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3
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:GUWAHATI.

ORDERS SHEET

APPLICATION NO.

415/2001.

Applicant (s) Dipak Kumar Kundu

Respondent (s) UOI LODS.

Advocate for the Applicant: Mr. G. K. Bhattacharjee,
Mr. B. Chaudhury.

Advocate for the Respondent: Mr. B. K. Sharma,
Rly. Counsel.

Notes of the Registry	Date	Order of the Tribunal
This is application in form C. F. for Rs. 50/- deposited vide IPO/BD No 64/788644	11.10.01	Issue notice to show cause as to why this application shall not be admitted. Returnable by 3 weeks. List on 19.11.01 for show cause and admission.
Dated 8/10/2001 Dy. Registrar		<i>H C Sharma</i> Member
g/c/s filed without enreg 10/10/2001	19.11.01	List after three weeks to enable the applicant to obtain instructions. List on 11.12.2001 for further orders.
Notice prepared and sent to S/s for giving the respondents 1 to 6 by Registered		<i>H C Sharma</i> Member
15/10/01		Vice-Chairman
DO No 4016 to 4021		
Dtd 23/11/07		

2
21
① Service report are 11.12.01. Heard Sri B. Choudhury, learned
still awaited counsel for the applicant.

② No. Show cause has
been filed.

By
16.11.01

Sri Choudhury, learned counsel for
the applicant informs that he does not
want to press this application. Accord-
ingly, the application is dismissed as
not pressed.

I C Chakraborty

Member

mb

10 OCT 2001

गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ~~GUWAHATI BENCH~~

GUWAHATI.

O. A. NO.

415 /2001.

Shri Dipak Kumar Kundu.

... Applicant.

-Vs-

Union of India and others.

... Respondents.

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Filed by:-

(Advocate)

Central Administrative Tribunal
Guwahati Bench
OCT 2001
गुवाहाटी न्यायालय
Guwahati Bench

Dipak Kumar Kundu
Filed by the applicant
through Bikram Choudhury
Advocate
7.10.01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

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

ORIGINAL APPLICATION NO. OF 2001

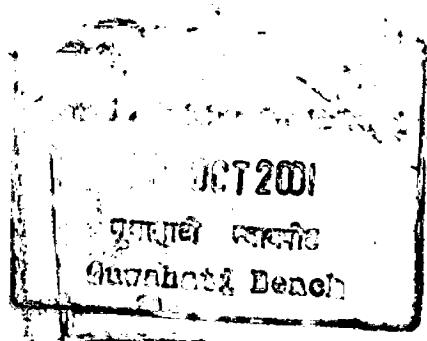
Shri Dipak Kumar Kundu,
son of Sri Dilip Kumar Kundu,
Senior Clerk/G,
Office of the D.R.M. (M)
Lumding, District Nagaon, Assam.

...APPLICANT...

-VERSUS-

1. The Union of India,
Represented by the General Manager,
N.F. Railways, Maligaon
2. The Chief Personnel Officer,
N.F.Railway, Maligaon.
3. The Chief Medical Director,
N.F.Railway, Maligaon.

Contd.../-



4. The Chief Medical Superintendent,
N.F.Railway, Lumding.

5. Divisional Railway Manager (P)
N.F.Railway, Lumding.

6. Divisional Railway Manager,
N.F.Railway, Lumding.

... RESPONDENTS.

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

Order No.E/II/Gr.I(DKK)/Court (Docket) dtd. 10.10.2000 passed by the Respondent No.5 informing the applicant that as per directive of the Hon'ble Central Administrative Tribunal, Guwahati, he had been medically re-examined on 4.7.2000 and the medical board had passed order that his services as ASM for the benefit of passengers was not permissible.

2. JURISDICTION

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

Contd.../-

Abu

Mr. T. V. S.
Gurukul Banerji

3. LIMITATION.

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

4. FACTS OF THE CASE

1. That the applicant is a Graduate in commerce and in response to an advertisement, the applicant applied for the post of Asstt. Station Master under the Respondent Railway. On being selected and after medically examining him, the applicant was sent for training and after successful completion, he was posted at Mandardisa Station under Lumding Division of the N.R.Railway and he joined on 28.7.95.

2. That, while being posted as such, the applicant, on 6.11.95, due to various personal problems and also because of the fact that he was performing his duties without taking any rest, had become upset and he could not assess the situation properly for which he could not grant line clear signal for a train passing through his station. For the aforesaid action, the applicant was arrested and he was brought to Lumding G.R.P. Police Station where he was threatened and abused and he was made to suffer for about 20 (twenty) hours.

Contd.../-

[Signature]

Subsequently, the applicant was sent for medical examination and after being medically examined and found normal, he was discharged with a duty fit certificate on 8.11.95. It will be relevant to mention here that no treatment whatsoever was given to the applicant and in the duty fit certificate it was routinely mentioned that the applicant was normal but in a state of anxiety.

3. That the applicant was placed under suspension w.e.f. 6.11.95 and by memorandum No.T/61/2/LM dated 20.11.95, a proceeding was drawn up against the applicant on the charge that he refused to grant line clear to a train which was ready and that the same amounted to gross negligence of duty.

A copy of the articles of charge is annexed herewith and marked as ANNEXURE-I.

4. That, subsequently, the respondent No. 6, by his order No.T/61/2/DM dated 13.12.95 revoked the order of suspension w.e.f.13.12.95.

Copy of the said order is annexed herewith and marked as ANNEXURE-II.

5. That, after the revocation of the suspension order, the respondent No. 5, by his office order No.ES-

Contd.../-



206-D(T) dated 14.12.95, transferred the applicant to Lumding to work as Station Clerk for six months with immediate effect. By the said order, the applicant was also directed to report to the Medical Superintendent, Lumding (Respondent no.4) for check up at monthly intervals.

Copy of the said order is annexed herewith and marked as ANNEXURE-III.

6. That on receipt of the aforesaid order, the applicant reported to the Station Superintendent, Lumding on 16.12.95. Meanwhile, the applicant had submitted his written statement to the charges levelled against him explaining as to why the line clear signal could not be given and the respondent no.6, by his order No. T/61/2/LM dated 12.4.96, held that the applicant accepted his fault in not granting line clear but that considering the fact that the applicant was a new comer to the Railways and also the circumstances under which the incident took place, the applicant was punished with stoppage of increments for two years (cumulative). The applicant had filed an appeal against the aforesaid order and the Senior Divisional Operation Manager, Lumding, by his order No.T/16/2/LM dated 22.4.96, held that justice would be met if increment stoppage was done for 24 months non-cumulative.

Dipak Kumar Kundu

Copy of the reply and the order dated 12.4.96 ad 22.4.96 are annexed herewith and marked as ANNEXURES-IV, V & VI respectively.

7. That, the applicant begs to state that the authorities, considering the explanation given by the applicant in reply to the charges, had imposed the minor penalty of withholding of increments for 24 months without cumulative effect and the applicant accepted the same and did not proceed further.

8. That, meanwhile, the applicant who was posted to work as Station Clerk in Lumding was being sent to the Respondent No. 4 for monthly check-up along with his working/behaviour/attitude report. Subsequently, the applicant was directed to appear before the Medical Director, Railway Hospital, Maligaon and he was finally examined on 13.5.96. It would be relevant to mention here that during the monthly check-up by the Respondent No. 4 and after the final examination at Maligaon, the applicant was not given any treatment or prescribed any medicine and he was being examined in a routine manner. As such the applicant was surprised when he received letter No.E/1/2/LM/0/Pt.IV dated 5.6.96 from the Respondent no. 5 whereby he was informed that the suitability test for the medically de-categorized staff was fixed on 5.6.96 for judging ability for further absorption and he

Contd.../-

Dipak Kumar Kundu

Contd.../-

5.6.96 for judging ability for further absorption and he was directed to attend without fail.

Copy of the letter dated 5.6.96 is annexed herewith and marked as ANNEXURE-VII.

9. That, the applicant duly appeared but, on 9.6.96, he had submitted an application to the Respondent No. 4 praying that he be furnished with a copy of the unfit certificate so that he could at least know as to why he was de-categorized. The respondent No. 4 informed the applicant that he had been certified as suffering from mental instability but that he could not be furnished with a copy of this certificate and this was communicated to him vide letter No. H/219/DM dated 21.6.96.

Copy of the letter dated 21.6.96 is annexed herewith and marked as ANNEXURE-VIII.

10. That the respondent No. 5, by his office order communicated vide E/1/2/LM (Q) Pt-III dated 21.6.96, announced the list of medically declassified staff who have been found medically fit in B/1, C/1 category recommended the alternative posts to which they could be appointed and the applicant was found fit under medical category C/1 and C/2 and recommended for appointment as Junior Clerk in the scale of Rs. 950/- to

Contd.../-



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Rs. 1500/-, The applicant as Asstt. Station Master was in the scale of Rs. 1200/- to Rs. 2040/-.

The relevant part of the said order is annexed herewith and marked as ANNEXURE-IX.

11. That, in pursuance of the said order, the applicant, without prejudice to his right to appeal, reported for duty to the Divisional Mechanical Engineer (P) Lumding on 30.7.96.

Copy of the joining report is annexed herewith and marked as ANNEXURE-X.

12. That the applicant begs to state that the authorities have acted in a very illegal and arbitrary manner and have deprived the applicant of the post due to him. Because of the incident on 6.11.95, the applicant was already penalized with the minor penalty of withholding of increments which the applicant accepted. The respondent authority, without following the procedure laid down and without giving the applicant any treatment or medicines, certified him to be a case of mental instability and that he had recovered from mental disease and debarred him from holding the post of Asstt. Station Master under paragraph 573 of the Indian Railway Medical Manual.

Contd.../-



13. That the applicant, immediately on 16.8.96, submitted an appeal to the respondent no.3 as provided under the Medical Manual categorically stating that he was never treated for any mental illness and that a great injustice had been done by certifying him as recovering from mental illness for which he was deprived of the post of ASM. The applicant reiterated that he never had any history of mental illness and that at no point of time, he was treated for mental disease and that he was treated in a most illegal and arbitrary manner only to deprive him of the post due to him. The applicant had submitted reminders to this effect on 10.10.96, 29.7.97, 20.9.97 and though all these representations were received by the respondent No.3, till date there was no response whatsoever.

Copies of the representation dated 16.8.96 and the last reminder dated 12.11.97 are annexed herewith and marked as ANNEXURE-XI & XII respectively.

14. That being aggrieved the applicant filed an original application before the Hon'ble Tribunal challenging the action of the authorities in declaring him unfit to hold the post of Assistant Station Master due to mental diseases and the same was admitted and numbered as O.A.No. 28 of 1998. The Respondent had

Contd.../-

Dipak Kumar Kundu

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entered appearance and had submitted a Written Statement and also an additional Written Statement in defence. During the pendency of the application before this Hon'ble Tribunal the respondent authorities by order No. /219/3-Appeal (Loose) dtd. 4.6.98 rejected the appeal dtd. 16.8.96 of the applicant filed by the applicant on the ground that the appeal was time barred and further it was not routed through proper channel.

A copy of the said order dated 4.6.98 is annexed herewith and marked as ANNEXURE-XIII.

15. That the case came up for hearing and this Hon'ble Tribunal by Judgement dtd. 4.2.2001 held that the applicant was denied justice mainly on technical grounds and disposed of the application by directing the respondents to reconsider the case of the applicant on merit by condoning the delay or procedural defects, if any. This Hon'ble Tribunal also allowed the applicant to submit fresh representation to the Respondent within one month and directed the Respondent to issue final order within 3 months.

A copy of the said order is annexed herewith and marked as ANNEXURE-XIV.

16. That the applicant on 9.3.2000, duly submitted an appeal stating all facts and circumstances as well as the medical aspect of the case and prayed that he be heard before any decision was taken.

A copy of the said appeal is annexed herewith and marked as ANNEXURE-XV.

17. That the applicant was directed to appear before a Medical Board consisting of doctors of N.F.Railway on 4.7.2000. The applicant duly appeared before the Board and he was simply asked some questions and was allowed to leave the Medical Board.

18. That the applicant then received the impugned order dtd. 10.10.2000 passed by the Respondent no. 5 whereby the applicant was informed that as per direction of the Hon'ble Central Administrative Tribunal., he had been medically re-examined on 4.7.2000 and the Medical Board had passed order that his services as ASM for the benefit of passengers was not permissible.

A copy of the impugned order dtd. 10.10.2000 is annexed herewith and marked as ANNEXURE-XVI.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

(i) For that the action of the respondents in

Contd.../-

Dipak Kumar Kundu

certifying the applicant as a case of mental instability is illegal, arbitrary and was issued in violation of the procedure laid down and as such the same is bad in law and liable to be set aside.

(ii) For that the Applicant, at no point of time, suffered from any mental disease and no treatment was ever given to him for his alleged mental disease and as such the action of the authority is malafide and is liable to be set aside.

(iii) For that for the incident of 6.11.95, the applicant has been penalized with a minor penalty but because of the said incident only, the applicant cannot be declared as a mental case and debarred him from holding the post of Assistant Station Master under paragraph 573 of the I.R.M.M. and as such the appointing the applicant as a Junior Clerk is bad in law and liable to be set aside.

iv) For that the action of the authority in de-categorizing the applicant unilaterally and offering him an alternative employment not commensurate with the post of Assistant Station Master which the applicant earlier held is arbitrary, capricious and malafide and as such the action of the authority is bad in law and liable to be set aside.

Contd.../-

Dipak Kumar Kundu

v) For that the impugned orders of the authority in de-categorizing the applicant arbitrarily and offering him a post of Junior Clerk which is not commensurate with that of the Asstt. Station Master which rank the applicant held earlier, are bad in law and liable to be set aside.

(vi) For that there was no finding by any medical board authority that the applicant had suffered from mental disease and as such the applicant cannot be debarred from post to which the staff having recovered should not be employed and as such the impugned action of the authorities is bad in law and is liable to be set aside.

(vii) For that the medical board is only required to examine and report as to the illness of the employee and the Medical Board has no jurisdiction to give opinion for the benefit of passengers and as such the impugned order is bad in law and is liable to be set aside.

(viii) For that in any view of the matter the impugned action and orders passed by the authorities is bad in law and is liable to be set aside.

6. DETAILS OF REMEDY EXHAUSTED

The applicant states that since the impugned

Contd.../-

Dipak Kumar Kandu

order has been passed in pursuance of this Tribunal's order dtd. 4.2.2000 in O.A. No. 28 of 1998 no further departmental appeal lies.

7. DECLARATION

That applicant further declares that he has not previously filed any application/writ petition or suit regarding the matter in respect of which this application has been made before any court of law or any other authority or any other Bench of this Hon'ble Tribunal and no such application/writ application or suit is pending.

8. PRAYER

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the opposite parties to show cause as to why the orders/certificates declaring the applicant to be suffering from mental instability and also the impugned order dtd. 10.10.2000 (Annexure-XVI) should not be set aside and after hearing the parties set aside the certificates/orders and further direct that the applicant was not debarred from

Contd.../-

Dipak Kumar Kandu

holding the post of Assistant Station Master and/or pass any other order/orders as Your Lordships may deem fit and proper.

And for this act of your kindness, the applicant as in duty bound shall ever pray.

9. INTERIM ORDER : NIL.

10. DOES NOT ARISE.

11. PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION FEE:

I.P.O. No. 6G1788644 Dtd. 8.10.01 issued by G.P.O. Payable at Guwahati.

12. LIST OF ENCLOSURES:

As stated in the index.

VERIFICATION

I, Shri Dipak Kumar Kundu, son of Shri Dilip Kr. Kundu, aged about 33 years, presently serving as the Senior Clerk, Office of the D.R.M. (M), N.F. Railway, Lumding, do, hereby verify that the statements made in paragraphs No. 1, 2, 7, 11, 12, 13 and 17 as true to my personal knowledge, and the statements made in paragraphs No. 3, 4, 5, 6, 8, 9, 10, 14, 15 and 18 and believed to be true on legal advice, and that I have not suppressed any material fact. I, being one of the applicants, have been authorised by other applicants to sign this verification on behalf of all the applicants.

Place :- Guwahati

Date :- 5.10.01

Dipak Kumar Kundu
SIGNATURE OF THE APPLICANT.

STANDARD FORM OF CHARGE SHEET

S. Form No. 5.

(Rule 9 of Railway servants (Discipline & Appeal Rules, 1968))

No. T/61/2/LM.

(Name of Railway Administration) N. F. RLY.

Place of issue) DRM(O)/LMG'S Office Dt/- 16-11-96.

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MEMORANDUM

The undersigned propose(s) to hold an inquiry against Shri D.K. Kundu, ASM/MYD under Rule 9 of the

Railway servants (Discipline and Appeal) Rules, 1968. The Substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is sent out in the enclosed statement of articles of charge (Annexure-1). A statement of the imputations of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure-III). A list of documents by which, under list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV). Further, copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2. * Shri D.K. Kundu is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact ** Under-signed

immediately on receipt of this memorandum.

Shri D.K. Kundu is further informed that he may, if he so desires, take the assistance of any other railway servant an official of Railway Trade Union (who satisfies the requirements of rule 9 (13) of the Railway servants (Discipline and Appeal) Rules, 1968 and Note 6 and 7 or there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiry Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting railway servant or Railway Trade Union Official (S),

Shri D.K. Kundu should obtain an undertaking from the nominee (S) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee (S) had already undertaken to assist and the undertaking should be furnished to the undersigned (General Manager).

(Railway) along with the nomination.

4. Shri D.K. Kundu is hereby directed to submit to the undersigned (through General Manager)

Railway a written statement of his defence (General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation

of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also (a) to state whether he wishes to be heard in person; and (b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of his defence.

Arrested by
General Manager

Arrested by
General Manager

(Contd....2/-)

Shri D.K. Kundu is informed that an inquiry will be held only in respect of these articles of charges as are not admitted. He should, therefore, specifically admit or deny each article of charge.

6. Shri D.K. Kundu is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex parte.

7. The attention of Shri D.K. Kundu is invited to Rule 20 of the Railway services (conduct) Rules, 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri D.K. Kundu is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rules, 20 of the Railway services (Conduct) Rules, 1966.

3. The receipt of this Memorandum may be acknowledged. (J. L.)
/-, By order and in the name of the president. (V. R. LENIN)

1. By order and in the name of V.H. BENTON
2. D.O.M. Commanding
3. S. Operations Director
Name & designation of person
4. A.M. 1000
5. N. F. Kelley, Commanding

To Shri D.K. Kundu,
ASM/MYD. (Designation)
MYD. (Place)
@ Copy to Shri Thros SS/MYD. (Name & Designation of the
sending authority for information.

1/- Strike out whichever is not applicable.
To be deleted if copies are given/not given with the Memorandum
as the case may be.
**Name of the authority.(This would imply that whenever a case is referred to the disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable the authority being mentioned in the draft memorandum.

22. Where the President is the disciplinary authority.
23. Wherever President or the Railway Board is the
competent authority.

competent authority.
@ To be wherever applicable SEE Rule 16. (I) thx of the RS(DA) Rule
1968 Not to be inserted in the copy sent to the Railway Servants.

Attached by
for ever
John

ପାଠ୍ୟକର୍ତ୍ତାଙ୍କରଙ୍କ

N. F. R.V.

ANNEXURE TO STANDARD FORM NO. 5.
MEMORANDUM OF CHARGE SHEET.
UNDER RULE - 9 OF THE RS (RWA) RULES, 1962.

(ARMED = 1)

Statement of Articles of Charge framed against

Shri D.K. Kundu, i AS/ASM/MYD.

(Name & Designation of the Railway Servant.)

ARTICAL - II

That the said Shri D.K. Kundu, ASM/MYD while functioning as ASM at MYD during the period FROM 14.30 Hrs. to 22.30 Hrs on 06.11.95. He refused to grant Leave (here enter definite & distinct article of charge) clear for DN LGT Cum PGMG Spl. which was ready from 16.30 hrs. of 06.11.95 though he was instructed by on duty SCR/LMG which ten times amount gross negligence of duty with violation of Rule No.3(1) (i) & (ii) of the Railway Service conduct Rule, 1966.

ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Q D.K. Kunju, ASM/MYD.

(here enter definite & distinct article of charge)

NIL

ARTICLE - III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri D.K. Kundu, ASM/MYD.

(Here enter definite & distinct article of charge.)

NIL.

Approved by
Chairman. Rev

(V.R. Lenin)
100/Lumalax.
100, Operations Plan.
Cyclone 100.
N.F. R. G. Roy, Leader.

ANNEXURE - II

Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against Shri D.K. Kundu, ASM/MYD

(Name and Designation of the Railway Servant.)

ARTICLE - I

While he was on duty ASM/MYD from 14.30 hrs. to 22.30 hrs. on 06.11.95 he refused to grant line clear for pn LGT cum PNGM Spl. which was ready from 16.30 hrs. of 06.11.95 though he was instructed by on duty SCR/LMG and DOM/LMG. As a result pn LGT cum PNGM Spl was cancelled and Train Engine No. 6366/YDM/4 was sent 19.30 hrs. under authority to proceed without Line clear (i.e. OP/T- 249) by picking up Shri J.C. Biswas, SS/MYD and Shri P.M. Biswas, ASM/MYD from LMG to open the station. At 20.00 hrs. 812 UP EV Exp. was also pushed to MYD from ETL with TI/Hill and LI/Hill under authority to proceed without Line clear (i.e. OP/T- 248) as on duty ASM/MYD refused to grant line clear to any train. On arrival of SS/MYD and ASM/MYD at MYD the train running was regulated from 20.15 hrs. of 06.11.95. The train between LMG and ETL station was suspended by him without granting line clear for the period from 19.20 hrs to 20.15 hrs. on 06.11.95. This is highly irregular as he refused to maintain absolute integrity and failed to maintain devotion to duty.

Hence, he is charged seriously for violation of Rule No.3(I)(i) & (ii) of Rly. Service conduct Rules of 1963.

ARTICLE-II.

NIL.

ARTICLE-III

NIL.

XXXXXX

(Contd....3)

*Affected by
Chancery Act*

V. R. LENIN
(DOM/LMG)
1. 11. 1995
Rly. Service Conduct
Control Room
Rly. Board, S. E. R.

(ANALYST) - AI)

✓
List of documents by which the articles of charge framed against
Shri P.K. Kundu, ASM/MYD.

(Name and Designation of the Railway Servant).

Are Proposed to be sustained :-

1. Control Chart of LMG-HFO Board (from 16Hrs. to 24 Hrs of 6/11/95).
2. Train Signal Registers of MYD Station, LMG(S) cabin & LMG 'A' Geometry of 6/11/95.
3. Diary of ASM/MTL, MYD, LMG(S), LMG/A Geometry.
4. 'FAO' Register of DYC /LMG of 06/11/95.

(V. R. LENIN)
DOM/LMG

$$\left(\sin \theta \sin \beta \sin \gamma = \frac{1}{2} \right)$$

✓ List of witnesses by whom the articles of charge against him are

Shri D.K. Kundu, ASM/MYD.

(Name & Designation of the Railway Servant)

proposed to be sustained.

1. On duty CMC/LMG Shri K.M. Bania,	6. ASM/HTL -Shri B.R. Bera,
2. On duty DYC/LMG Shri B.R.Das,	6. SS/HTL Shri S.K. M Handa;
3. SS/MYD Shri J.C.Biswas,	7. ASM/LMG(S)/Cabin-Sri S.D. Biswas
4. ASM/MYD Shri P.M.Das,	8. ASM/LMG 'A' Cabin-Sri T.K. Dutta

(V. R. LHNIN)
DOM/LMG
ଶ୍ରୀ ପାତ୍ରାନନ୍ଦ ମହିନ
P.M., Operational Head
ପ୍ରଦୀପ କାର୍ତ୍ତିକ
P. D. Kulkarni. *lent*

-22-

ANNEXURE II

N. F., RAILWAY.

STANDARD FORM NO. 4.

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

T/ 61/2/IM.

Date 13/12/95.

(Name of the Railway Administration) N.F. RLY.

ORDER.

Whereas an order placing Shri D.K. Kundu, ASM/MYD.....

(Name & Designation of the Rly. servant) under suspension made/ was deemed to have been made by DOM/LUMDING..... on 6/11/95.....

Now, therefore, the under signed the authority which made or is deemed to have made the order of suspension of any other authority to which that authority is subordinate) in exercise of the powers conferred by clause(c) of sub-rule (5) of Rule 5 of the RS (D&A) Rules 1968, hereby revoked the said order of suspension ~~with effect from 13/12/95~~ with effect from 13/12/95.

15. Lmn.

(V.R. LENIN)

DOM/LUMDING.

Designation of the authority making this order.

Div. O c. of Asst Manager
govt. of India
N. F. Railway, Lumding

Copy to:-Shri D.K. Kundu, ASM/MYD.

Text

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

Copy to- APO/I/LMG for information. He will please issue necessary orders in favour of Shri D.K.Kundu to work Station Clerk under SS(Gaz.)/Lumding. This is issued as per order of DPO/LMG on 12/12/95 & CIS/Lumding.

Latest for Six months.

15. Lmn.

(V. R. Lenin)

DOM/Lumding.

Div. Operations Manager
govt. of India
N. F. Railway, Lumding

*After 6 months
After 6 months
After 6 months
After 6 months*

N. F. RAILWAY.

Office of the
Divisional M.y. Manager(P),
Lumding.

OFFICE ORDER.

Shri D.K. Kundu, ASM/MYD in scale r. 1200-2040/- is hereby transferred to LMG to work as station Clerk under SS/GAZ/LMG at least for six months with immediate effect. He should be directed to MS/IC/LMG for check up at monthly intervals alongwith his working/behaviour/attitude report for better evaluation of the case as advised by MS/IC/LMG vide his letter NO.H/184/LM-I dt 7.12.95.

This issues with the approval of DOM/LMG.

for D.A.M.(P)/LMG. 14/n

No. ES-206-2(7) dtd, LMG 14-12-95.

Copy forwarded for information and necessary action to:-

- 1) Sri D.K. Kundu, ASM/MYD thro. SS/MYD.
- 2) SS/MYD. He will please spare and direct Shri Kundu to report to SS/GAZ/LMG for duty. Shri Kundu should not be directed to
- 3) SS/GAZ/LMG. He will please utilise Shri Kundu only as station Clerk. He will also direct Shri Kundu to MS/IC/LMG for check up at monthly intervals accordingly.
- 4) DAO/LMG.
- 5) SR. DOM/LMG. 6) MS/IC/LMG. 7) OS/ET Bill at office.

for D.A.M.(P)/LMG. 14/n

'naha'
141295

Attested by
Choudhury

Attested by
Choudhury

Annexure- IV. (. . .)

To

The Senior Divisional Operations Manager,
N.E.Railway, Bumding.

Sub : Reply of your charge sheet
No. T/61/2/LM dated 20.11.95.

Sir,

I beg to inform you the following lines for your information and necessary order please. On 6.11.95 I have performed Roster duty from 14.30 to 22.30 Hrs. i.e. Evening Roster I. On 4.11.95 I have received message from GM that my father was serious and accordingly I prayed to SM/MYD to arrange necessary leave for me to attend at Katihaz to see my old aged father but my prayer neither accepted by SM/MYD nor my leave sanctioned for me.

Moreover, on 6.11.95 I have been ordered to perform duty without taking my due rest. For you information on 6.11.95 before giving line clear to DM LGT cum PRGM spl. Block Instrument found neither giving proper response nor giving any but through which I can grant line clear.

On that period SM/MYD as well as ASI/MYD both were absent from MYD, I was completely nervous and could not understand what I have to do at that situation. Moreover prior to that I was mentally upset as I have received that my father was serious at Katihaz.

contd...:

Detected D
Bhoudhury

Attended by
S. C. Mehta
Adv.

As both the SM & ASM / MYD are absent I could not took any suggestion from any one to run the train.

As on duty ASM / MYD and also new hands I was completely nervous at that time and moreover as I have heard that my father was serious at Katihar.

So, in view of the above my submission to you that I was not directly responsible regarding the detention of train at MYD.

So, you are requested to consider my case sympathetically and allow me to continue my duties & oblige.

Yours faithfully,

Dated Bumding.

The 21st Dec/1965.

(Dipak Kumar Kundu)
Assistant Station Master,
Pandarpur, Bumding,
Division, M.C.W.L.

Attest by
J. S. K. D.

Anandkumar-V.

30

NOTICE OF IMPOSITION OF PENALTIES UNDER RAILWAY SERVANTS
DISCIPLINE AND APPEAL RULES-1938.

No. T/61/2 /LM.

dated 12.4.96.

From : DRD (Operations) /Laudingia Office .

To : Shri D.K.Kundu,
ASM New Working as STO/LMC.

Through: ss/Lauding .

With reference to your explanation to the
Memorandum No. T/61/2/LM dated 20.11.95 .

In this connection, DOM/LMC has passed the
following orders :-

{ "Defendant has accepted his fault is not
granting line clear. But considering the fact that defen-
dant is a new comer to Railways and also the circumstances
under which this incident took place, he is punished
with stoppage of increment for 2 (two) years (cumulative).

sd/-V.R.Lenin

Signature & Designation of the
Disciplinary authority.

* When the name is signed by a authority other than the
disciplinary authority here quote the authority passing
the orders .

* Here quote the acceptance or rejection of explanation
and the penalty imposed .

Attested By
Copy to : ET/Cadrs & ET/Rill section of this office and
and for information and necessary action.

INSTRUCTIONS:- (1) An appeal against this order lies to
S-r DGM/LMC (Next immediate superior to the Authority
passing the order).

sd/- V.R.Lenin.

...

Chandru
Daudhury

N.I.P.Railway,

No. T/61/2/IM.

Office of the
DRM(O)/Iumding,
Dated. 22/04/96.

To:

✓ Shri D. K. Kundu,
ASM now working as STC/IMG,
Through : SS/Iumding.

Sub:- Suspension of Shri D.K.Kundu, ASM/MYD from
6/11/95 to 13/12/95.

Ref:- Your appeal No. Nil of 16/4/96.

In connection with the above, N.I.P No. T/61/2/IM dated 12/4/96 is hereby treated as cancelled as Sr.DOM/IMG (Next immediate superior to the authority passing the order) has passed the following orders considering the appeal of Shri D. K. Kundu, ASM now working as STC/IMG.

Sr.IOM/IMG's observation:-

" On going through the appeal, I consider justice would be met if the increment stoppage is done for 24 months (Non-Cumulative)."

INSTRUCTION :- (1) An appeal against this order lies to DRM/IMG (Next immediate superior to the authority passing the order).

22/4/96
For DRM(Operations)/Iumding.

Copy to :- ET/Cadre and ET/Bill section at office for information and taking necessary action accordingly.

For DRM(Operations)/Iumding.

*Attested by
S. K. Kundu
S. K. Kundu*

Chandru

N. R. RAILWAY

No. E/1/2/LM(Q) Pt. IV.

Office of the " -
Divisional Rly. Manager (P),
Lumding, dtd 5-3-96.

To - Sri Dipak Kr. Kundu,
Ex. ASM/MYD at LMG.

Sub:- Suitability test for Medically
de-categorised staff.

The date of suitability test for medically de-categorised staff is fixed to be XIA held on 5.3.96 at 10.00 hrs. in DPO/LMG's chamber for judging ability for further absorption. You are, therefore, advised to attend this office without fail as per date and time fixed.

for D.R.M.(P)/LMG.

Copy to:- 1) SR.DOM/LM(Q) for information and necessary action.
2) S%MYD.) please.

Attested (En) for D.R.M.(P)/LMG
on date Spur-3 (AU) on file
naha
5096

68/12/96
q.Secy. (En) (Efficient)
Divl. Rly. Manager
N.R. Rly. Lumding

Attested by
J. S. Datta
P.D.W.

Attested by
B. D. Dutt
S. S. D.

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ANNEX RE: VIII

NORTHEAST FRONTIER RAILWAY

No. H/219/LM

Lumding, dated 21.6.96. ³

To.
Sri D.K. Kunlu
ASW/MYD now STC/LMG.
Thro : 63/LMG.

Sub : Unfit certificate.

In ref. to your application d. 9.6.96 this is to inform you that copy of unfit certificate will not be supplied to you as per rule. The concerned certificate has already been sent to your department under confidential cover to take proper action.

Forward
Medical Subj/TC/LMG. 21/6

*Affected by
Medical sub
pdv.*

Blondlunay

N.Y. & H. RAILWAY

DRM(+) 's Office
Lundin, dated 21.6.95.

Office order.

The following medically de-categorised staff who have been declared medically fit in B/1, C/1 and below being found suitable by the nominated committee in suitability test held on 5.6.96 consisting of DPO, Sr.DOM/LAG Sr.DBV/LAG, Sr.DM/LAG and having recommended and accepted for alternative posts as shown against each, are posted accordingly as suggested by the authority concerned.

Sl. No.	Name	Designation & station prior to de-catego- rized.	fit in medical category.	post recommen- ded for a scale.	Branch of posting.	Pay in scale prior to de- categoriza- tion.	Remarks.
1.	2	3	4	5	6	7	8.
1.	-	-	-	-	-	-	-
1.	-	-	-	-	-	-	-
2.	-	-	-	-	-	-	-
2.	-	-	-	-	-	-	-
2.	-	-	-	-	-	-	-
2.	-	-	-	-	-	-	-

2. 11. 1981. 10. 10. 1981. 10. 10. 1981.

C/1 & Jr. Clerk //
C/2. 950-1500

D/E(P)^{1/2}

Rs. 1200/-
1200-2043

Pay to be fixed
by C.C.L.

SS/-Eligible, 24.5.96
for 2.3.k(F)/ funding.

۹۴

This has the approval of GPO/LM

സംഗ്രഹി

No. E/1/2/LM(i) Pt. III. Landing dated 21.6.96.

Copy forwarded for information and necessary action to :-

1. Sr.DCA/LAG 2. Sr.DOF/LAG , 3.Sr.DEN/LAG, 4. DST-/LAG. 5. ARB/GHY, 6.APO/GHY, 7.YS/KGC, 8. AFN/LFG,
9. CPBT(P) /LAG, 10. CSM(P) /LAG, 11. PDI/HILL/LEG, 12. SI/DSV, 13.SS/LFG, 14.SI/HYD, 15.OS/COMB1, 16.OS/ET B ill, 17.SS/LFG, 18.OS/EM and Bill , 19. OS/tech, 20. OS/II/EM and Bill, 21. OS/ET Cadre, 22.OS/EE & Bill , 23.OS/E/SAT 24. OS/Op* 9 25.AEF/BPG.
26. DAO/LAG(E & PF).
27. Commandant 1st BN RPSP/LAG, 28. Staff concerned through proper channel.
29. S/Copy for P/Case.
30. C.O. of the concerned staff requested to send P/Case and/ S/Deck of the staff working under them in the cadre sec. in which they are absorbed i. alternative appointment for necessary fixation.

5d/- Illegible, 24.5.9

For Divl. Railway Lancer (P),
R.F. Railway, Lundia.

~~dictated~~ by

~~Section 1~~

35

Lumding.

Sir,

Dated, 30/07/96 PN

Without prejudice to my right to appeal, I report for duty in terms of DRM(P)/LMG's letter No. E/1/2/LM(G)P/11 dt. 21/06/96 r/W SS/LMG's letter No. TPS/96/49 dt. 29/07/96.

Reported on 30/7/96.

Yours faithfully,

30/7/96 Sri Dipak Kumar Kundu

(Dipak Kumar Kundu)
ASM/MYD/ now
Jr.Clerk/G.

~~Accepted by~~
G. T. Kundu
P.D.

Accepted by
B. S. Kundu

1. Dipak Kumar Kundu,
Jr.Clerk/G under
DRM(M)/Lumding
formerly ASM/MYD.

Dated, 16.8.96

To
Chief Medical Director,
N.F.Railway, Maligaon,
Guwahati-II.

Sub:- Appeal against medical decategorisation
on the advice of MD/CH/Maligaon.

Madam,

Being aggrieved by my medical decategorisation on the advice of Dr.B.R.Dhar, MD/CH/Maligaon, supposedly on the ground of mental instability, I am constrained to come in appeal to you for your kind and judicious consideration and appropriate orders. I submit below a brief history of the case and material statements and arguments in support of my submissions.

A. Brief history of the case

1. After passing my B.Com examinations I applied for the job of ASM, was selected, sent for training in ZTS/APDJ, passed out the same and was sent to Lumding Division for appointment as ASM. I was duly appointed as ASM in scale 1200-3040/- on 28.7.95 and posted at Mandardima (G MYD) station.

2. It may be mentioned that before being sent for training in ZTS/APDJ I was psychologically tested.

3. That on 6.11.95 there was an incident at MYD station where due to non-cooperation of ASM/Lumding (S) line clear to down trains could not be granted by me, in the evening shift of my duty, whereupon GRP was sent to my station, I was arrested and brought to Lumding GRP police station where I was threatened and abused and thereafter I was sent for medical examination. I was medically examined and found normal and after two days I was discharged with a duty fit certificate dt.8.11.95 with the remark that I was normal but in a state of anxiety. A man who was arrested for no fault of his and placed under suspension on 6.11.95 and was hungry for about 20 hours was bound to be anxious as to the ~~same~~ outcome of the proceedings.

4. The discharge certificate was served on DOM/LMG who again caused a letter to be sent to MS/IC/LMG seeking opinion as to my fitness for trains passing duties. MS/IC/LMG thereupon directed me to Dr.B.R.Dhar, MD/CH/LMG, who happens to deal with psychiatric cases on 16.11.95. Dr.Dhar told me that a medical board had to be constituted for the purpose. On 28th or 29th November, 1995 I appeared before the said medical board where Dr.B.R.Dhar, Dr.Pazirika and another doctor were present. They interrogated me about various subjects and recommended 6 months' light duty. No medicines were recommended.

5. Thereupon I was posted as Station Clerk under SS/GAZ/LMG under DRM(P)/LMG's ~~interior~~ office order No.E.S-206-D(T) dated 14.12.95 with the advice that I should be directed to MG/IC/LMG for check up at monthly intervals alongwith my working/behaviour/attitude report for better evaluation of the as advised by MS/IC/LMG vide his letter No.H/184/LM-I dated 7.12.95.

6. Accordingly, I was sent to MS/IC/LMG after one month who

(contd...2)

(contd...2)
Deoudhury

By Registered Post with A/D

1. Dipak Kumar Kundu,
Jr. Clerk/G under
DRM(H)/Lumding
formerly ASM/MYD.

Dated, 16.8.96

To
Chief Medical Director,
N.F. Railway, Maligaon,
Guwahati-11.

Sub:- Appeal against medical decategorisation
on the advice of MD/CH/Maligaon.

Madam,

Being aggrieved by my medical decategorisation on the advice of Dr.B.R.Dhar, MD/CH/Maligaon, supposedly on the ground of mental instability, I am constrained to come in appeal to you for your kind and judicious consideration and appropriate orders. I submit below a brief history of the case and material statements and arguments in support of my submissions.

A. Brief history of the case

1. After passing my B.Com examinations I applied for the job of ASM, was selected, sent for training in ZTS/APDJ, passed out the same and was sent to Lumding Division for appointment as ASM. I was duly appointed as ASM in scale 1200-2040/- on 28.7.95 and posted at Mandardisa (S) MYD) station.

2. It may be mentioned that before being sent for training in ZTS/APDJ I was psychologically tested.

3. That on 6.11.95 there was an incident at MYD station where due to non-cooperation of ASM/Lumding (S) line clear to down trains could not be granted by me, in the evening shift of my duty, whereupon GRP was sent to my station, I was arrested and brought to Lumding GRP police station where I was threatened and abused and thereafter I was sent for medical examination. I was medically examined and found normal and after two days I was discharged with a duty fit certificate dt.8.11.95 with the remark that I was normal but in a state of anxiety. A man who was arrested for no fault of his and placed under suspension on 6.11.95 and was hungry for about 20 hours was bound to be anxious as to the ~~next~~ outcome of the proceedings.

4. The discharge certificate was served on DOM/LMG who again caused a letter to be sent to MS/IC/LMG seeking opinion as to my fitness for trains passing duties. MS/IC/LMG thereupon directed me to Dr.B.R.Dhar, MD/CH/MLG, who happens to deal with psychiatric cases on 16.11.95. Dr.Dhar told me that a medical board had to be constituted for the purpose. On 28th or 29th November, 1995 I appeared before the said medical board where Dr.B.R.Dhar, Dr.Pazarka and another doctor were present. They interrogated me about various subjects and recommended 6 months' light duty. No medicines were recommended.

5. Thereupon I was posted as Station Clerk under SS/GAZ/LMG under DRM(P)/LMG's ~~intkxxpx~~ office order No.E.S-206-D(T) dated 14.12.95 with the advice that I should be directed to MS/IC/LMG for check up at monthly intervals alongwith my working/behaviour/attitude report for better evaluation of the as advised by MS/IC/LMG vide his letter No.H/184/LM-I dated 7.12.95.

6. Accordingly, I was sent to MS/IC/LMG after one month who

(contd...2)

Tested by
Dipak Kumar Kundu

terior motives or collateral reasons. To diagnose a case of mental instability the physician has to exercise maximum care and investigate the case on the basis of evidence gathered from close relatives, friends and professional colleagues. This procedure was not adopted either by Dr.Dhar or by the said medical board in coming to the conclusion that I was suffering from and have recovered from a mental disease so as to make me incapable of performing the duties of ASM. As such, Dr.Dhar in connivance with Dr.S.C.Das, MS/IC/LMG, has committed a great fraud on the medical profession by declaring me a patient of mental disease who has recovered but is incapable of performing the duties of ASM. They are also guilty of causing me injury in the form of defamation, social ostracisation and stigma which is also likely to affect my children in the pursuit of their career as well as marital prospects.

6. I submit that inconvenient employees have more than often been referred to Dr.Dhar for declaring them mentally ill and getting them declared unfit for the post of ASM. Recent examples of Shri Amarendra Ganguly, ASM/LMG, Shxxxtxxxxxxxxxxxxxx

7. I submit that the medical certificate issued by Lumling Rly. Hospital on 8.11.98 declared me fit for duty was a valid one and there was no scope for further medical check ups and constitution of special medical board.

8. I further submit that none of the conditions precedent for constitution of special medical board laid down in section E of Chapter V of IRMM & is satisfied and as such the constitution and finding of the said medical board is illegal and ultra vires the rules.

9. I submit that Dr.Dhar is not qualified to declare an employee unfit on grounds of mental disease as he is not an expert and as such his finding and recommendation is liable to be set aside.

Submissions

In view of the foregoing, I pray that my case may kindly be re-examined by getting me examined by specialists in the field of neurological sciences or psychiatry and the findings of such specialist or body of specialists may alone be allowed to stand. And for which act of your kindness I shall ever remain grateful.

I could not submit an appeal earlier or in time as I had not been informed of the ground of my unfitness. As such, the delay in submission of this appeal may kindly be condoned.

Thinking you,

Yours faithfully,

(Dipak Kumar Kundu),
Jr. Clerk/C, DME (P)/IMD
Ex, ASM/MYD.

Copy to MS/IC/LMG for information and n/a pl.

Dipak Kumar Kundu.

(De^pak Kumar Kundu) -
Jr.Clerk/G,DME(P)/DAG
Ex.ASM/MYD.

Kumar Kundu,
Clerk/G,
Under DRM(M)/LMG,
formerly ASM/MYD.

Dated : 12.11.97.

To,
The Chief Medical Director,
N.F.Railway, Malignaon,
Guwahati-11(Assam).

Sub : Appeal against medical deategorisation
on the advice of MD/CH/Malignaon.

Ref : My appeal dt. 16/08/96 received in your
office on 19/08/96 and my 1st reminder
letter dt. 10/10/96 received in your
office on 14/10/96 and 2nd reminder
letter dt. 29/07/97 received in your
office in your office on same date and
my 1st ultimatum letter dt. 20/09/97
received on same date., this is my 2nd
ultimatum letter.

Madame,

Respectfully, I submit that I had appealed
against my medical deategorisation from the category
application to AGMs on the advice of MD/CH/Malignaon on the
ground that I have recovered from a mental disease in
invocation of para 573 of Indian Railway Medical Manual
whereas I have never suffered from nor treated for my mental
disease either in the railway hospital or anywhere else.
In this connection, I have failed on appeal to you for
consideration in the light, on my material statements and
arguments and submissions made in my appeal.

This medical deategorisation had inflicted
on me a great loss of prestige, reputation, image and esteem
as well as snatching away my source of livelihood for which
I had been selected by the Railway Recruitment Board,
Guwahati and had been performing duties. This stigma will
continue to stick so long as the matter is not settled.

Therefore, I pray that the appeal may kindly
be decided early so that the stigma attached is removed.

It is my ultimatum, hence forth if I don't
get the proper justice from your side that I shall be
compelled by you to move for legal justice through the
judiciary.

Thanking you.

Yours Faithfully,

Dipak Kumar Kundu
(Dipak Kumar Kundu)
Jr.Clerk/G,
Under DRM(M)/LMG.
Ex-ASM/MYD.



Attested By
S. P. GURUNG
Pd.

Signature

Annexure-XIII

Confidential

N.F. Railway

Office of the
Chief Medical Director,
Guwahati-11.

No. /219/3-appeal (Loose)

Maligaon, Dated 04.06.98

To

Shri Dipak Kumar Kundu
Jr.Clerk(G) under
DRM(M)/N.F.Railway,
Lumding.

Sub :- Appeal against medical decategorisation on the advice
of MD/CH/Maligaon.

Ref :- Your appeal vide letter No. Nil dated 16.8.96.

In reference to your above mentioned appeal dated
16.8.96 CMD has passed the following remarks.

"I have personally gone through the appeal and it is
that the appeal was ~~timber~~ and it was also not routed
through proper channel .

Hence the appeal not be entertained".

This is for your information please.

Sd/- Illegible

(Dr. K. N. Sutradhar)
Dy. Chief Medical Director/M. S.
for Chief Medical Director.

Copy to:

1. DRM(P)/LMG for information please. This is in reference
to his letter No. E/Court 28/98 dated
have matter.

Sd/- Illegible

(Dr. K. N. Sutradhar)

Dy. Chief Medical Director/M. S.
for Chief Medical Director.

Attested by
Bhoudhury

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 28 of 1998.

Date of Order : This the 4th Day of February, 2000.

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

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

Shri Dipak Kumar Kundu,
Son of Shri Dilip Kumar Kundu,
Junior Clerk/G.
Office of the D.R.M.(M)
Lumding, Nagaon (Assam). Applicant

By Advocate S/Shri G.K.Bhattacharya,
G.N.Das, P.Sharma and Mrs B.Dutta Das.

- Versus -

1. Union of India
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati.
2. Chief Personnel Officer,
N.F.Railway, Maligaon.
3. Chief Medical Director,
N.F.Railway, Maligaon.
4. Medical Superintendent,
N.F.Railway, Lumding.
5. Divisional Railway Manager(P),
N.F.Railway, Lumding.
6. Divisional Railway Manager,
(Operations) N.F.Railway,
Lumding. Respondents.

By Advocate Sri S.Sengupta, Railway Counsel.

O R D E R

G.L.SANGLYINE, ADMN. MEMBER,

The applicant was working as Assistant Station Master at Mandardisa Station of the Lumding Railway Division of the North East Frontier Railway on 6.11.1995. On that day he did not grant line clear signal for a train passing through his station resulting in suspension of running of the train for a considerable period and dislocating train communication. Consequently, the applicant was arrested and kept in the Lumding G.R.P. Police Station for about 20 hours. Thereafter he was hospitalised at Lumding Railway Hospital from 7.11.1995

contd..2

to 9.11.1995. The applicant was placed under suspension with effect from 6.11.1995 by Memorandum No.T/Misc/LM dated 9.11.1995. The order of suspension was revoked on 13.12.1995. He was transferred to Lumding to work as Station Clerk for 6 months with immediate effect by office order No.Es-206-D(T) dated 14.12.1995 (Annexure-III). By the same order he was directed to report for monthly medical check up alongwith his working/behaviour/attitude report for better evaluation of his case. The applicant reported to the Station Superintendent, Lumding on 16.12.1995 in compliance with the order. It may be mentioned that Departmental proceedings were held against the applicant in connection with the incident of 6.11.1995 and he was punished after appeal with stoppage of increments for 24 months (non-cumulative). While working as Station Clerk the applicant reported for the monthly medical check up. On 4.6.1996 the Chief Medical Superintendent, N.F. Railway, Lumding examined the applicant and issued certificate dated 4.6.1996 to the effect that he was found unfit for A/3, B/1 and B/2 but fit for medical category C/1 and C/2. On the Annexure-A of the same certificate the applicant endorsed his signature dated 4.6.1996 to the following effect :

"I have been advised by MS/LMG that I am not fit to continue in my post in Medical category A/Two. I do prefer to lodge an appeal to the higher medical authority within 7 days from the date for reconsideration of the adverse report.

Dipak Kr.Kundu
4.6.96."

On 5.6.1996 the applicant who directed to appear in the suitability test for medically declassifiable staff in the chamber of DPO/Lumding for judging ability for further absorption and the applicant duly appeared in the test. On 9.6.1996 he applied for copy of medical certificate declaring him unfit for the categories of jobs mentioned above. Prayer

contd..3

was not granted. On 21.6.1996 it was communicated that the applicant among others who was declassified staff and declared medically fit in B/1, C/1 and below and found eligible for the suitability test held on 5.6.1996 and having recommended and accepted for alternative post shown against his name was posted accordingly. The applicant was posted as Junior Clerk(G) in the scale of pay of Rs.950-1500/- in the office of the DME(P) LMG. His pay was fixed at Rs.1200/- which is identical with the pay he was drawing as Assistant Station Master in the scale of pay of Rs.1200-2040/-. The applicant joined the post of Junior Clerk on 30.7.1996 (FN) without prejudice to his right to appeal. The applicant is aggrieved as according to him he was illegally and arbitrarily being deprived of the post due to him. According to him the respondents authority without following the procedure laid down and without giving him any treatment or medicine certified him to be a case of mental instability and debarred him from holding the post of Assistant Station Master. He therefore submitted representations dated 16.8.1996 and 12.1.1997 requesting for re-examining him medically by a specialist in the field of Neurological Science or psychiatric and to act upon their findings. There was no response. Therefore he had submitted this application praying that the order/certificate declaring him to be suffering from mental instability be set aside and directing the respondents to examine the applicant by a Medical Board. He further submitted that the impugned certificate be set aside and direct the respondents that he is not to be debarred from holding the post of Assistant Station Master.

2. The respondents have contested the application and submitted written statement. We have heard learned counsel of both sides. It was submitted for the applicant that he was illegally, arbitrarily and without following the procedure prescribed declared medically unfit for the post of Assistant Station Master. This was also done with mala fide. Similarly,

contd..4

the action of the respondents in decategorising him and offering him an alternative appointment which was not in commensurate with the post of Assistant Station Master is arbitrary, capricious and mala fide. The learned counsel for the respondents however, defended the action of the respondents. The applicant was medically examined by the Medical Board on 28.11.1995. It was found that he had no present problem and at present he was in anxiety/depression state which may be due to the present situation at his job. The Medical Board finally came to the conclusion that as the applicant was at present in Anxiety - Depression state he should not be allowed to perform duty as ASM and in other posts as listed in IRMM Item No.573. He may be provided with some sedentary job with such duty which will be compatible with railway working at least for 6(six) months at present and he should be directed for check up at monthly intervals alongwith his monthly working report for better evaluation of the case. On 8.5.1996 the Chief Psychiatrist, Central Hospital, Maligaon gave his finding that the applicant was at present psychologically fit to perform duty but considering his past psychological problems even though he had recovered from his illness, he should not be posted in the posts as listed in IRMM Item No.573. On 4.6.1996 he was examined by the Chief Medical Superintendent, N.F.Railway, Lumding and he was found unfit for A/2, A/3, B/1 and B/2 categories of service but fit for C/1 and C/2 categories. It was also stated that he should not be posted in a post as listed in para 573 of IRMM. The applicant had submitted representations dated 16.8.1996 and 12.11.1997 requesting for review of his case. On 4.6.1998 the Deputy Chief Medical Director rejected the appeal of the applicant on the ground that the appeal was time barred and further it was not routed through proper channel. We are of the view that the applicant was denied

contd.. 5

justice merely on technical grounds. At any rate, the order dated 4.6.1998 could not have been passed after this original application was admitted on 24.4.1998. We therefore direct the respondents to re-consider the case of the applicant on merit by condoning the delay or procedural defects, if any.

The applicant may also submit fresh representation to the respondents, if he desires, within 1(one) month from the date of receipt of this order. The respondents shall issue a final order to the applicant after hearing him within 3 months from the date of receipt of this order.

The application is disposed of. No order as to costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

Verified to be true Copy

11/13/1998

Attested:

pg

26/3/98
S. G. Wadhwa
Mechanical Engineer
Mr. Justice

From :- Dipak Kumar Kundu,
Jr.Clerk/G under
DRM (M)/ Lumding
(formerly ASM/MYD)

To

Dated :- 9.3.2000

The Chief Medical Director,
N.F. Railway, Maligaon ,
Guwahati-11.

Sub :- Appeal against medical decategorisation on the advice
of MD/CH/Maligaon .

Ref :- CAT/GHY's order dated 4.2.2000 received on 20.2.2000
in O.A.No. 28 of 1998 Dipak Kumar Kundu -Vs-U.O.I.
& Ors.

Sir,

In reference to the order of the honourable CAT/GHY in
the above case, where the CAT had directed the respondents to
reconsider the case of the applicant on merit by condoning delay
or procedural defects , if any, with a further direction to the
applicant that he may also submit a fresh representation to the
respondents within one month from the date of receipt of the
order on which the respondents shall issue a final order to the
applicant after hearing him within 3 months from the date of
receipt of the CAT's order, I hereby submit this fresh appeal
for your kind and judicious consideration .

This appeal is presented directly to the appellate
authority and a copy given to the authority who made the order
appealed against, in accordance with Rule 21(3) of Rly. Servants
(Discipline and Appeal)Rules, 1968 .

Attested by
Thoudhury

contd...

I submit below a brief history of the case, material statements and arguments relied on and submissions for your consideration.

A Brief history of the case :

1. I was selected for the post of ASM in scale Rs. 1200-2040/- and on successful completion of training I was appointed as ASM on 28.7.95 and posted at Manderdisa (MYD) Station on the Lumding Division. Before being sent for training to ZTS/APDJ I had been psychologically tested.
2. That owing to an incident on 6.11.95 while performing duty, I was arrested by GRP/LMG at MYD and brought to Lumding and kept in the lock up for about 20 hours. For this duration I was given neither food nor water, and was continuously abused and threatened.
3. Thereafter I was produced before MS/IC/LMG, Dr. SC Das for medical examination.

Dr. Das, vide his indoor patient case sheet No. 268 dated 6.11.95 found me : (i) conscious (ii) higher function normal, (iii) behaviour normal (iv) smell of alcohol (v) no physical infirmity (vi) no sign of addiction and drunkenness (vii) patient completely normal at the time of examination. He gave a diagnosis of " anxiety State" inspite of his above observations.

Then on 7.11.95, he observed that I should be examined prior to discharge for mental health. He himself examined me for mental health and noted that I was talkative but otherwise mentally all right.

contd...

4. I was discharged from the hospital vide memo dated 9.11.95 wherein against the column for diagnosis "Anxiety State" was mentioned ..

5. DOM/LMG on receipt of discharge certificate directed me to CMS/LMG again for medical check up in respect of my mental condition under his letter No. T/Misc/Med /LM dt. 10.11.95 . MS/ IC/LMG thereupon directed me to Dr. B. R. Dhar, MD/CH/LMG.

6. On 28.11.95, a medical board comprising of Dr. BR Dhar, Dr. N. N. Barua and Dr. S. Bhattacharjee examined me. Report of the medical board was made by the said doctors where Dr. Dhar and Dr. Barua signed on 28.11.95 and Dr. Bhattacharjee signed on 2.12.95 . Vide item 7 of the report the medical board opined as follows :

" As Sri D.K. Kundu, ASM/MYD, is at present in Anxiety-Depression State he should not be allowed to perform duty as ASM and in other posts as listed in IRMM item No. 573 . He may be provided with some sedentary job with such duty which will be compatible with railway working at least for 6 (six) months at present and he should be directed for check up at monthly intervals alongwith his monthly working report for better evaluation of the case " .

7. Finally, vide unfit certificate No. SPL/73 dt. 4.6.96, I was declared unfit for A/3, B/1 and B/2 but fit for medical category C/1 and C/2 by CMS/LMG .

8. I applied to MS/ IC/LMG vide application dt. 9.6.96 to furnish reasons for my unfitness for ASM's duty and post so that I could make an appeal to CMD but MS/ IC/LMG vide letter No. H/219/DM dt. 21.6.96 rejected my request on the ground of confidentiality .

9. Being aggrieved I submitted an appeal dt. 16.8.96 to CMD/MLG and finding no response I was constrained to file an application under Section 19 of A.T. Act, 1985 before CAT/GHY which was registered as O.A. No. 28 of 1998 which has been decided on 4.2.2000 with the direction as mentioned in para 1 of this appeal. Hence this appeal .

**B. MATERIAL STATEMENTS AND ARGUMENTS RELIED ON IN SUPPORT OF
THIS APPEAL :**

1. From the facts narrated above, it is evident that the term "Anxiety State" was first used in the diagnosis in the case sheet No. 268 dt. 6.11.95 when I was produced for medical examination at Lumding hospital under custody of Police who had arrested me about 20 hours previously, and had kept me under lock up without food and water with a continuous dose of abuses and threats. Under that situation the manifestation of anxious feelings was perfectly warranted but the same could not be construed as a pathological phenomenon as will be evident from below .

Anxiety State, a pathological entity, connotes a continuous and/or irrational condition of fear, apprehension or worry that is not consistent with the physical, social ,

economical or environmental status of the subject concerned. Any anxiety (or fear, apprehension or worry) that is a direct result of the distortion of any of the above parameters is only to be considered normal and physiological. In fact, an absence of any anxious reaction to adverse stimuli should raise a doubt above the psychological well being of the subject. This self-evident (but frequently over looked) fact seems to have totally escaped the attention of the medical examiner at Lumding.

2. It was the term "Anxiety State" used by the medical examiner at Lumding on case sheet No. 268 dt. 6.11.95 that led the medical board held on 28.11.95 totally astray and the members of the board were acting with the preconceived notion to give a finding of Anxiety and Depression. There was no evidence by way of clinical or pathological findings that could justify the diagnosis of "Anxiety-Depression" given by the medical board as well be evidence from below.

3. The medical board vide para 2 of its report noted:

"Mental status examination:- Mesomorphic built, looking around his age, dressed with heat and clean railway uniform. Personal hygiene is average. He is co-operative, help-seeking, submissive, open and frank. His speech is relevant and goal directed. No filing of ideas, no circumstantiality. Behaviour is appropriate with general body movements within normal limit. Affect and mood is appropriate, deep,

not labile. Anxiety + Depression + . Rapport could be established . No delusion. No hallucination . Sensorium & intelligence -NAD. Insight- Present . Judgement- Intact".

The above observations of the medical board are self- contradictory and incongruous to the diagnosis of "Anxiety + Depression" . Since the above finding was based on the interview I had with the board, the observable behaviour noted by the board is significant to disprove the finding of "Anxiety and Depression". The board noted that the affect and mood was appropriate, deep, not labile; no delusion, no hallucination . If the affect and mood were appropriate how it could be concluded that the patient was suffering from "anxiety and depression" ?

4. I would like to quote from "Oxford Text book of Psychiatry" second edition authored by Michael Gelder, Professor of Psychiatry, University of Oxford , Dennis Gath, Clinical Reader in Psychiatry, University of Oxford , Richard Mayon, Clinical Reader in Psychiatry, University of Oxford .

In chapter 1, page 1, ibid, it is stated:

"Once the psychiatrist has elicited a patient's symptoms and signs, he needs to decide how far these phenomena resemble or differ from those of other psychiatric patients . In other words, he must determine whether the clinical features form a syndrome, which is a group of symptoms and signs that identifies patients with common features .

When he decides on the Syndrome the psychiatrist combines observations of the patient's present State with information about the history of the disorder. The purpose of identifying a syndrome is to be able to plan treatment and predict the likely outcome by reference to accumulated knowledge about the causes, treatment and outcome of the same syndrome in other patients".

The above approach was not adopted by the medical board.

The same book at page 3 reads as under:

"It is often mistaken to conclude that a person is mentally ill on the evidence of an individual symptom. Even hallucinations, which are generally regarded as hallmarks of mental illness, are sometimes experienced by healthy people, for example when falling asleep".

On the subject of "Disorders of emotion" at page 24, it reads :

"The glossary of DSM III recommends that the term affect should be used for short-term states and mood for sustained ones. . . . In mental disorder, affect may be abnormal in three ways: its nature may be altered, it may fluctuate more or less than usual; and it may be inconsistent either with the patient's thoughts and actions or with events that are going on at the time".

" Changes in the nature of emotion can be towards anxiety, depression, elation, or anger. Changes in any of these emotions may be associated with an obvious cause in the person's life, or arise without reason. Emotional disorders usually include several components other than the mood change itself. Thus feelings of anxiety are usually accompanied by autonomic over-activity and increased muscle tension, and feelings of depression by gloomy preoccupations and psychomotor slowness. These other features are part of the syndromes of anxiety and depressive disorders " .

At page 25, it reads :

"Normally, emotional expression seems appropriate to a person's circumstances (e.g. looking said after a loss) and congruent with his thoughts and actions (when a person looks sad he is likely to be thinking gloomy thoughts . In psychiatric disorders, there may be incongruity of affect. For example a patient may laugh when describing the death of his mother .

"Disorders of emotion are found in all kinds of psychiatric disorder . They are the central feature of the affective disorders (depression and elation) and of anxiety disorders " .

On the subject of Mental State examination, at page 48, ibid, reads as under:

" Facial appearance provides information about mood . In depression the most characteristic features are turning down of the corners of the mouth, vertical furrows on the brow, and a slight raising of the medial aspect of each brow. Anxious patients generally have horizontal creases on the forehead, raised eyebrows, widened palpebral fissures, and oiled pupils " .

None of the above features have been found and noted by the medical board which conclusively establishes that the finding of anxiety and depression was not based on any evidence .

The medical board has described the general body movements within normal limit. On posture and movement , the book , ibid, reads :

" A depressed patient characteristically sits leaning forwards, with shoulders hunched, the head inclined down wards and gaze directed to the floor. An anxious patient usually sits upright with head erect. Often on the edge of the chair and with hands gripping its sides . Anxious people and patients with agitated depression are often teemulous and restless, touching their jewellery, adjusting clothing, or picking at the fingernails" .

None of the other heads of mental state examination like speech, mood, depersonalization and derealization, obsessional

phenomena, delusions, illusions and hallucinations, orientation attention and concentration, memory, insight etc. noted by the medical board establish a syndrome of "Anxiety and Depression".

The above quotations from the Oxford Text book of Psychiatry are only illustrative and not exhaustive just to demonstrate that the findings of "Anxiety and Depression" given by the medical board are incongruent and inconsistent with the evidence before them and that the medical decategorization based thereon is illegal and unlawful.

5. Hearing :

In addition to what has been discussed above, I would like to be heard before any decision is made on this appeal in view of the direction of the CAT/GHY. Therefore, I pray that I may be allowed to appear before you in person alongwith a psychiatrist of my choice, Dr. N. Moitra, MBBS, who will be able to represent the medical and psychiatric aspects of the case.

6. Submissions :

In view of the foregoing, I submit that the findings of the medical board based on which I have been decategorized and debarred from performing the duties of my post as ASM are incongruent, inconsistent with the medical record and evidence and as such a fresh medical board may be constituted comprising

entirely of psychiatrists of note who are not employed in the railways to examine me to judge my fitness to occupy the post of ASM and for which I shall be ever grateful .

Thanking you ,

Yours faithfully,

(Dipak Kr.Kundu)
Jr.Clerk/G under
DRM(M)/Lumding
(formerly ASM)

Copy to :

1. Dr.BR Dhar,MD/CH/MLG for information and necessary action.

(Dipak Kr.Kundu)

.....

Shri. Dipak K. Kundu, IAS
- 54 - ANNEXURE-XVI

REGD. NO. 1000

NORTHEAST FRONTIER RAILWAY.

Office of the
Divisional Rly. Manager (P)
Lumding.

Notes/XXI/Crt.I (DKK) /Court (Deckt) Dated 10-10-2000

To
Shri Dipak K. Kundu, Ex-ASM now Jr. Clerk under Sr. DMS/LMS
Thre:- OS/Mechanical at Office.

please note that as per directive of Shri
Hon'ble CAT/Guahati you have been medically re-examined
on 4-7-2000 and the medical Board passed orders that
your services as ASM for the benefit of passengers
is not permissible as duly communicated by CMS/LMG
vide his letter No. M/174/LM dt. 18-8-2000. This is in
response to CMD/LMG's letter No. NM/Medical Board
(Loose) dated 27-7-2000.

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

Copy to:-

- 1) To CMD/LMG for information in reference to his letter
No. NM/Medical Board(Loose) dt. 27-7-2000
- 2) To CMS/LMG.
- 3) To GM/Law/LMG for information please in reference to
his letter No. L/208/8/CAT/GHY/98
-dated 1-3-2000.
- 4) To OS/LM at Office.

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

Initiated by
Dipak Kundu

29.9.00
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