri
migraine)

q: 1 cap after breakfast

⑩ TCC / DCC

⑪ Calpol 500 mg / Encopex 500 mg

ESR / Hb

500 mg 30

q: 1 tab clinical x 10 days

⑫ Scopolamine 100 mg sig 1 tab 80s.

(14)

Formerly Professor & HOD, Neurology, Gauhati Medical College, Guwahati - 781 032, Assam

Attended
Dr. Ranjana (P.D. & Co.)

92
Apollo Health Chec/Apollo Executive Health Chec/Apollo Heart Chec
Date: 22/7/98

Final Impression:

MRS. HIKUNJALATA HABARIKA

579932 - 22/7/98

- 1) Anaemia - mild
- 2) H/o Migraine headache
- 3) Bronchitis
- 4) Dyspepsia

ADVISED:

- 1) Regular walking & Breathing exercises
- 2) Zental
- 2) Course of Tiniflex
- 3) Unienzyme MPS
- 4) Haematinics
- 5) Neuro Consult

(DR. UMA N.)

P.S.: Pap smear result will be ready after 3 days. The report and the Gynacc advise (if necessary) will be intimated later.

ru/-

Attested
Dr. Banotra (M.D. M.A.)

GAUHATI MEDICAL COLLEGE HOSPITAL

OUT-PATIENTS DEPARTMENT

ADVICE SLIP

Service & Unit 1/2 Date 27/2/2027
Name Indira Hospital No. 13025
Age 45 Sex ♀ Regd. No. 6421
Advice -

R

① Trizafan

1 tab twice daily
after food x 2 weeks

② Zclam 0.5 mg

1 tab at bed time

Bed rest for 1 month

Lumbar belt

CT cervical spine *Albert*
9/3/01

W. B. Banerjee (Patent)

ANNEXURE- 4

N.F. RAILWAY

NO. C/Comml/Staff/GHY-NGC/96

OFFICE OF THE
SR.ARM/GUWAHATI
DT: 8.3.2001

To
Shri C.K.Hazarika,
Ex- CS(C)/GHY(Parcel)

Sub:- Hand over of charge of CS(C)/GHY(Parcel)
to Shri A.N.Das, CS(C)/GHY(Parcel).

Since you are spared from GHY station to
carry out transfer and posting order to Katihar Divn.
station on 24.2.2001, you are hereby advised to
hand over the charges of CS(C)/Parcel/GHY to Sri A.
N.Das, CS(C)/GHY(Parcel) immediately on date along-
with the confidential paper/key's of Almirah etc. if
any. This is as per order of Sr.ARM/GHY.

for SR.ARM/GUWAHATI.
Senior Area Railway Manager
N.F. Railway

Attested
A. Basumat (Attestant)

To

SM / GHY.

N. F. RLY.

Dt. 8.3. 2001.

Ref :- Sr. ARM/GHY" L/No. C/Comm / Staff/ GHY-WGC/96
Dt. 8.3. 2001.

Sub :- Handling over of Pareel office Almirah's Key.

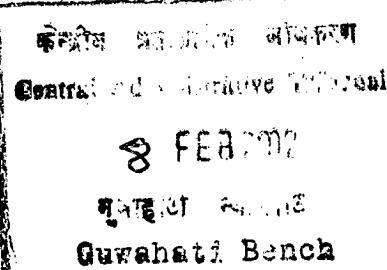
Sir,

In reference to the above it is to inform you that pareel office Almirah Key had already been handed over to Sri S. Bhattacherjee CCMI/GHY on 26.2.2001 and another key is available with Sri Ranjit Roy CS/GHY for running of the official work without any obstruction. Now I am in sick and fully bed rest as per advice of Doctor. No official key is available with me. Please do needfull.

Copy to - Sr. ARM/GHY for information please.

Chandra Kanta Hazarika
CS/ GHY (Pareel)
at home.

*Attested
A. Banerjee (Advocate)*



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

IN THE MATTER OF :

O.A. No. 105 of 2001

Sri Chandra Kanta Hazarika

... Applicant

vs.

Union of India and others

... Respondents.

AND

IN THE MATTER OF :

Written Statement for and on behalf of the
Respondents.

The answering respondents Nos. 1, 2, 3 and 5 Most
respectfully beg to sheweth as under :

1. That, the answering respondents have gone through the copy of the application and have understood the contents thereof.
2. That, save and except these statements of the applicant which are borne on records or are specifically admitted hereunder, all other allegations/averments of the applicant as made in the application are denied herewith and the applicant is put to strictest proof of the statements which are not specifically admitted by the respondents.
3. That, for the sake of brevity the respondents have been advised to confine their reply only on those averments of the applicant which are relevant and material for a proper decision.

in the case and the meticulous denial of each and every averment/allegations have been avoided without admitting the correctness of any such allegations/averments.

4. That, the case suffers for non-joinder of necessary parties in the case and also on ground of mis-representation of facts and mis-interpretation of rules on the subject. Neither Sri Balen Das and the so-called customers (who are said to have been harassed by Sri Balen Das) nor the said Senior Area Manager (A.R.M.), Guwahati (about whom ~~the~~ he has mentioned at Paragraph 4.4 of the application) ^{have been made} as parties in the application. The application is thus vague and defective one on ground of non-joinder of necessary parties and warrants dismissal/rejection.

5. That, the case suffers for want of valid cause of action. The applicant holds a transferable post and has already completed more than 3 years service at one station i.e. Guwahati and since transfer is one of the incidence of service, he can not claim any right for retention at Guwahati Railway Station for no fixed period and defy or attempt to nullify any order of a superior officer passed on ground of administrative interest.

6. That, the present application is quite pre-mature. The applicant has not exhausted the normal course of representation etc. to higher authorities, if he at all felt aggrieved with the vires of the order, and instead has jumped up to file the present application before the Hon'ble Tribunal. As such, the application filed by the applicant warrants dismissal.

7. That, the case is fit one to be dismissed in limine.

8. That, with regard to averments made at paragraphs 4.1, 4.2 and 4.3 of the application it is submitted that except those averments/statements of the applicant which are borne on records or those which are specifically admitted here-under no other averments of the applicant are admitted as correct and hence the applicant is put to strictest proof of the rest of the statements. It is admitted that he had been serving in Guwahati Railway Station continuously for more than 3 years and both (i.e. the applicant and Sri Balen Das) have been transferred to Katihar Division in their existing pay and grade on administrative ground as mentioned in Annexure-I to the application (Order issued under No.E/41/157/Pt.I VIII(T) dated 9.2.2001). It is not correct to say that the applicant has a blemish free service career or he rendered service to the satisfaction of all concerned etc. as contended by him.

It is to state herein that the applicant had been serving as a Chief Parcel Clerk, which is a Supervisory nature post in the N.F. Railway's Commercial Department and was holding a transferable and sensitive post involving direct public contact and handling of traffic etc. The C.C.M. is the head of the Commercial Department of the entire North-east Frontier Railway Zone and as such the full responsibility for manning and distribution of Commercial department posts in the Zone i.e. in all divisions as well, rests on him and with that end in view he has to maintain close liaison with all the divisions as well as with Commercial department staff/employees of this Zone.

In the instant case, the work necessity prompted the head of the department i.e. the Chief Commercial Manager of N.F. Railway to make adjustment of the staff and effecting the transfer of these two staff (i.e. Sri C. K. Hazarika and Sri Balen Das) to Katihar Division from Guwahati Railway Station (where these two staff have already passed more than 3 years continuously). Further,

Further, for shortage of Commercial Department staff (due to remaining many unfilled posts) in the Katihar Division since quite long time, the work in that Division has had been suffering badly and for public interest such transfer had to be ordered. There is nothing irregular in such transfer from one division to another division also especially when Katihar Division is within the N.F. Railway Zone and the Chief Commercial Manager has ordered the transfer on administrative convenience/interest and ^{when} Chief Commercial Manager is the superior authority than any other divisional officers and both the staff i.e. Sri C.K. Hazerika and Sri Balen Das, are holding posts with transfer, liability etc. on work interest.

It is reiterated that the transfer order (Annexed as Annexure-I to the application) was issued on administrative interest and is quite valid, legal and proper and was passed on work interest/administrative convenience only.

It is also to submit herein that the transfer in an incidence of service and the applicant can be posted in any place on the N.F. Railway Zone where the Railway Administration considers to post him for work interest and personal considerations of the employee should not be the plea as a valid cause for nullifying any transfer order validly issued for genuine cause and administrative interest. Moreover, the Railway in India is not only a Government concern but is also a Commercial enterprise, and, also like other Commercial Organisations it has also to conform to the Commercial requirements for its healthy running and smooth management. The office order passed against the staff never speaks of any such incident as forwarded by the applicant. Rather, it is clearly laid down that the transfer order was on ground of administrative interest.

Central Public Works Department
 Assam
 10/12/2001

9. That, with regard to averments/allegations made at paragraphs 4.4. and 4.5 of the application it is submitted that none of the allegations/narrations as made in this paragraphs are admitted as correct and hence these are denied.

There is nothing on record that the transfer was made for any incidents as narrated by the applicant or any such incidents as narrated by the applicant took place where the applicant was told that he would be shunted out of Guwahati Railway Station. It thus appears that all such stories/narrations are nothing but cooked-up stories made purposely to derive illegal gain and to mislead the Hon'ble Tribunal as to put some imputation on the bonafide transfer order passed against the applicant. It is emphatically denied that the impugned order dated 9.2.2001 has been issued by the authorities in colourable exercise of power or is not bonafide one or has been issued as a measure of penalty for any alleged occurrence of harassment as narrated by the applicant in paragraph 4.4. of the application.

10. That, with regard to averments made at paragraphs 4.6, 4.8 and 4.10 of the application it is stated that except these statements which are either borne on records or specifically admitted hereunder, all other averments as made in these paragraphs are denied herewith and the applicant is put to strictest proof of same. The contention of the applicant that the transfer was not in the administrative exigencies, was his own conclusion and has got no relevance to the transfer order issued in his case. Further, medical facilities for the staff as well as of their family members are available at different places in the divisions of the Railways also and the transfer on administrative interest cannot be hauled on the alleged ground of education of the

children and medical ground. There are provisions for retention of the Railway quarters till the School/College sessions are over besides provisions for educational concession and hostel subsidies for children of Railway employees. Moreover, necessary transfer allowances and travelling facilities are also provided by the Railway administration.

11. That, with regard to averments made at paragraph 4.7 of the application it is stated that the contentions of the applicant are not correct and hence not admitted. The applicant has attempted to mis-construe the Service Rules. It is submitted that, a Railway staff can be transferred to any station on administrative interest and work need also, and the present transfer cannot be related to the aspects of any mis-behaviour as alleged. It is quite a wrong statement of the applicant that the transfer can be made on own request of the staff/employee for such transfer. It is submitted that the allegations as have been made in these paragraphs are quite incorrect and hence not acceptable. The applicant hold a very sensitive and transferable post where continuous public dealing are there and from time to time transfer orders are to be issued considering various factors and work needs at different points of the Railways and their retention at a particular place cannot be assured for work interest. It is submitted that the present transfer order has been issued on administrative necessities and the allegations/ statements as made in these paragraphs are not based on records. It thus appears that these have been made with a motive to derive undue benefit and also to mislead the Hon'ble Tribunal and to [^]stell a valid transfer order.

The allegations of the applicant are quite uncalled for, un-warranted and not correct and hence denied herewith.

It is also submitted that any attempt to nullify a valid transfer order, is nothing but an attempt to disrupt the normal functioning of the Railway administration.

In this connection, the photo copies of the Rules 226 and 227 of the Indian Railway Establishment Code (i.e. Rule 226 & 227-RI) are annexed hereto as Annexures I & II for ready perusal.

12. That, with regard to the averments/statements at paragraph 4.11 of the application it is stated that nothing are accepted as correct except those which are borne on records or are specifically admitted hereunder. It is submitted that it is quite an incorrect statement that the applicant has not yet been relieved from his post at Guwahati.

The Senior Area Manager/Guwahati, N.F. Railway's letter dated 8.3.2001 (Annexure-4 to the application) read with the applicant's letter dated 8.3.2001 addressed to Station Master, Guwahati, N.F. Railway clearly shows that the applicant was spared from the office and he handed over the keys of the Almirahs to the respective officials of the Railways. Copies of the above said letter dtd. 8.3.2001 and applicant's letter dated 8.3.2001 are annexed hereto as Annexure-III & IV respectively for ready perusal.

13. That, with regard to averments made at paragraphs 4.12 and 4.14 of the application, it is submitted that the contention of the applicant that he being a scheduled caste employee cannot be transferred outside his district or state, is not correct and hence not applicable in the instant case. It is submitted that a good number of scheduled caste employees are working in this Railway organisation and if transfer of such supervisory ^{or other} staff are stalled in this manner, then the work and functioning of this life line

will be disrupted and stalled. Such pleas are not sustainable in the present case and hence not accepted. It is submitted that for exigencies of service any staff can be posted in any place of the Railways. Further, the Katihar District falls within the N.F. Railway Zone (i.e. his home Railway). There has been no irregularity in transferring the applicant who belongs to (North-east Frontier) Railways, to the Katihar District ^{Division} of the N.R. Railway Zone on administrative grounds. It is denied that the transfer order was passed without application of judicious mind or that he being a Group-C staff should not be subject to transfer on the ground that he would be required to maintain two establishments etc. If his argument are to stand, then it appears that the Railway administration would be debarred to transfer any staff on work interest which might effect the personal interest etc. of the staff. There are Railway Hospitals etc. at Katihar Division and educational and hostel facilities are also subsidised by the Railway administration. S.C.I.S.T. Staff

Further, there is no bar in transferring S.C.P.O. to another post on exigencies of service in this public utility concern.

14. That, with regard to averments at paragraph 4.13 of the application it is denied that the impugned order has been issued in colourable exercise of power and not in public interest or there has been any malafide action in issuing the said transfer order or any of his alleged representation is still remaining undisposed of. It is also submitted that the applicant was already spared from the Guwahati Parcel Office and he already handed over the keys to other nominated staff after issue of the said transfer order.

15. That, with regard to averments made at paragraph 4.15 of the application it is submitted that the contentions of the applicant are not correct and hence denied herewith.

As stated in the foregoing paragraph of the Written Statement it is to submitted that it is quite incorrect that the employee was not spared from the Guwahati Parcel office as will quite reveal from Annexures- 4 and 5 to the application also. It is also a wrong statement on the part of the applicant that there is no impediment in granting the interim prayer.

It is also submitted that it is not necessary that the posting orders should be issued by the Divisional Railway Manager, Lunder. It is quite competent on the part of the Head of the Department of the Railways to take decision and pass orders for transfer of his departmental staff wherever necessary for work interest/administrative convenience.

16. That, due to shortage of Commercial staff and running of vacancies unfilled for long time, the Commercial work in the Katihar Division has been suffering and it is very necessary to post staff there for smooth running of office/work so that Commercial work does not suffer.

17. That, with regard to ground for relief sought for as stated in paragraphs 5 & 8 of the O.A. it is submitted that in view of the fact of the case and laws/rules involved and the submissions made herein before in different paragraphs of the Written Statement, none of the grounds put forward by the applicant are sustainable and the allegations are not admitted and hence the applicant is not entitled to any relief, as sought for by him. All the allegations made at paragraphs 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 are incorrect and hence denied herewith. It is also emphatically denied that the alleged transfer has any connection or caused due to any alleged so called occurrence of harassment to any customer. It is denied that the transfer

cannot stand judicial scrutiny and is liable to be set aside and quashed or that the transfer is contrary to and in derogation of the policy guide lines as alleged or it violated service jurisprudence or failed to treat the employees without any bias. Further, before transferring the staff all points as stated/agitated by the applicant including the medical facilities etc. were already kept in mind/considered by the Railway administration.

It is also submitted that the transfer order is quite valid and proper and fair one, issued on work/public interest, and any indulgence or impediment created in this regard without carrying out the order will only upset work management in this organisation and smooth management. The applicant worked for more than 3 years at Guwahati Parcel office and there is no official/statutory etc. Rule barring such transfer in administrative interest especially when the transfer is not a punishment.

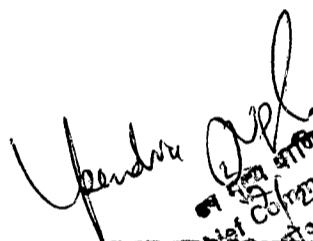
18. That, all the actions taken in the case are quite valid, legal and proper.
19. The respondents crave leave of the Hon'ble Tribunal to permit them to file additional Written Statement, if found necessary for proper ends of justice.
20. That, under the facts and circumstances stated above, there is no merit in the O.A. and the same is liable to be dismissed with cost.

46

-: 11 :-

VERIFICATION

I, U. C. JOSHI son of
Shri A. D. JOSHI aged about 35 years
at present working as Deputy Chief Commercial Manager, N.F.
Railway, Maligaon, do hereby solemnly affirm that the
statements made at Paragraphs 1, 2 and 3 are true to my knowledge
and those made at Paragraphs 8, 9, 10, 12, 13,
14 and 15 are based on record of the case, which are believed
by me to be true and the rest are my humble submissions before
the Hon'ble Tribunal.


U. C. Joshi
Deputy Chief Commercial Manager
Northeast Frontier Railway
Maligaon: Guwahati
For and on behalf of
Union of India.

(2) A person who is not able to declare his age should not be appointed to railway service.

(3) (a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g. if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(4) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall however, be open to the President in the case of a Group A & B railway servant, and a General Manager in the case of a Group C & D railway servant to cause the date of birth to be altered.

- (i) where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made; or
- (ii) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or
- (iii) Where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended.

Railway Ministry's decision.—(a) When a candidate declares his date of birth he should produce documentary evidence such as a Matriculation certificate or a Municipal birth certificate. If he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be the School Leaving Certificate, a Baptismal Certificate in original or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age.

(b) If he could not produce any authority in accordance with (a) above he should be asked to produce an affidavit in support of the declaration of age.

(c) In the case of Group D employees care should be taken to see that the date of birth as declared on entering regular Group D service is not different from any declaration expressed or implied, given earlier at the time of employment as a casual labourer or as a substitute.

226. Transfers.—Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of

the President under this rule in respect of transfer, within India may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated.

Railway Ministry's decision.—Requests from railway servants in Groups C & D for transfer from one railway to another on grounds of special cases of hardships may be considered favourably by the railway administration. Such staff transferred at their request from one railway to another shall be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment, irrespective of date of confirmation or length of officiating service of the transferred employees.

(Railway Ministry's letter No. E. 55 SR/6/6/3 dt. 19th May, 1955).

227. (a) A competent authority may transfer a railway servant from one post to another provided that, except—

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

a railway servant shall not be transferred substantively to or, except in a case of dual charge appointed to officiate in a post carrying pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under rule 241 (FR. 14).

(b) Nothing contained in clause (a) of this rule or in clause 28 of Rule 103 shall operate to prevent the retransfer of a railway servant to the post on which he would hold a lien, had it not been suspended.

228. Retention of lien on transfer.—The lien of a permanent staff transferred to another railway will be retained by the transferring railway till he is finally absorbed on the other railway.

229. Transfer on request.—Transfers ordered in the interest of employees shall be within the same seniority group, or different group or a mutual exchange. If such transfers are within the same seniority group under the same railway the seniority is not affected but if the transfers are inter divisional or outside the seniority group, the Railway Ministry's decision below Rule 226 for inter railway transfers shall apply.

230. Transfer on mutual exchange.—In case of mutual exchange, the senior of the two employees will be given the place of seniority vacated by the other person. The junior will be allowed to retain his former seniority and shall be fitted into the seniority below the persons having the same seniority.

231. Transfer from one department to another.—Persons employed in one department shall not be eligible for employment in another except with the previous consent of the head of the department in which they are employed. Without such prior consent the head of an office or department shall not employ a person either temporarily or permanently, if he knows or has reasons to believe that such person belongs to another establishment under Government. A railway servant who takes up a new employment without the consent of the head of department commits a breach of discipline and is liable to be punished. Divisional Railway Managers, may, however, transfer Group D employees (peons, gangmen, Khalas, unskilled and semi-skilled, etc.) from one department to another or from one Division to another.

-23-
-14-

ANNEXURE - 4 (U)

N.F. RAILWAY

NO. C/Comm/Staff/GHY-NGC/96

To

Shri C.K. Hazarika
Ex- CS(C)/GHY(Parcel)

OFFICE OF THE
SR.ARM/GUWAHATI
DT: 8.3.2001

Sub:- Hand over of charge of CS(C)/GHY(Parcel)
to Shri A.N.Das, CS(C)/GHY(Parcel).

Since you are spared from GHY station to
carry out transfer and posting order to Katihar Divn.
station on 24.2.2001, you are hereby advised to
hand over the charges of CS(C)/Parcel/GHY to Sri A.
N.Das, CS(C)/GHY(Parcel) immediately on date along-
with the confidential paper/key's of Almirah etc. if
any. This is as per order of Sr.ARM/GHY.

for SR.ARM/GUWAHATI.

QD 610 300 400021

Senior Area Railway Manager
N.F. Railway

63
20/3/01

- 15 -

- 20 -

ANNEXURE - B IV

To

SM / GHY.

N. P. RLY.

Dt. 8.3. 2001.

Ref :- "S.E. ARM/GHY" L/No. C/Comm / Staff/ GHY-RCC/96
Dt. 8.3. 2001.

Sub :- Handling over of Pareel office Almirah's Key.
Sir,

In reference to the above it is to inform you that
Pareel office Almirah key had already been handed over to
Sri S. Bhattacharjee CCM/ GHY on 26.2.2001 and another key
is available with Sri Ranjit Roy CC/GHY for running of the
official work without any obstruction. Now I am in sick and
fully bed rest as per advice of Doctor. No official key is
available with me. Please do needfull.

Copy to - S.E. ARM/GHY for information please.

Chandra Kanta Hazarika
CII/ GHY (Pareel)/
at home.