

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.ORDERS SHEET

APPLICATION NO.

402 / 2001

Applicant (s) Mrs. Pratima Dey

Respondent(s) U. O. T. Govt

Advocate for the Applicant: U.K. Warir, U.K. Soseemi, D.K. Sharma.

Advocate for the Respondent: Learned Counsel.

Notes of the Registry	Date	Order of the Tribunal
This application is filed but not yet registered as the same is filed by the Respondent.	4.10.01	Issue notice as to why the application shall not be taken admitted. Returnable by 3 weeks. Mr. J.L. Sarker, learned Sr. Rly. Standing counsel accepts notice on behalf of the respondents.
IPU No. 647883931 Dated.....20.9.2001 By..... D.R.	6/10/01	List on 13/11/01 for admission. Endeavour shall be made to disposed of the same at the admission stage.
Pl. come	13.11.01	ICC Shaha Member Vice-Chairman
Pl. come AS 4/11/01	mb	List on 4/12/01 to enable the Rly. counsel to obtain necessary instructions.
Opposed and Notice would only be served to Respondent No. 2 & 3 by Regd. A.D.	8/11/01	ICC Shaha Member Vice-Chairman
DINo. 39354/3938 Dtd - 12/10/01	mb	

(2)

4.12.01 Heard Mr.U.K.Nair, learned counsel for the applicant and also Mr.S.Sengupta, learned Rly. counsel for the respondents.

Mr.Sengupta, learned Rly. counsel prays for time to obtain necessary instructions. Prayer is allowed.

List on 10.1.2002 to enable the Rly. counsel to obtain necessary instructions.

B
Member(J)
mb

K Chakraborty
Member(A)

10.1.02 List on 28.1.2002 to enable the respondents to obtain necessary instructions.

I C Usha
Member

L
Vice-Chairman

28.1.02 List on 26.2.2002 to enable the respondents to obtain necessary instructions on the matter.

Mr. S.Sarma, learned counsel for the respondents stated that the applicant may also report the respondent No.4 Divisional Railway Manager (P), North East Frontier Railways, Lumding to enable the respondents to consider her case. Mr. U.K.Goswami, learned counsel appearing for the applicant stated that he would advise Mrs.Pratima Dey, to report The Divisional Railway Manager(P), Lumding.

I C Usha
Member

L
Vice-Chairman

26.2.02 Written statement has been filed by the Respondents. Pleadings are complete. The case may now be listed for hearing on 21.3.2002. The applicant may file rejoinder, if any, within ten days from today.

I C Usha
Member

L
Vice-Chairman

No. Rejoinder has
been filed.

My
20.3.02

mb

(3)

O.A. No. 402/2001

3

Notes of the Registry	Date	Order of the Tribunal
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No. Rejoinder not been
filed.

30
22.4.02.

21.3.02

On the prayer of learned counsel
for the applicant the case is adjourned.
List on 23.4.2002 for hearing.

Usha
Member

Vice-Chairman

mb

20.5.02

There is no hearing lunch. The case
is adjourned to 20.5.2002.

M. A.
A.

Heard learned counsel for
the parties. Hearing concluded.
Judgment delivered in open
Court, kept in separate sheets.
The application is allowed in
terms of the order. No order as
to costs.

Usha
Member

Vice-Chairman

bb

Received
G.P.O.
20.5.2002
20.5.2002
30.5.2002
20.5.2002
R.M.H.M.

u

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./K.X. NO. 402 of 2001. . . XX

DATE OF DECISION 20,5,2002.

Smt. Pratima Dey

APPLICANT(S)

Mr.U.K.Nair, U.K.Goswami &
D.K.Sharma.

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Others.

RESPONDENT(S)

Mr.S.Sengupta

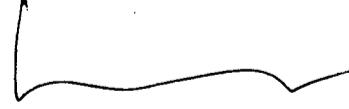
ADVOCATE FOR THE
RESPONDENTS.

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

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

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

x. Judgment delivered by Hon'ble Vice-Chairman.



X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.402 of 2001.

Date of Order : This the 20th Day of May, 2002.

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

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

Smt. Pratima Dey
Wife of Panch Dey
Resident of Sankardev Nagar
Maligaon, Guwahati-781011. . . . Applicant.

By Advocates Mr.U.K.Nair, U.K.Goswami & D.K.Sharma.

- Versus -

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Railway
New Delhi-1.
2. The General Manager
North East Frontier Railway
Maligaon, Guwahati-11.
3. The General Manager (P)
N.F.Railway, Maligaon
Guwahati-11.
4. The Divisional Railway Manager (P)
North East Frontier Railways
Lumding, Dist:- Nagaon
Assam. . . . Respondents.
By Mr.S.Sengupta, Railway counsel.

O R D E R

CHOWDHURY J.(V.C.):

The matter pertains to the area of
compassionate appointment in the following
circumstances.

1. The applicant was married to one Panchu Dey, who was working as Gangman under S.S.E.(P.Way)/GHY. Her husband is missing since 24.5.90. The applicant awaited

for some time and thereafter lodged an FIR before the Officer-in-Charge, Panbazar P.S. Vide Panbazar P.S. GDE No.567 dated 12.8.91. The information was recorded and as per the certificate issued by the Officer-in-Charge of Panbazar P.S. dated 3.12.91 the employee could not be traced out after all efforts were made. In similar fashion the Officer-in-Charge issued another certificate dated 26.2.99 referring GDE No.567 dated 12.8.91 and indicated that the husband of the applicant was not traced till the date of issue of certificate. To overcome the situation that had arose when the sole bread earner of the family was no where to be found, the applicant made / before the authority for compassionate appointment. The applicant subsequently issued legal notice on the authority by communication dated 16.5.2001. the Office of the Divisional Rly. Manager (P), N.F.Railway, Lumding intimated that the application of the applicant was received by the office on 21.5.99 without any age proof/school certificate. Subsequently the department received the affidavit submitted by the applicant on 21.8.2000 indicating the date of birth as well as the qualifications. By the said communication it was also informed that the missing employee was an up-approved staff, direct appointment to such employee could not be given in the cases of approved staff unless the case was approved by the General Manager. By the said communication the applicant was asked to submit a

certificate from the police authority to the extent mentioned in Annexure-D as :

"In order to examine the case for onward forwarding to GM(P)/MLG for obtaining GM's approval, Smt. Pratim Dey was asked to submit a certificate from the police authority, if her husband is suspected to have committed fraud, suspect to have joined any terrorist organisation or suspected to have gone abroad or not, but the same is yet to be received from her. On receipt of the said certificate the case will be processed from obtaining GM's approval."

Failing to get any appropriate remedy from the authority the applicant moved this Tribunal seeking for a direction for compassionate appointment.

2. The respondents have filed written statement. In the written statement the authority relied upon the communication dated 16.5.2001. The respondents in the written statement referred to the report of the Officer-in-Charge of the Panbazar P.S. dated 3.12.2001 indicating the husband of the applicant was missing from 24.5.90. It was also indicated in the written statement that on receipt of the application of the applicant dated 6.4.99 actions were taken by the General Manager(P), N.F.Railway by forwarding that to the D.R.M.(P)/N.F.Railway, Lumding on 21.5.99. Necessary staff was also deputed to enquire and submit necessary report in connection with the appointment matter on compassionate ground. After considering the reports submitted and the Railway Board's relevant circular No.E(NG).II/97-R.C-I/210 dated 26.7.98, the applicant was advised vide letter dated 14.5.2001 to obtain

a certificate on the following points :

"if her missing husband is suspected to have committed fraud, or joined any terrorist organisation, or has gone abroad or not."

It was also stated that the applicant did not submit any certificates/documents as desired by the Railway Board. The respondents in its written statement also stated that the personal contribution made by the husband on P.F. of Rs.2499- was passed by the Accounts Officer on 22.1.93.

The Gratuity Rs.496/- was released on 15.10.92 but the amount was adjusted against the Government dues recoverable from the husband of the applicant amounting to Rs.900/-. In the written statement the respondents also indicated that since the applicant was un-approved staff, direct appointment to his wife could not be given as in this case of approved staff unless the case was approved by the General Manager.

3. We have heard Mr.U.K.Nair, learned counsel for the applicant and also Mr.S.Sengupta, learned Railway standing counsel for the respondents. Mr.Sengupta submitted that compassionate appointment is to be made in terms of policy guidelines approved by the Railway Board. In support of his contention the learned counsel for the respondents referred to the communication No.586E/81/O(W)Pt.III dated 7.4.99 which enclosed the Railway Board letter dated 26.7.98 on the subject of compassionate appointment. As per the Railway Board circular a request to grant the benefit of compassionate appointment can be considered after a

lapse of at least two years from the date from which the Railway employee was missing, provided that an FIR was lodged and the missing person was not traceable, and the competent authority feels that the case is genuine. As per the Circular the benefit would not be applicable in the following circumstances :

- "a) Who had less than two years to retire on the date from which he has been missing ; or,
- b) Who is suspected to have committed fraud, suspected to have joined any terrorist organisation or suspected to have gone abroad.
- c) The above will also be applicable to the wards/widows of casual labourers (temporary status) who are found missing. The other conditions contained in Board's letter No.E(NG)II/96/RC-1/85 dated 17.10.97 will however continue to apply in such cases."

4. From the materials produced it appears that the applicant's husband was a Casual Labourer with CPC status. The Railway Board Circular dated 26.7.98 is also applicable to the widow of a Casual Labourer (Temporary Status). Mr.S.Sengupta, learned Railway counsel for the respondents submitted that the husband of the applicant was not screened and therefore he was not as such eligible. We find it difficult to accept this contention of Mr.Sengupta to limit that the benefit of compassionate appointment only to those labourers who are/were screened, screening is held only in case of any regular vacancy. Casual Labourer with CPC status is like an employee of temporary status. The dependents of such

persons are also eligible to get the benefit of compassionate appointment. In our view, the applicant's case squarely covers the Railway Board Circular dated 26.7.98. As the widow of a Casual Labourer with CPC status the applicant is eligible for granting of temporary status. We also agree with the contention of Mr.U.K.Nair, learned counsel for the applicant that it is not the job of the applicant to obtain a certificate from the police authority to the extent that her husband is suspected to have committed fraud, suspected to have joined any terrorist organisation. The entire responsibility of giving compassionate appointment is vested on the Railway authority. It is the Railway authority to examine and scrutinise as to whether the case of the applicant is bona fide or genuine. the wife of the missing husband cannot be expected to move around the Police Stations for obtaining such certificate.

5. Considering all aspects of the matter, we are of the opinion that ends of justice will be met, if a direction is issued on the respondents to consider the application submitted by the applicant for appointment on compassionate ground in the light of the Railway Board Circular dated 26.7.98. Accordingly, the respondents are directed to consider the case of the applicant for compassionate appointment in the light of the aforesaid circular within a period of three months from the date of receipt of the order. It would be open to the respondents

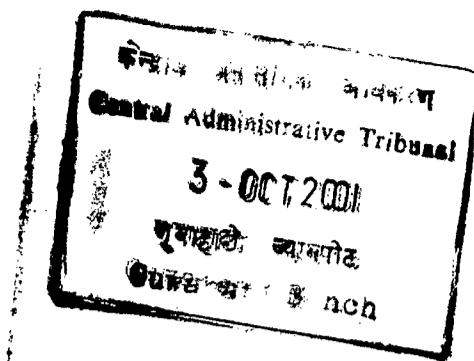
to make an enquiry and thereafter to reach a decision with utmost expedition. The respondents are further directed that the exercise of consideration of compassionate appointment of the applicant should not brook further delay. It is expected that the Railway shall complete the exercise expeditiously and preferably within three months from the receipt of the order.

Subject to the observation made, the application stands allowed.

No order as to costs.

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

D.N.Chowdhury
(D.N.CHOWDHURY)
VICE CHAIRMAN



THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

D.A. No. 401 of 2001

Smti Pratima Dey

... Applicant

- Versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by : U.K. Goswami

Advocate

Filed By
Smti Pratima Dey
Through
Lital Kr. Goswami Advocate

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

(Application under Section 19 of the Central
Administration Tribunal Act, 1985)

D.A. No. 402 of 2001

BETWEEN

Smti Pratima Dey,
wife of Panchu Dey, resident of
Sankardev Nagar, Maligaon,
Guwahati-781011.

AND

... Applicant

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Railway, New Delhi-1,
2. The General Manager, North-East Frontier Railway, Maligaon, Guwahati-11.
3. The General Manager (P), NF Railway, Maligaon, Guwahati-11.
4. The Divisional Railway Manager (P), North East Frontier Railways, Lumding, District Nagaon, Assam.

... Respondents

DETAILS OF APPLICATION

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

The instant application is directed against the letter bearing Memo No. E/227/Eng/Com(W) dated 16.5.2001 issued by Divisional Railway Manager (P), NF Railway, Lumding.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. 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 and as such she is entitled to all the rights and privileges as guaranteed under the Constitution of India and laws framed thereunder.

4.2 That the Applicant is aggrieved by the action/inaction on the part of the Respondent in not considered her case for compassionate appointment under the Respondents. The husband of the Applicant was working as Gangman under S.S.E.(P.Way)/GHY and on 24.5.90 he has been missing. In this connection a FIR was lodge on 12.8.91 before the Panbazar Police Station and the Officer-in-charge, Panbazar P.S. issued a certificate stating therein that enquiry was conducted into the case, but inspite of all effort the missing person has not been traced out. Thereafter the Applicant made several representations to the Respondent authority stating the whole facts of the case and praying therein her case for appointment in any type of group 'D' post in compassionate ground. But

inspite of repeated prayer of the Applicant, it was not reach the deaf ear of the Respondent authority. Hence the instant application.

4.3 That the Applicant begs to state that on 12.8.91 she lodged a FIR before the Panbazar Police Station stating therein about missing of her husband who was working as Gang man under SSE(P.Way)/GHY, NF Railways since 24.5.90, the last date of his presence in office as per office attendance he was missing. The Panbazar Police Station on basis of the aforesaid FIR registered a case being GDE No. 567 dated 12.8.91 and started investigation of the case. But nothing could be traced out after investigation.

A copy of the certificate dated 3.12.91 & 26.2.99 issued by the Officer-in-charge, Panbazar PS are annexed herewith as Annexure-A Colly.

4.4 That the applicant begs to state that she intimated the Respondent authority about missing of her husband Panchu Dey. The Applicant made several representations before the Respondent authority for consider her prayer for compassionate appointment and to release all the amount entitle to her missing husband since he was an employee under the Respondents authority. But the Respondent authority did not look into the matter.

4.5 That the applicant begs to state that she is only the legally married wife of her missing husband Panchu Dey and hence she is entitled to all the benefits granted under law. Therefore she made a representation

on 29.8.2000 to the Respondent No. 2 praying therein for consider her case for appointment on compassionate ground in any Group 'D' post under the Respondents. In the representation, it was also mentioned the difficulties she have to face in absence of her husband. On the other hand the Respondent authority kept silence and did not gave any answer.

A copy of the representation dated 29.8.2000 is annexed herewith as Annexure-B.

4.6 That the applicant begs to state that finding no other alternatives she approach to her lawyer and as per the advise of her lawyer a legal notice was given to the Respondents authority. In the legal notice it was clearly describe the whole case and to consider her case for appointment on compassionate ground under the Respondents authority.

A copy of the legal notice dated 1.5.2001 is annexed as Annexure-C.

4.7 That the applicant begs to state that pursuant to the legal notice dated 1.5.2001, the Respondent gave their reply vide letter bearing No. E/227/ENQ/Comp. (W) dated 16.5.2001. In the reply, the Respondent authority stated their inability to consider the case of the Applicant and also stated that in the instant case G.M.'s special approval is required.

A copy of the letter dated 16.5.2001 is annexed as Annexure-D.

4.8 That the applicant begs to state that she has made several correspondence with the Respondents authority and prayed for consider her case for appointment on compassionate ground. To this effect a certificate issued officer-in-charge, Panbazar Police Station dated 3.12.91 and 26.2.99 (Annexure-A colly) has already submitted before the Respondent authority. But the Respondent authority without going into the matter rushly issued the letter dated 16.5.2001.

4.9 That the applicant belongs to the lower statrum of the society and after disappearance of her husband, she faced tremendous problems. Being a woman, she have to face financial as well as security problem as she has no issue from her marital life. Now she tried to maintain herself by doing household works in the house of others. She have to think about her daily bread as well as her own security.

4.10 That the applicant submits that it has already been completed more than 10 years since the date of missing of her husband. As per certificates of the Officer-in-charge, Panbazar Police Station (Annexure- A Colly), after enquiring, it has not be traced out about the missing person. Knowing fully about those enquiry, the Respondent authority declined to consider the case of the Applicant for consideration of the name of the Applicant for compassionate appointment.

4.11 That from mere perusal of the annexed documents

(i.e. Annexure-A to Annexure-D), it will be clear that Respondent authority unnecessarily delayed the matter settlement of the matter. The the Respondent authority ought have to consider the case of the Applicant for appointment on compassionate ground.

4.12 That the applicant has got her vested rights to claim appointment in the compassionate ground and her missing husband being an employee under the Respondents, therefore her case for compassionate appointment ought to have consider by the Respondent authority in accordance with law. In the instant case as it was not given by the Respondent authority, the Applicant has a right to demand for it.

4.13 That the applicant demanded justice and which is denied to her and having no other alternative, she has come under the protective hands of this Hon'ble Tribunal.

4.14 That the applicant files this application bonafide and to secure the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the action on the part of the Respondent authority in not consideration of the case of the Applicant for appointment on compassionate ground is illegal and arbitrary and hence necessary directions need be issued to them for settlement of the same within a fixed time period.

5.2 For that the action on the part of the Respondents in not disposing the matter inspite of repeated prayer before the Respondents authority amounts to failure in administrative fair play.

5.3 For that even after completion of almost 10 years of missing of her husband, the authority concerned did not tried to settle the matter, which has resulted unnecessary complication in her life.

5.4 For that the inaction on the part of the Respondent authority for settlement of her case towards appointment on compassionate ground under the Respondents authority is not at all tolerable under law.

5.5 For that the inaction on the part of the Respondents authority to consider of case of the Applicant towards appointment on compassionate ground is not at all tenable on the part of the Respondents who is the largest employer of the country and a model employer.

5.6 For that the inaction on the part of the Respondents authority to given appointment to wife of a missing employer, is not maintainable taking into consideration various Rules/Regulation and Guidelines of the Respondents.

The applicants crave leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that she has exhausted all the remedies available to her under the law and there is no alternative remedy available to her and the reliefs sought for, if granted, would be just, proper and adequate.

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

The applicants further declare that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicants pray that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To direct the respondents to appoint the Applicant in any Group D post on compassionate ground.

8.2 To direct the Respondents authority to release all the amount entitle to her missing husband since he was

an employee under the Respondents authority.

8.3 To cancel/set aside/quashed the impugned letter dated 16.5.2001 (Annexure-D) passed by the respondent No. 2 rejecting the prayer of the applicant.

8.4 Cost of the application.

8.5 Any other relief/reliefs to which the applicant is entitled to and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Under the facts and circumstances of the case the applicants pray for interim order directing the respondents to consider the case of the applicants.

10.

The application is filed through Advocate.

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

- i) I.P.O. No. : 66788393
- ii) Date : 25.9.2001
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, Shri Pratima Dey, aged about 35 years, wife of Late Panchu Dey, resident of Sankardev Nagar, Maligaon, Guwahati-II, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case. Thus I am competent to verify this case and the statements made in paragraphs 1to3, 4'1, 4'2, 4'3, 4'4, 4'5, 4'6, 4'8, 4'9, 4'10, 4'11, 4'12, 4'14 and 5to12 are true to my knowledge ; those made in paragraphs 4'7 _____ are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 28 th day of September, 2001.

(RTI of the Deponent)

Annexure-A

To whom it may concern

This is to certify that, Smt. Pratima Dey w/o Panchu Dey a gang khalasi under PWT/Ghty residing at Sankardev Nagar, Maligaon reported to this PS on 12.8.91 that her husband Panchu Dey has been missing on 24.5.90.

This refers GDE No. 567 dt. 12.8.91 of Panbazar PS. The employee has not been traced out after all efforts have been made.

Sd/Illegible
3.12.91

~
Officer IN-charge
Pan Bazar Police Station
Guwahati-1.

A Husted
Adv. bdr
Advocate

- 3 -

Annexure-A

To whom it may concern

Sri Pratima Dey, S/O L Ganesh Dey of Sankardev Nagar under Gulukbari PS has been missing since 24.5.98 as reported by her wife Pratima Rani Dey. This refers Panbazar PS GDE No. 567 dt. 12.8.91

Enquiries were made in this regard but his whereabouts is not known and he is still untrace.

Sd/Illegible

Officer IN-charge
Pan Bazar Police Station
Guwahati-1.
26.02.99

Affested
Smt. both
Advocate

To,

The Divisional Railway Manager,
N.E. Railway, Lumding.

Dated Guwahati the 29th August, 2000.

Sub :- Compassionate ground appointment
in Group 'D'.

Ref :- DRM (P)/IMO'S Letter No. E/227/ENQ/
Comp (W) Dt. 3-6-99.

Sir,

With due respect and humble submission
I like to say few lines before you for your
kind and sympathetic consideration. That Sir,
my husband Panchu Dey who was working as Gang-
man under SS. E (P. way)/G.W. has been missing on
12/8/91 and his whereabouts is not known to me.
Sir I have applied for appointment in Gr. 'D'
Post on compassionate Ground but till now I
have not received any offer. That Sir, I am
facing very difficulties during these hardship.
So I request your honour & kindly to look in to
the matter and consider my case I shall be ever
grateful to you.

Yours faithfully,



(R.T.T. of Sati, Pratima Dey)
W/o Late Panchu Dey,
Ex. Gangaon, Guwahati.

Attested
Sati Dey
Advocate

To,

The Divisional Railway Manager (Personal),
NF Railway, Lumding.

Sub : Legal Notice.

Sir,

Upon authority and as per instruction of my client Smti Pratima Dey, wife of Panchu Dey at present resident of Sankardev Nagar, Maligaon, Guwahati-11, I give you this notice as follows :-

1. That my client husband was working as Gangman under S.S.E (P.Way)/Ghy and on 12.8.91 he has been missing. In this regard an FIR has been lodge before the Panbazar Police Station by my client. In this connection the officer-in-charge of the Panbazar Police Station has issued a certificate stating that "Enquiries were made in this regard but inspite of all efforts the employ has not been traced out".
2. That after waiting for a considerable time when the police authority also declared that on enquiry all efforts has been made but the husband of my client could not traced out, then my aforesaid client has preferred an application for appointment in any type of Group-D post on compassionate ground, being no other alternative to trace out her husband.
3. That inspite of the aforesaid position the case of my client has not been considered till date though she had made

Attested
Lini. Deka
Advocate

- 2 -

several representations to you stating the fact that she has no source of income and living alone facing very difficulties during these period after missing her husband. By now almost ten years have been passed since missing her husband, however no action have been taken from your end towards appointment of my client on compassionate ground. Your such action/inaction has made you liable for adequate compensation, interest etc. to my client.

In view of the above, I give you this notice on behalf of my aforesaid client upon authority and instruction making a demand to pass necessary orders towards compassionate appointment of my client within a month from the date of receipt of this notice. On your failure to comply with the demand made in this notice, my instruction will be to initiate appropriate legal proceeding against you. In such an eventuality, you will be solely responsible for the consequence proceeding thereof.

I hope and trust that there would be no such occasion for any further litigation, unnecessarily bringing you into the same and there would be a happy end to the entire episode and the demand made in this notice would be fulfilled within the time limit fixed in this notice.

Thanking you,

Sincerely yours

D.K. Sarmah

16
Road. Post.

Annexure - D

No. E/227/ENQ/Comp.(W).

Office of the
Divisional Rly. Manager (P)
N.F. Rly. Lumbding

Date : 16.05.2001.

To,
Shri Dharmendra Kr. Sarkar,
Advocate, Tetalia (Lalmati), Guwahati,
Dist. Kamrup (Assam), PIN : 781033.

Sir,

Sub : Legal Notice.

Ref : Your letter dated 01.05.2001.

In response to the above, this is to inform you that the application of Smt. Pratima Dey, W/o Shri (Missing) Panchu Dey, Ex. Gangman (CL/CPC) under SSE(P.Way)/CHY was received by this office through GM(P)/MLG. on 21.05.99 without any age proof/school certificate of the application.

Since qualification of the applicant is NIL an affidavit declaring her date of birth has been submitted to this office on 12.08.2000.

As the missing employee was an un-approved staff, direct appointment to his wife can not be given as in the cases of approved staff unless the case is approved by the General Manager at his discretion.

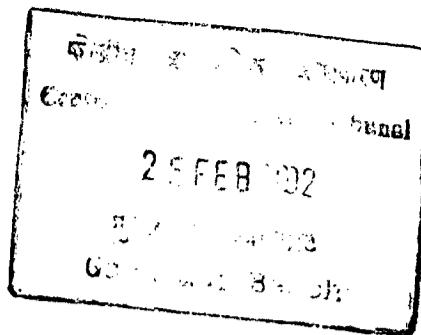
In order to examine the case forward onward forwarding to GM(P)/MLG for obtaining GM's approval, Smt. Pratima Dey was asked to submit a certificate from the police authority, if her husband is suspected to have committed fraud, suspect to have joined any terrorist organisation or suspected to have gone abroad or not, but the same is yet to be received from her. On receipt of the said certificate the case will be processed from obtaining GM's approval.

Yours faithfully,

Omra

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

Attested
Anuradha
Advocate



File No. :
Guwahati Bench
Railway Advances
Case No. 22.2.2002

Table

Guwahati

S. Div. Personnel Officer
T. S. Secy, Staff
N. P. Sly, Ld. d.m.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI .

IN THE MATTER OF :

O.A. NO. 402 OF 2001

Mrs. Pratima Dey

- Vs -

1. Union of India

2. The General Manager,

N.F. Railway, Maligaon,

Guwahati-11.

3. The General Manager (P),

N.F. Railway, Maligaon,

Guwahati-11.

4. The Divisional Railway Manager, (P)

N.F. Railway, Lumding,

Dist. Nagaon, Assam.

- AND -

IN THE MATTER OF :

Show cause/written submission for
and on behalf of the respondents.

The answering respondents most respectfully
beg to sheweth as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.

Jitkalgya Balika

-2-

2. That, save and except the statements of the applicant in this application which are specifically admitted herein below, all other averments/allegations as made in the application are emphatically denied herewith. Further, the statements of the applicant which are not borne on records are also denied herewith and the applicant is put to strictest proof thereof.

3. That, the application is not maintainable under law and fact of the case.

4. That, the application is premature.

In this connection it is to state that the applicant was requested under DIRM(P)/Lumding's letter No. E/227/ENQ/Comp(W) dated 14.5.2001 to obtain a certificate from the Police Authority on following points and submit the same to the office for further action :

"If Sri Panchu Dey (missing) Ex-Gangman (CL/CPC) under S.S.E(P-way)/GHY is suspected to have committed ~~to have~~ fraud, suspected to have joined any terrorist organisation or suspected to have gone abroad or not".

But instead of complying with requirements as called for from her, she has filed the present application before the Hon'ble Tribunal, when her claim has neither been admitted nor been rejected by the Railway Administration and was awaiting further investigation and decision on the matter.

5. That, the applicant has got no valid cause of action and has also no right for filing the application.

Sri. Panchu Dey, Ex-Gangman
J. P. W. T. B. S. R. L. S.
Sr. Divl. P. & A. C. M.
N. P. R. L.

6. That, the application is barred under the law of limitation as well as under Section 21 of the Central Administrative Tribunal Act, 1985.

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

8. That, with regard to averments at paragraphs 4.1, 4.2 and 4.3 of the application it is submitted that nothing are accepted as correct except those which are borne on records or are admitted hereunder.

In this connection it is to state that the report of the Officer-in-Charge, Panbazar Police Station/Guahati-1 dated 3.12.91 shows that the husband of the applicant has been missing since 24.5.90. It is denied that the applicant made several representations to the Respondent authority as alleged.

Receipt of one application dated 6.4.99 only addressed to the Chief Personnel Officer, N.F. Railway Maligaon, is however, admitted and immediate action was taken by the General Manager (P)/N.F. Railway, Maligaon's Office on it by forwarding it to the D.R.M.(P)/N.F.Railway, Lumding's Office on 21.5.99.

Necessary Staff was also deputed by the D.R.M.(P)/Lumding's Office to enquire and submit necessary report in connection with the appointment matter on compassionate ground. After considering the reports submitted and the Railway Board's relevant circular No. E(NG).II/97-R.C-I/210 dated 26.7.98, the applicant was advised under D.R.M./P/Lumding's (i.e. Divisional Railway Manager (P)/DRM)'s letter No.E/227/ENQ/Comp(W) dated 14.5.2001 to obtain a certificate from the Police authority on the following points :

["if her missing husband is suspected to have committed fraud, or joined any terrorist organization, or has gone abroad or not".]

But the applicant has not yet submitted any certificate as desired by the Railway Administration.

Photo copies of the applicants letter dated 6.4.1999 addressed to the CPO/N.F. Railway, report dated 24.6.1999 submitted by the Chief Personnel Inspector, Railway Board's circular letter dated 26.7.98 and DRM(P)/Lumding's letter dated 14.5.2001 are annexed hereto as Annexures- I, II, III and IV respectively for ready perusal.

9. That, with regard to averments of the applicant at paragraph 4.4. and 4.5 of the application it is submitted that nothing are accepted as correct except those which are borne on records or are specifically admitted hereunder. It is denied that the respondents kept silence or did not look to the matter of representation of the applicant or did not release the dues of her missing husband etc. as alleged.

In fact, the following dues were paid to the applicant as per entitlement in the case of a missing employee :

a). P.F. (own contribution) Rs. 2499/- passed under Divisional Accounts Officer/Lumding's A.B. No. 54 dated 12.1.93, Co7No.5 LFS dated 22.1.93.

b). Gratuity Rs.496/- was released on 15.10.92 but the amount is adjusted against to the Government dues recoverable from the husband of the applicant amounting to Rs. 900/- while still Rs. 404/- is to be recovered.

10. That, with regard to averments made at paragraph 4.6 and 4.7 of the application it is submitted that nothing are accepted as correct except those which are borne on records or are admitted hereunder. It is quite incorrect that the respondent No.4 vide his letter dated 16.5.2001 did express his inability. Rather, it was made clear that the applicant did not submit the required certificate and informations etc. for which she was asked to submit, so that the case could be examined for further processing and obtaining the General Manager's approval, if found to be in order and as per laid rules.

It is also to mention herein that the missing employee rendered about 8 years 9 months service and as he was an unapproved staff, direct appointment to his wife cannot be given as in the case of approved staff unless the case is approved by the General Manager at his discretion. The same was also made clear in the Railway Administrations letter No. E/227/EnQ/Com/W dated 16.5.2001,

a Copy of which letter has been annexed as Annexure-D to the application.

A copy of this letter dated 16.5.2001 is however annexed hereto as Annexure - V for ready perusal.

11. That, the allegations/contention made at paragraphs 4.8, 4.9, 4.10, 4.11 and 4.12 of the application are not correct.

It is submitted that the applicant without complying with the required informations/particulars/documents as called for, rather, rushed before the Hon'ble Tribunal by filing the present

application. It is submitted that the respondent acted as per guidelines given under the Railway Board's letter dated 26.7.98 as mentioned in foregoing paragraphs of this written statement and the ^{said} letter dated 14.5.2001 was written quite in conformity with the guidelines given by the Railway Board.

12. That, with regard to the averments made at paragraphs 4.13 and 4.14 it is submitted that the allegations/ contentions of the applicant are not correct and hence are denied herewith. It is denied that the applicant was denied Justice or that the application is bonafide one.

13. That, in reply to the grounds given in paragraphs 5 and 8 of the application it is submitted that in consideration of the facts and circumstances of the case and in view of what have been submitted in the foregoing paragraphs of this written statement, none of the grounds as mentioned at ~~para~~ paragraphs 5 of the application are sustainable and hence none of the grounds are accepted. For the sake of brevity, meticulous denial of each and every statements in the sub-paragraphs and repetition of replies have however been avoided.

It is emphatically denied that there had been any inaction on the part of the respondents in disposing of the applicant's representation or the allegations made by the applicant are correct. Rather, the case will reveal that the applicant is to blame herself as she has not been lending her helping hand by submitting the required particulars/documents/informations as called for by the respondents so that the case may be examined properly and processed on merit.

and a proper decision can be taken.

ब्रह्म कृष्ण अधिकारी
Sr. Divl. P. C. Office
जू. बड़े राज़े, लालकिंग
N. F. Rly., Ludhiana

Jubalaya Balika

14. That, it is submitted that all the actions in the case have been taken in conformity of rules and law on the subject and actions are quite valid, legal and proper.
15. That, the respondents crave leave of the Hon'ble Tribunal to permit them to file additional written statement, if found necessary, for ends of Justice.
16. That, in the circumstances explained above the application deserves to be dismissed with cost.

verification.....

VERIFICATION

I, Sri Tukalgya Rabha son of
Shri T. K. Rabha aged about 36 years now
working as Sr. Divisional Personnel Officer, N.F. -
Railway, Lumding do hereby declare that whatever have
been stated at paragraphs 1 and 2 are true to my knowledge
and those made at paragraphs 8, 9 and 10 are ~~true~~ based on
records and informations as gathered from records which
I believe to be true and the rest are my humble submissions
before the Hon'ble Tribunal.

Tukalgya Rabha

for and on behalf of
respondents.

विश्वासित अधिकारी
Sr. Divl. Personnel Office
ग्राम. रेखा, लामडिङ
N. E. Rly., Lumding

ANNEXURE — I

To
The Chief Personnel Officer (Welfare),
M.F. Railway/Malig. No.
Guwahati-781011.

Dated 6th ^{March} 99

Sir,

Sub:- Prayer for appointment in the Category of
Class - IV post on compassionate ground due
to missing of my husband Sri Panchu Dey,
Gang Thalachi under PWI/GHY from 24.5.90.

With heavy heart, I beg to state that I applied for compassionate appointment in Class IV post on the ground stated above to DRM(P)/LMG on 22.9.94 along with Police Report. But my case was forwarded to your office vide DRM(P)/LMG's letter No. E/227/CL/LMG/Comp. After that I applied to your honour for consideration of my case since long, I have not heard anything from you.

At this critical stage, I would also like to remind you along with a photo copy the recent Police Report.

As, I am into hand to mouth condition along with my children. So, I would like to request your honour kindly to consider my above appointment with your natural magnanimity to enable me to survive with my children and feel me obliged thereby.

Thanking you,

Yours faithfully,

Enclosure: One Police Report.

(F.T.I. Pratima Dey)
W/O Panchu Dey,
Ex. Gangman, Guwahati.

Forwarded for action:

6/4/8

ASST. DIRECTOR

2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 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1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 136

~~Missing Case
CL/CPC~~

Received through Smt. D. M. D.
SAC/CHY on 12.08.2000
L2181200010

Affidavit on age &
Proof of the said date.

N. F. Railway.

Annexure-I

ENQUIRY REPORT TO BE SUBMITTED BY THE LWI/PI'S
IN CONNECTION WITH APPOINTMENT ON COMPASSIONATE GROUND.

The following particulars as furnished is in connection with
appointment of Shri/Smt. Pratima Dey

son/daughter/wife of Sri Panchu Dey

Ex. Gangman (CL/CPC) under SSE (Pay) / CHY
to, Class- III/IV posts on compassionate grounds.

1. SERVICE PARTICULARS OF THE EX EMPLOYEE:-

1. Name:- Sri Panchu Dey
2. Designation & Office:- Ex. Gangman (CL/CPC), SSE (Pay) / CHY
3. Date of birth :- 20.12.56
4. Date of apptt:- 16.8.81
5. Date of death/medically incapacitated: - Missing on 24.5.90
6. Period of service rendered:- 8 yrs 9 months 8 days
7. Period of service left to attain the retirement age:- 24 yrs 7 mos
8. Last pay and scale:- Rs. 859/- 6 days.
9. State whether died/medically incapacitated while in service:- Missing
10. Cause and nature of death/ medically incapacitated. Does not arise
11. Whether belongs to SC/ST:- NL
12. In case of medically declassifiable staff:-
 - a) Category for which declared fit for alternative job :-
 - b) Alternative post offered any- with pay and scale.
 - c) Loss of emoluments towards the pay and allowance:-
 - d) Whether alternative job accepted applied for voluntary retirement:-
 - e) The date of voluntary retirement:-
 - f) Actual period of qualifying service for pensionary benefits:-

Does not arise

④ Missing from 21.8.91 as per FIR.

FAMILY PARTICULARS OF RLY. EMPLOYEE.

(I)

Name of the Family members, Relation ship with Ex-Rly. employee, Date of birth, Educational qualification, Whether employee or not.

1. Smt. Pratima Ram Dey wife 16.1.63 in m/s
2.
3.
4.
5.
6.
7.
8.
9.
10.

(II) Whether any member of the family already employed in the Rly. If so, indicate when and how he/she was appointed:- **NIL**

FAMILY SETTLEMENT PARTICULARS OF THE EX-EMPLOYER.

1. P.M. own contribution:- **R. 2499/-**
2. LCRG.
3. LEP.
4. GIS.
5. pension.
6. other dues, if any:-
7. Present/permanent address of the applicant:-

**Sankar Dev Nagar,
Maligaon,
P.O/Maligaon, Guwahati**

Certified that the particulars furnished above are verified from the service record of the ex-employee and no member of the family of the ex-employee has been appointed on compassionate ground.

It is also certified that the particulars furnished above are correct and the same has been personally verified by me at the spot.

Date:-

Asin
24/6/99/6H
Signature of Labour Welfare/
Personnel Inspector.

Enclo:- A) A copy of the death/medically incapacitated certificate of the Ex-employee and photograph of the candidate duly attested.
B) Educational and age proof certificate of the candidate for whom appointment sought for and certificate if any.

95

E. R. Railway.

Office of the
General Manager (P)
Maliagan: Gauhati-11.E.C.
1/1

No. 586E/31/U(W)Pt.III.

Dated, the 7-4-99.

To
DRMs/KIR, APDJ, LMG & T3K.
Dy.CME3/NBQ & DBWE.
CJC/MLG.
GM(CON)MLG.
G3/NFRMU & NFREU/PNO.Sub:- Compassionate appointment in the case of
missing Railway employees.A copy of the Railway Board's letter No. E(NG)II/97/RC-1/
210 dated 26.7.98 on the above subject is forwarded herewith for
your information and necessary action please.

for General Manager (P) : MLG.

for General Manager (P) : MLG.

(Copy of Railway Bd's letter No. E(NG)II/97-RC-1/210 dt. 26.7.98.)

Subj:- As above.

Attention is invited to the instructions contained in this
Ministry's letter No. E(NG)II/81/RC-1/251 dated 6.2.82, 24.5.82 &
21.12.85, on the above mentioned subject.2. Department of Personnel & Training, vide their O.M. dated
31.10.97, have laid down certain norms for compassionate appointment
in the case of missing Government servants.3. The matter has been considered by the Board in the light of
the above. Accordingly, in supersession of existing instructions on
the subject, it has been decided as under:-

- (i) A request to grant the benefit of compassionate appointment can be considered after a lapse of at least 2 years from the date from which the Railway employee has been missing, provided that an FIR has been lodged and the missing person is not traceable, and the competent authority feels that the case is genuine;
- (ii) This benefit will not be applicable to the case of a Railway employee :-

(Contd.....2/-)

① Circular dated 24.5.82 is at
SN-143 of original circulars

② Letter from Board is at SN-87

M.R.
09.6.89
DRM

E.R.

(a) Who had less than two years to retire on the date from which he has been missing; or,

(b) Who is suspected to have committed fraud, suspected to have joined any terrorist organisation or suspected to have gone abroad.

(iii) Compassionate appointment in the case of a missing Railway employee also could not be a matter of right and will be subject to fulfilment of all the conditions, including the availability of vacancy, laid down for such appointment under the existing scheme;

(iv) While considering such a request the results of police investigation will also be taken into account.

(v) A decision on a request for compassionate appointment covered by these general instructions should be taken only at the level of the General Manager on the Railways;

(vi) The services of the wards/widows will be terminated in case the missing Railway employee becomes available subsequently;

(vii) The compassionate appointment may be delinked from settlement dues i.e. compassionate appointment cases may not be denied or deferred. That settlement dues of the missing employee are to be paid to the persons entitled to receive them.

4. The above will also be applicable to the wards/widows of deceased labourers (temporaries) who are found missing. The Board's letter No.E(NG)II/96/RC-1/85 dated 17.10.97, will however continue to apply in such cases.

5. Please acknowledge receipt.

ad/ 6.4.99

by Post

21/ENQ/comp(2)

Office of the
DR.JOI(P)/LMG
Dtd. 11.5.2001

Mr. Pratima Dey, w/o. Sri (Mirasing)
 Banchu Dey, Sankar Dev Nagare,
 Maligaon, Po: - Maligaon,
 Assam

sub:- App't. on comp. grounds.

-- X --

In connection with the above, you are
 requested to obtain a certificate from the
 Police authority on the following points and
 submit the same to this office early for
 further action.

If Sri. Panchu Dey (Mirasing), ex. Gangman
 (ct/cpc) under S.1 (P:way)/GHy is sus-
 pected to have committed fraud, suspected
 to have joined any terrorist organisation
 or suspected to have gone abroad. are not.

B.M.S.

As/11/5/01
2 DR.JOI(P)/LMG

Caged Lab.

CTC	Front Scale	St. (H.S.O.)
	Screen	Like to be against vacant.

Annexure -Regd. Post.

No. E/227/ENQ/Comp.(W).

Office of the
Divisional Rly. Manager(P)
N.F. Rly. Lumdinga

45

Date : 16.05.2001.

To,
Shri Dharmendra Kr. Sarkar,
Advocate, Tatalia (Lalmati), Guwahati,
Dist. Kamrup (Assam). PIN : 781033.

Sir,

Sub : Legal Notice.

Ref : Your letter dated 01.05.2001.

In response to the above, this is to inform you that the application of Smt. Pratima Dey, W/o Shri (Missing) Panchu Dey, Ex. Gangman (CL/CPC) under SSE(P.Way)/GHY was received by this office through GM(P)/MLG. on 21.05.99 without any age proof/school certificate of the application.

Since qualification of the applicant is NIL an affidavit declaring her date of birth has been submitted to this office on 12.08.2000.

As the missing employee was an un-approved staff, direct appointment to his wife can not be given as in the cases of approved staff unless the case is approved by the General Manager at his discretion.

In order to examine the case forward for approval to GM(P)/MLG for obtaining GM's approval, Smt. Pratima Dey was asked to submit a certificate from the police authority, if her husband is suspected to have committed fraud, suspect to have joined any terrorist organisation or suspected to have gone abroad or not, but the same is yet to be received from her. On receipt of the said certificate the case will be processed from obtaining GM's approval.

Yours faithfully,

Dmgb
for Divisional Railway Manager(P)
N.F. Rly., Lumdinga.

Attested
Dharmendra
Advocate