

30/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

**INDEX**

O.A/T.A No. 85/2001

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. OA 85/2001 Pg. 1 to 3
2. Judgment/Order dtd. 12/02/2002 Pg. 1 to 3 Dismissed
3. Judgment & Order dtd. .... Received from H.C/Supreme Court
4. O.A. 85/2001 Pg. 1 to 25
5. E.P/M.P. NIL Pg. .... to .....
6. R.A/C.P. NIL Pg. .... to .....
7. W.S. Submitted by the Respondents Pg. 1 to 11
8. Rejoinder. .... Pg. .... to .....
9. Reply. .... Pg. .... to .....
10. Any other Papers. .... Pg. .... to .....
11. Memo of Appearance. ....
12. Additional Affidavit. ....
13. Written Arguments. ....
14. Amendment Reply by Respondents. ....
15. Amendment Reply filed by the Applicant. ....
16. Counter Reply. ....

SECTION OFFICER (Judl.)

FORM NO.4  
(See Rule 42)

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

ORDER SHEET  
Original APPLICATION NO 85 OF 2001

Applicant (S) Mrs. Nihar Rani Mazumdar

Respondent(s) O.O.I Row

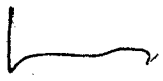
Advocate for Applicant(s) A.C. Bhaagachari, M. Rahman

Advocate for Respondent(s) Railway advocate

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time consideration. Petition is filed not filed vide M.P. No. C.F. for Rs. 50/- deposited vide IPO/BO No. 216-555-53 Dated 19.2.2001</p> <p>4/6/01 original 4 envelopes received</p> <p>Dr. Registrar 26/2/01</p> <p>JS 26/2/01</p> <p>2-3-2001</p> <p>Service of Notice issued to the respondents vide D.O. No. 868-890 dt. 12.3.01</p> <p>Service report are still awaited.</p> <p>24/3/01</p>	<p>28.2.2001</p> <p>nkm</p> <p>JS 24/3/01</p> <p>28.3.2001</p> <p>nkm</p>	<p>Heard Mr M. Rahman, learned counsel for the applicant. The application is admitted. Call for the records returnable by four weeks. List it on 28.3.01 for orders.</p> <p>Vice-Chairman</p> <p>Four weeks time allowed for filing of written statement. List it for orders on 25.01.</p> <p>Vice-Chairman</p> <p>Passover to 25/5/2001 m/s A.K. 2 21/5</p>

25.5.2001

List again on 29.5.01.


  
Vice-Chairman

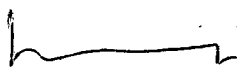
nk m

29.5.01

None appears for the parties.  
List again on 29-6-2001 to enable the  
respondents to file written statement

No. written statement  
has been filed.

  
7.8.01

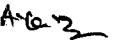
  
Vice-Chairman

bb


29.6.2001

Four weeks time allowed to the  
respondents to file written statement.  
List for orders on 8.8.01.

By Order

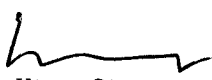
  
29.6

No. written statement  
has been filed.


  
6.9.01

8.8.2001

Four weeks further time allowed to the respond-  
ents to file their written statement. List for  
orders on 7.9.01.

  
Vice-Chairman

No. written statement  
has been filed.

  
9.10.01

nk m  
7.9.01

No written statement has been filed. Mr. S.  
Sengupta, learned counsel for the respondents, seeks  
4 weeks time to file written statement.

Prayer is allowed. List on 10/10/01 for order.


  
Member

mb

10.10.01

List on 23.11.01 to enable the  
respondents to file written statement.

No. written statement  
has been filed.

  
22.11.01

pg  
23.11.01

  
Vice-Chairman

On the prayer of Mr. S. Sengupta  
learned Railway counsel two weeks time  
is allowed for filing of written state-  
ment. List on 5.12.01 for orders.

  
Vice-Chairman

3  
O.A. 85/2001

Notes of the Registry

Date

Order of the Tribunal

5.12.01

Written statement has been filed by the respondents. Prayer has been made on behalf of the applicant for filing a rejoinder. Prayer is allowed. Three weeks time is allowed to the applicant to file rejoinder.

List on 4.1.02 for order.

Member (J)

Member (A)

mb

4.1.02

Written statement so far filed. Case is ready for hearing. List the case for hearing on 8.2.02.

Member

Vice-Chairman

lm

8.2.02

List again on 12.2.2002 for judgment.

Member

Vice-Chairman

mb

12.2.02

Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open court, kept in separate sheets. The application is dismissed. No costs.

Member

Vic-Chairman

trd

11/3/2002

Copy of the order has been sent to the office, for issuing the same to the applicant as well as to the Rly. Advo call for the reply.

Advo call for the reply  
12.2.2002  
RALPH  
13.3.2002

Date \_\_\_\_\_

Order of the Tribunal

6

CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A./R.A. NO. 85/2001 . . . . . of

DATE OF DECISION 12.2.2002

Mrs. Nihar Rani Mazumdar

APPLICANT(S)

Mr. A.C.Buragohain.

ADVOCATE FOR THE APPLICANT(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. S.Sengupta, Railway Standing Counsel.

ADVOCATE FOR THE  
RESPONDENTS.

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

THE HON'BLE MR. K.K.SHARMA, MEMBER (A).

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.

Ho  
by

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 85 of 2001.

Date of decision : This the 12th day of February, 2002.

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

Hon'ble Mr. K.K.Sharma, Member (A).

Mrs. Nihar Rani Mazumdar  
W/o Late Moran Chandra Mazumdar  
Village Nakhola,  
P.O. Jgiroad,  
P.S. Jagiroad,  
District Morigaon, Assam

...Applicant.

By Advocate Mr. A.C.Buragohain.

-versus-

1. The Union of India  
(represented by Respondent No.2).
2. Station Superintendent  
N.F.Railway, Jagiroad.
3. Divisional Railway Manager (P)  
N.F.Railway, Lumding,  
District-Nagaon, Assam.
4. General Manager,  
N.F.Railway, Maligaon,  
Guwahati, Kamrup,  
Assam.

...Respondents

By Advocate Mr. S.Sengupta, Railway Standing Counsel.

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O R D E R (ORAL)

CHAUDHURY J.(V.C.).

The issue relates to grant of Over Time Allowance. The applicant is the wife of Late Moran Chandra Mazumdar who was working as Points Man A under the respondents. Late Moran Chandra Mazumdar retired from service on 30.6.1988. The wife of the applicant contended that Late Moran Chandra Mazumdar during his life time represented

Contd..

before the authority for giving him Over Time Allowance, so much so his duty hours was 12 hours per working day. He was paid usual pay and allowances which was admissible against 8 hours working. The respondents did not respond to his representation and on his death the applicant, wife of Late Moran Chandra Mazumdar took up the matter with the Railway. The Railway Authority by order dated 2.12.1999 rejected the claim of the applicant. Hence this application assailing the legitimacy of the action of the Respondents.

2. The Railway Authority submitted its written statement. The respondents amongst others took up the plea of limitation. The Railway Authority in its written statement stated that the husband of the applicant who served under the Railway never raised this question during his life time. The Railway Authority in the written statement also stated that Late Moran Chandra Mazumdar worked and retired in Essentially intermittant Roster in 12 hours shift duty. As per rules the question of payment of Over Time Allowance beyond 8 hours as claimed by the applicant did not arise. The Respondents relied upon paragraph 3503 of the Indian Railway Establishment Manual, 1968 which reads as follows :

"The employment of a Railway servant is said to be 'essentially intermittant' when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the Railway servant normally include period include period of in-action aggregating six hours or more (including at least one such period of not less than one hour or two such periods of not less than half an hour each) during which the Railway servant may be on duty but is not called upon to display either physical activity or sustained attention."

The 12 hours shift duty roster was also applied to the category of Points Man A posted in other stations of the N.E. Railway mainly in the road side stations and such persons were entitled for Over Time Allowance only when they rendered service for more than 12 hours.

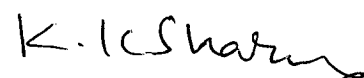
3. We have heard Mr. A.C. Buragohain, learned


Contd..



counsel for the applicant at some length. We have also heard Mr. S.Sengupta, Standing counsel for the Railways. Though there is substance in the contention of Mr. Sengupta that the application is not to be entertained on the ground of limitation, considering the fact situation we however, did not like to dismiss the application on the ground of limitation alone. We have given our anxious consideration to the submission of Mr.A.C.Buragohain as to the entitlement of the Over Time Allowance to the deceased husband of the applicant. From the materials on record it was clearly spelt out that the applicant was essentially intermittent and therefore daily hours of duty of such Railway employees including the period of in action aggregating 6 hours or more. Therefore the respondent authority cannot be faulted in declining the claim of the applicant for payment of Over Time Allowance.

4. In the circumstances we find no merit in this application and accordingly the application is dismissed. There shall, however, no order as to costs.

  
(K.K.SHARMA)  
Member(A)

  
(D.N.CHOWDHURY)  
Vice-Chairman

trd

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH.

O.A. No. 85 /2001.

Mrs.Nihar Rani Mazumdar  
W/o late Maran chandra Mazumdar  
vill Nakhola  
P.O.& P.S. Jagiroad,  
Dist. Morigaon ,Assam.

...Applicant.

-vs-


Union of India and ors..Respondents.

INDEX

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Petition	1-9.
2.	Affidavit	10-
3.	Annexure .A	11-12
4.	Annexure-B	13
5.	Annexure-C	14-15
6.	Annexure-D	16-17
7.	Annexure-E.	18-19
8.	Annexure-F.	20-22
9.	Annexure-G	23-24
10-	Annexure H	25-

Filed by :-

Registration No.

  
( M. Rahman )  
Advocate

Date.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GAUHATI BENCH .

(An application under Section 19 of  
Administrative Tribunal Act, 1985).

O.A. No. 85 of 2001.

BETWEEN

Mrs.Nihar Rani Mazumdar  
W/o Late Moran Chandra Mazumdar  
Village Nakhola,  
P.O. Jagiroad,  
P.S. Jagiroad,  
District Morigaon, Assam.

-AND-

IN THE MATTER OF:

1. The Union of India (represented  
by Respondent No.2).
2. Station Superintendent  
N.F. Railway, Jagirbroad.
3. Divisional Railway Manager(P)  
N.F. Railway  
Lumding,  
District Nagaon, Assam.
4. General Manager,  
N.F. Railway, Maligaon,  
Guwahati, Kamrup, Assam.

...Respondents.

নীহার রানী মজুমদার

contd..

12  
2.

DETAILS OF THE APPLICATION:

1: PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE :†

The instant application is made against letter No.EB/4/Misc- 8 dated 2.12.99 issued by Divisional Railway Manager, N.F. Railway Lumding denying payment of overtime for working beyond 8 hours to late Moran Chandra Mazumdar , Point Man-A.

2 : LIMITATION:

The applicants declare that the instant application has been filed under Section 21 of the Administrative Tribunal Act, 1985.

3. The applicants further declare that the subject matter of the instant case is within the jurisdiction of the Hon'ble Tribunal.

4: FACTS OF THE CASE :-

4.1. That the applicants is a citizen of India by birth and as such she is entitled to all the rights protections and privileges guaranteed by the Constitution of India and laws framed thereunder.

4.2. That in the instant application the applicant is the widow of Late Moran Chandra Mazumdar an employee in Traffic Deptt. of N.F. Railway. He was appointed

contd..

12/12/99

3.

as Points Man- A on 30.6.1950 .

4.3. That his ~~last~~ posting is at Jagiroad . He has retired on 30.6.1988 (Service certificated enclosed in Annexure- A) . Since his date of joining the Railway authority has engaged him 12 hours in a day per working day till the date of his retirement from the services . However, the authority had only paid him monthly wages / salary for 8 hours per day basis . The authority has never paid him any extra wages for his additional 4 hours duty performed by him i.e. beyond 8 hours per day was not paid to him w.e.f. the date of joining i.e. 30.6.1950 in service till the date of his retirement i.e. on 30-6-1988. (A certificate of Station Superintendent is enclosed as Annexure- B).

4.4. That late Maran Chandra Mazumdar during the period his service was claiming wages for doing over-time 4 hours per day w.e.f. the date of joining, before the authority but his genuine demand was never looked into by the authority.

4.5 That late Moran Ch. Mazumdar performed his duties for 12 hours a day in his entire service period as per roster maintained . At the relevant points of time the duty Roster of Pointsman A & B at Jagiroad Railway Station had been classified as

contd..

निदेशक रेली अख्यत

4.

"Essentiality Intermittent " as per classification of Hours of Employment Regulation Act and staff concerned under this category had to perform 12 hours duty per day. Accordingly Late Maran Ch. Mazumdar had to perform 12 hours duty per day. However, no overtime dues was paid to him for working beyond 8 hours.

4.6. That the petitioner submitted a representation before Human Right Commission ,Guwahati on 23.9.99 that her husband late Maran Ch. Mazumdar pointsman 'A' was engaged in works 12 hours per day w.e.f.30.6.50 the date of his joining in service till the date of his retirement i.e. up to 30.6.88 an no overtime was paid to him for the period of working beyond 8 hours.

A copy of her representation enclosed as  
Annexure-'C'.

4.7. In response to the representation of the petition the Assam Human Right Commission taken up the matter with the Divisional Manager (P) N.F. Railway Lunding . The Divisional Manager N.F. Railway Lunding vide letter No.EB 14/Mis 8 dated 02.12.99 informed that Late Maran Ch. Mazumdar Ex. P+ Man-A had performed 12 hours duty in a day and 72 hours in a week as per provision as classified Essentilly intermittent under Hours of Employment Regulation Act and the payment

contd..

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5.

of O.T.A. for working beyond 8 hours duty upto 12 hours in a day as claimed by Smti. Nihar Rani Mazumdar widow of late Maran ch. Mazumdar is no admissible as per entent Rule ".

A copy of the letter is enclosed as

Annexure- 'D.

4.8 That on receipt the above mentioned letter the Secretary Assam Human Right Commission Communicated the same to the petitioner/ claimant and asked to give comment on this and the petitioner conveyed her comments to the Under Secretary to Govt. of Assam Human Right Commission vide her letter dated 14.7.2000.

4.8(i) That the letter No.EB /4/Misc- 8 dated 2.12.99 from DRM N.F. Railway clearly proves that late Maron Ch. Mazumdar performed duty for 12 hours a day in his entire service period as per the roster maintained by his good office. As the letter mention that late Maron Ch. Mazumdar had to perform the duty for 12 hours a day under the category "Essentially Intermittent " Group but to utilize a workman beyond his normal working hours without paying him extra wages is a total violation of Human fundamental right , Government can impart training beyond his schedule hours, but have his skill was utilized beyond his normal working hours.

contd..

১২০০ নম্বর স্মৃতিস্মরণ

16  
6.

4.8(2) That again Railway authority had violated its own own rule "Essentially Intermittent " duty hours by detailing all workman of "Traffic Section" for equal amount of working hours ; detaling some of one for 8 hours and some one for 12 hours a day.

Sample

1. Points man A & B	.. 12 hours.
II. Cabinman G.I. & II	.. 8 "
III. Shunting Jamadar	8 "
IV. Shouting Master	8 "
V. Asstt. Station Master	8 "

3. Letter No.I.R. 11/91/5299 8th April 1998  
Labour Commission are clear that week means starting for Sunday to Saturday having 8 hours rest after 48 hours duty in a week.

A copy of comments and letter from Labour Commission is enclosed as Annexure.- E & F) respectively.

4.9. That after conveying comments and pray for financial relief by the widow of Late Moran ch. Mazumdar for the extra duties the petitioner is suffering lot of harrashment and mental agony.

4.10. That the petitioner again on 8.1.2001 made an appeal before the station Superintendent N.F. Railway, Jagiroad to kindly look into the matter and make

contd..

निम्नलिखित कार्य करावत



17  
7.

necessary arrangement for early payment of the over-time dues for the duty performed by her husband beyond normal period of 8 hours per day for every working day w.e.f. 30.6.50 to 30.6.88 at an early date. The petitioner has sent a copy of her representation to the Divisional Manager N.F. Railway Lunding, and the General Manager, N.F. Railway Maligaon also. But till to day no positive result has come up.

A copy of her <sup>representation ✓</sup> ~~requestion~~ is enclosed as Annexure- G.

G R O U N D S F O R R E L I E F :

5(a) That under the provisions of the Indian Railways Act as well as the Industrial dispute Act, the workers/ employees of the Railways or any other Industrial establishment is to work for 8 hours a day, and they are entitled to over time for each extra hours of work done by the worker. It may be mentioned that the rate of overtime is double the normal wage.

b) It may further be mentioned that no establishment is legally entitled to take more than 8 hours duty per day from the employees. In other words the Railways is liable to pay the

contd..

निम्नलिखित प्रमाण

appellant at the rate of double the normal wage for each of the extra 4 hours per day to the appellant from the date of his employment i.e. 30.6.1950 at the proportionate rate of increase of wage till the date of his retirement as he was compelled to work for 12 hours a day continuously till the date of his retirement .

6. DETAILS OF REMEDIES EXHOUSTED:

i) Filed appeal before the station Superintendent N.F.Railway , Jagiroad Dist. Morigaon (Assam) for payment of overtime dues in respect of late Maran Chandra Mazumdar. The copy of the appeal was sent to the Divisional Railway Manager , N.F. Railway Marding and General Manager, N.F. Railway, Maligaon, Guwahati.

ii) Prior to this appealed was made before the Human Right Commission Gauhati .The Human Right Commission had taken up the matter with the appropriate authority.

7. MATTERS NOT PREVIOUSLY FILED:

Except the aforesaid remedies sought by the petitioner , the matter is not pending before any Court of Law.

contd..

সিদ্ধান্ত সনদী প্রস্তুত

9.

**8. RELIEF SOUGHT :**

The humble petitioner/ applicant press for  
the following relief :-

- i.) To declare the impugned letter No.EB-4/Misc-3 dated 2.12.99 as illegal, arbitrary and mala fide as the same is violation of the relevant Rules.
- ii) Direct the respondent to review the matter and quash the same.
- iii) To grant over time and pay over time arrear dues with effect from 30.6.1950 till the date of retirement .
- iv) To grant adequate compensation for giving harrashment to the husband of the petitioner unnecessarily.
- v) And to grant any other relief as may deem fit and proper.

VERIFICATION

I, Smti Nihar Rani Mazumdar, aged about 62 years, village - Nokhola, P.O. - Jagiroad, P.S. - Jagiroad, District - Morigaon (Assam), do hereby verify that the contents of Paras 4.1 to 4.4 are true to my personal knowledge and paras 1, 2, 3, 4.5 to 8 believed to be true on legal advice and that I have not suppressed any material fact.

~ नीहार रानी मजुमदार

Signature of Applicant.

Signature — A

फार्म सं० 30/FORM No. 30  
(नियम 1620 - आर० आई० देखें)  
(See Rule 1620 - RI)

सेवा प्रमाण - पत्र/Service Certificate.  
नियम 1620-आर० आई० देखें/(See Rule 1620-RI)

क्र. संख्या/Serial No. 77-1 ..... DRM/D ..... निगम कार्यालय/Issuing Office.  
27.6.83 ..... दि. म. तारीख/Date of issue.

1. नाम Name S. Narayan Ch. Mazumdar.
2. पिता का नाम /Father's Name. Sri. Divanikar Mazumdar.
3. जाति/Caste Hindu.
4. दि. (म. त. र.) : 27.6.83 Date of birth in words Twenty seven June Ninety three.
5. विभाग जिसमें कार्य किया /Department in which employed DRM/D.
6. सेवा के अवधि : 30.6.57 To 27.6.83 Period of Service from To.
7. सेवा छोड़ने पर वेतन की दर Appointment when leaving service P/mcn - 1.
8. सेवा छोड़ने पर वेतन की दर Rate of pay on leaving service Rs. 1090/- Pm. (R.D.)
9. सेवा छोड़ने के कारण Reasons for leaving service Retired on Superannuation.
10. समय रक्षण Time keeping

हस्ताक्षर/Signature

पदनाम/Designation

Certified to be the true copy.

DRM

**पूर्वांतर सीमा रेलवे/N. F. RAILWAY**

Form 1323

विभाग/Department

खाता पन्ना सं./Ledger Folio No.

विल यूनिट सं./Bill unit No. 206

**अंशदायी राज्य रेलवे भविष्य संस्था लेखा का विवरण**

Statement of Contributory state Provident Institution Account

31 मार्च, 19... को समाप्त होनेवाले वर्ष के लिए श्री... टिकट सं...

नाम... जमाकर्ता सं... का राज्य रेलवे भविष्य निधि में जमा

Deposit account of Shri... Maran Ch. Mazumdar No...

Designation... Depositor No. 596118 with the State Railway Prov...

Fund for and upto the end of year 31st March, 19... 87

विशेष ध्यान दें :- इस फार्म की टिप्पणी नं० 2, 3 और 4 पर विशेष

N. B. :- Special attention is invited to items 2, 3 and 4 of this form.

1	2 अंशदान Sub- scription रु०/रु.	3 बोनस Bonus रु०/रु.	4 ऐच्छिक नं० V.P.F. रु०/रु.	5 निहासी का बोरा Details of drawals	6 बत rks
1 अप्रैल, 19... को Balance on 1st April 19...	9766	1351			
वर्ष का अंशदान Add. Subscr- ption during 19... <u>87</u>	520	507			
अग्रिम की वापसी/Refund of Advance	80				
प्रतिशत प्रति वर्ष की दर से 19... वर्ष का व्याज Interest for 19... @ <u>12</u> % Per annum	1180	1674			
योग/Total-	11546	15653			
कलम 5 में दर्ज व्योरे के अनुसार निकासी की रकम घटा दें/Less-withdrawals as per details in column 5	181				
31 मार्च, 19... को Balance on 31st March, 19... <u>87</u>	11365	15653			

रु० रु० रु०/P. T.

*Heedee*

*Sh*

Annexure-B.

To whom it may concern

Certified that Late Moran Chandra Mazumder  
Ex P/Man A worked and retired in Essentially Intermittent Roster in 12.00 Hrs shift duty.

Sd/- Illegible,  
Station Superintendent,  
N.F. Railway, Jagir Road.

Attested

John e

Annexure-C.

( English Translation )

To

The Human Right Commission,  
Statfed, Head Office Building,  
3rd floor, Medical Road,  
Bangaghar, Guwahati-5.

Dated 23.9.99.

Complainant : - Smti Nihar Rani Mazumdar,  
W/O. Late Moran Ch. Mazumdar,  
Village - Nokhola, Jagirdad,  
District - Morigaon (Assam).

- Versus -

Opposite party : - Divisional Railway Manager,  
Lumding.

Sub : - Application for granting payment of over time  
dues for doing O.T. duty 4 hours per day  
beyong normal period of 8 hours w.e.f. ~~from~~  
30.6.1950 till 30.6.1988.

Sir,

The respectful submission of the petitioner  
that my husband Late Moran Chandra Mazumdar was appoin-  
ted as Pointsman-A on 30.6.1950 and from the date of  
his joining he was doing duty 4 hours more than the  
normal period of 8 hours per day but he was paid wages  
only for 8 hours and the wages for extra 4 hours duty  
per day still not yet paid to him.

My husband during the period of service in  
N.F. Rly. for long 38 years was suffering from exploi-  
tation by doing duty 12 hours per day only because of  
maintaining his family members.

Contd...2.



Now after his death there is nobody to look after his family members as none of his family members is appointed.

I therefore request your goodself to kindly look into matters and make necessary arrangement for payment of arrear dues for engaging his beyond 8 hours ~~xxxx~~ extra 4 hours duty w.e.f. 30.6.50 to 30.6.88.

Yours faithfully,

Signed by -

Nihar Rani Mazumdar,

W/O. ~~Mr~~ Lt. Moran Ch.  
Mazumdar,

Nokhola, Jagiroad.

M. S. S. S.  
Ch. e

Annexure-D.

No. EB/4/Misc-8

Dated : 2-12-99.

To

Shri M. Goswami,  
Under Secretary to the Govt. of Assam,  
Assam Human Rights Commission,  
Guwahati-5.

Sub : - Submission.

Ref : - Your L/No. 3005/99/6 dtd. 07/10/99.

In response to your letter under reference, the appeal of Smti Nihar Rani Mazumdar widow of late Moran Ch. Mazumdar, Ex. Pointsman-A/Jagiroad under Sr. DOM/LMG (Retired on 30.6.88) has been examined and the detailed report are furnished below : -

It is seen from this office record that at the relevant points of time the duty roster of Pointman-A and B at Jagiroad station had been classified as "Essentially Intermittent" as per classification of Hours of Employment Regulation Act.

In accordance with the roster decided as per Hours of Employment Regulation Act the staff concerned had to perform duty for 72 hrs. In a week with 24 consecutive Hrs. of rest covering full night and daily Hrs. of duty is 12 Hrs. This is also in terms of GM(P)/MIG's L/No. LL-170

E/123/III/44 (Adj) dt 16.7.75 and E/123/22/Adj/Return Pt. VI dtd. 22.12.92 respectively.

In view of the above, it is evident that Late Moran Ch. Mazumdar, Ex. P/Man-A had performed 12 Hrs.

Contd...2.

*Alfred*  
*Ch*

- 2 -

duty in a day and 72 hrs. in a week as per provision as classified " Essentially Intermittent" ~~the~~ under Hours of Employment Regulation Act and the payment of OTA for working beyond 8 hrs. duty upto 12 Hrs. in a day as claimed by Smti Nihar Rani Mazumdar, widow of Late Moran Ch. Mazumdar is not admissible as per extent rules.

Thanking you.

Sd/- Illegible,

2/12/99

Divisional Railway Manager,

N.F. Rly, Lunding.

Alleged

Chy

-78-

Assam - E

To,

Under Secretary, to the Govt. of Assam.  
Human Rights Commission,  
Guwahati- 5.

DATE: 14-7-2000

From : Smti. Nihar Rani Mazumder,  
W/O Lt. Maran Ch. Mazumder,  
Vill. Nakhula, Jagiroad,  
P.O. & P.S. Jagiroad,  
Dist. Morigaon, Assam.  
Pin- 782410.

Sub : A.H.R.C. Case No. 3005/99/ Submission of Comments.

Sir,

In reference to your letter dtd. 17-06-2000, I have  
to submit the following few lines for your kind information  
and sympathetic action.

1. That, the letter No. EB/4/Misc-48 dtd. 02/12/99 from  
DRM, N.F.Rly. clearly proves that Lt. Maran Chandra  
Mazumder performed duty for 12 Hrs. a day in his  
entire service period as per the roster maintained  
by his good Office. As the letter mentions that Lt.  
Maran Ch. Mazumder had to perform the duty for 12 Hrs.  
a day under the Category " Essentially Intermittent "  
group, but to utilise a work man beyond his normal  
working hours without paying him extra wages is a  
total violation of Human fundamental rights. Government  
can impart training beyond his Schedule hours, but  
have his skill was utilised beyond his normal working  
hours.
2. That, again Rly. authority had violated its own rule  
" Essentially Intermittent " duty hours by of detailing  
all workman of " Traffic Section" for equal amount of  
working hours ; detailing some one for 8 Hrs. and some  
one for 12 Hrs. a day.

Example :

- i. Point man - A & B - 12 Hrs.
- ii. Cabinman Gr. I & II 8 "
- iii. Shunting Jamader - 8 "
- iv. Shunting Master - 8 "
- v. Asstt. Station Master - 8 "

Contd.. 2/-



Handed  
[Signature]

= 2 =

3. Letter No. IR.11/91/5299 dtd. 8th April, 1998 from labour Commissioner also clear that week means starting from Sunday to Saturday, having 8 hrs. rest after 48 Hrs. of duty in a week.

Lastly I conclude that due to performing duty for 12 Hrs. a day for his entire service period, he had irreparable impact on his family life and as well as on his own health for which my Late husband lost, his life early.

Now, I request your honour, to give me a financial relief by paying money for the extra duties he performed as per Government norms if possible.

Thanking you,

Yours faithfully,

श्रीनिहार रानी-मजुमदार

( Smt. Nihar Rani Mazumder)

0

Alfred  
Osh

Annexure-F.

GOVT. OF ASSAM  
OFFICE OF THE LABOUR COMMISSIONER :: ASSAM.  
GOPINATH NAGAR :: GUWAHATI.

N O T I F I C A T I O N

NO. LR.11/91/5299

Dated Guwahati the 18th  
April, 1998.

In exercise of the power conferred by Sub-clause (b) of clause (v) sub-rule (2) of Rule 25 of the Contract Labour (Regulation & Abolition) Rules, 1971, I Shri Ananta Kumar Malakar IAS, Labour Commissioner, Assam supersession of this office Notification NO. LR. 11/91/4444, dtd. 1st March, 1998 do hereby revise the rate of wages, holidays, hours of work and conditions of service of skilled and unskilled workman employed by and through the contractors as mentioned under the scheduled below in cases which are not covered under the Minimum Wages Act, 1948 and where the workman employed by the contractors do not perform the same and similar kind of work as the work directly employed by the principal employer of the establishment.

S C H E D U L E

Categories of workman :

Rates of Wages

(a) Skilled workman (I.T.I. Certificate Holder)	-	Rs. 70.00
(b) Skilled workman (Other than I.T.I. Certificate Holder)	-	Rs. 67.00
(c) Unskilled workman	-	Rs. 65.00

Contd...2.

*Alleged*  
*Signature*

WAGES FOR PIECE WORK : Piece rate of wages shall be fixed in such a manner that no unskilled workman gets less than Rs. 65.00 per day and no. (a) & (b) categories of skilled workman gets less than Rs. 70.00 and 67.00 respectively by working for maximum 8 (eight) hours a day.

HOURS OF WORK : 8 (eight) hours a day and 48 (forty eight) hours a week (normal).

OVERTIME WAGES : At twice the ordinary rates of wages for every hours worked over 8 (eight) hours a day and 48 (forty eight) hours a week.

WEEKLY DAY OF REST : A day of rest every week with pay for working for a continuous period not less than 6 (six) days in a week.

EXPLANATION : 'Week' maximum period of 7 (seven) days commencing from Sunday.

OTHER CONDITIONS OF SERVICE :

FESTIVAL HOLIDAYS : Every workman shall be allowed leave of absent with full pay for the number of days he may select not exceeding 7 7 (seven) in number in any one calender year for the purpose of attending cermonies or performing functions for duties connected with or on joined by his religion.

ANNUAL LEAVE WITH WAGES : One day for every twenty days of work performed in a calender year.


Contd...3.

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G21

LEAVE TRAVEL CONCESSION : 25 days average wages earned during the month preceding the calendar month in which the leave is availed shall be payable once in every ~~alternate~~ alternate year.

This Notification comes into force with immediate effect.

( A.K. MALAKAR, IAS. )  
LABOUR COMMISSIONER: ASSAM,  
GUWAHATI.

Also  




To,

Date : 08-01-2001

The Station Superintendent  
N.F. Railway,  
Jagiroad,  
Dist. Morigaon (Assam).

Sub: Payment of overtime dues in respect of Late Maran Chandra Mazumdar, Point Man-A for the period from 30.06.1950 to 30.06.1988.

Respected Sir,

I have the honour to inform you that I am the widow of Late Maran Chandra Mazumdar, Point Man - A of N.F. Rialway, Jagiroad Traffic Branch.

That my husband Late Maran Chandra Mazumdar was appointed as Point Man - A in Traffic Branch in 30.06.1950 and he had retired on 30.06.1988 as Point Man - A from Jagiroad.

That from the date of his joining your good office has utilised the services of my husband 12 hours in a day i.e. 4 hours excess perday beyond normal 8 hours per working day till the date of his retirement.

That, although my husband performed duties 4 hours excess (overtime) perday your good office has never paid him any overtime dues to my husband except monthly salary.

That during his service period my husband apprao - ched many times your good office for payment of his overtime dues, but the same was never paid to him till the date of his retirement. My husband was died on 21.07.92 and his O.T. dues are still unpaid.

That, I as widow and sucesser of Late Moran Ch. Mazumdar, after the death of my husband, approached many times personally to look into the matter and settle the outstanding claims of my husband but your good office is still silent about the matter.

That, I approached ~~the~~ before the Hon'ble Human right commission also for the genuine grievence of my Late husband but no possitive results have come up till date.

*Attested*

*[Signature]*

Contd. 2

(2)

I once again request your <sup>august-</sup>against office to kindly look into the matter and make necessary arrangements for early payment of the over time dues for the duty performed by my husband beyond normal period of 8 hours perday for every working day w.e.f. 30.06.50 to 30.06.88 at an early day, otherwise I will have no other alternative but to take legal action against you, for which you alone will be responsible.

With kind regards,

Yours faithfully,

শ্রীমতি নিহার রানী মজুমদার

(Mrs. Nihar Rani Mazumdar)

W/O Late Maran Ch. Mazumdar

Vill.- Nokhola,

P.O.- Jagiroad,

Dist.- Morigaon (Assam).

Copy to :-

1. The Divisional Rly. Manager,  
N.F. Railway,  
Lumding,  
Dist. Nagaon (Assam).
2. General Manager,  
N.F. Railway, Maligaon,  
Kamrup (Assam).

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Alister  
Dy

Annexure-

( English Translation )

OFFICE OF THE JAGIROAD GAON PANCHAYAT

P.O. JAGIROAD, DIST. MORIGAON .

C E R T I F I C A T E

This is to certify that Smti Nihar Rani Mazumdar, wife of Late Moran Ch. Mazumdar is an inhabitant of village Nokhola, P.O. - Jagiroad, District - Morigaon (Assam). It is true that Smti Nihar Rani Mazumdar's husband Late Moran Ch. Mazumdar died on 21.7.92.

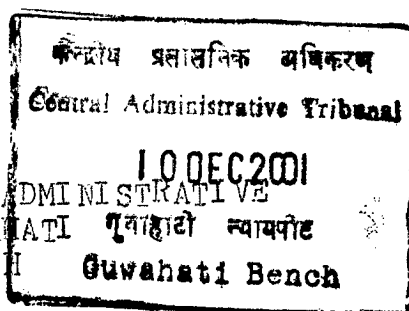
sd/-

Secretary,  
Jagiroad Gaon Panchayat.

Alleged

23/6

BEFORE THE CENTRAL ADMINISTRATIVE  
TRIBUNAL AT GUWAHATI  
GUWAHATI BENCH  
GUWAHATI



Filed by:  
Sukomal Sanjib  
Railway Advocate, Guwahati  
29.11.2001

36  
Sanjay Narayan Ray  
Divisional Personnel Officer  
N F R  
Landing

IN THE MATTER OF

OA NO. 85 of 2001

Mrs. Nihar Rani Mazumder ..... Applicant

=Vs =

Union of India and Others..... Respondents

-ADD-

IN THE MATTER OF

Written statement 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.
- 2) That save and except those statements of the applicant which are specifically admitted hereunder and those which are borne on records, all other allegations / averments of the applicant as made in the application are denied herewith and the applicant is put to strictest proof thereof.

Contd...2-/

37  
Srinivas Narayan  
Deputy  
Divisional Personnel Officer  
N.F. Railway, Lumding

- 3) That, for the sake of brevity, the respondents have been advised to confine their reply only to those averments of the applicant which are relevant and material for a proper decision in the case and all other allegations to the contrary are denied herewith and meticulous denial of each and every statements of the applicant has been avoided.
- 4) That the case is hit under the law of limitation and the section 21 of the Central Administrative Tribunal. Act 1985.
- 5) That the case suffers from non- joinder of necessary parties.
- 6) That the case is fit one to be dismissed in limine.
- 7) That, the application suffers for want of valid cause of action. It is denied that the applicant has got valid right for filing the present application.
- 8) That, with regard to averments at paragraph 2 of the application it is submitted that the present claim for overtime allowance relates to the period from 30/6/1950 and till date of retirement of Late Maran Chandra Mazumder who worked as pointsman at Jagiroad Station of the N.F.Railway. During the entire period of service Late Maran chandra Mazumder never approached any Court or the Hon'ble Tribunal also ( after the Hon'ble Tribunal was set up in 1985 ). The claim is already barred under law of limitation as well as under Section 21 of the Central

Contd.. Item No. 8.

Central Administrative Tribunal Act 1985. The present application has been filed in 2001 i.e. after more than 12 years from the date of retirement of the staff and after about 9 years from the date of death of Late Maran Chandra Mazumder as reveals from Annexure- G to the application.

9) That, with regard to the averments at paragraphs 4.1, 4.2, 4.3 and 4.5 it is submitted that nothing are accepted except those which are borne on records or are specifically admitted hereunder. It is submitted that from the certificate of the station Master Jagirod which has been annexed as Annexure 'B' to the application it is quite evident that Late Maran Chandra Mazumder worked and retired in Essentially intermittent Roster in 12.00 hours shift duty Late Maran Chandra Mazumder retired from Railway service on 30/6/88 on super-annuation. Thus, as per rules the question of payment of OTA ( Overtime Allowance ) beyond 8 hrs. as contended by the applicant does not arise. In this connection the extract of the definitions of essentially intermittent category as laid down in paragraph 3503 of the Indian Railway Establishment Manual, 1968 is furnished herein below:-

EXTRACT

Paragraph 3503 (b)

" The employment of a Railway servant is said to be ' essentially intermittent' when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the Railway servant normally include period

Contd..4-/

33  
Srinivas Narayan Ray.  
Divisional Personnel Officer  
N.F. Railway, Lumding

include period of in-action aggregating six hours or more ( including at least one such period of not less than one hour or two such periods of not less than half an hour each ) during which the railway servant may be on duty but is not called upon to display either physical activity or sustained attention. "

39  
Srinivasan Narayan Ray,  
Divisional Personnel Officer  
N.F. Railway, Lumding

- 10) That, with regard to averments at paragraph 4.4 of the application it is denied that Late Maran Chandra Mazumder during the period of his service as pointsman-A Jariroad. Claimed overtime for 4 hours per-day with effect from his date of joining before the authority as alleged by the applicant. Rather records reveal that not only Late Maran Chandra Mazumder Ex. P.man-A Jariroad but also other P-man-A of Jariroad station have not claimed O.T.A ( i.e. overtime allowance ) when they were put on 12 hrs. Shift duty roster. The 12 hrs. Shift duty roster was also applied to the category of P.man-A posted in other Stations of the N.F.Railway ( mainly in Road side Stations.) on the basis of Man-power and volume of work duly sanctioned by Chief Operating Superintendent (P)/ Maligaon . N.F.Railway with the concurrence of the Financial Advisor and Chief Accounts Officer, N.F.Railway Maligaon.
- As such , the question of extra hours of duty does not arise.

It is also to mention herein that not only P-man/A , P-man/B of Jagiroad Station have been classified as 'E.I' ( Essentially Intermittant ) as 12 hrs. . Shift duty in terms of Hours of Employment Regulation Act ( in short HOER ) even in many other Stations of Lumding Division the P/man-A, P/man-B , Cabinman, Station Superintendent ,Station Master and Assistant Station Master have been classified as 'EI ' (Essentially Intermittent ) under HOER and they are to perform 12 hrs. shift duty ( mainly in road side Station) duly sanctioned by COPs (P)/Maligaon with the concurrence of the FA & CAO/Maligaon .

However, those who are put to 12 hrs. shift duty roster, they are also entitled to O.T.A if they perform extra duty beyond those prescribed under HOER i.e.beyond 12 hrs. shift duty.

It is to submit here-in that the Late Maran Chandra Mazumder was not put on extra duty beyond 12 hrs. and as such it appears that he preferred no claim while he was on railway job or even after his retirement till his death.

It is also<sup>to</sup> mention herein that for the purpose of hours of work, the Railway employees have been classified as :-

- i) Intensive ( with 6 hours shift duty )
- ii) Continuous ( with 9 to 8 hrs. shift duty )
- iii) Essentially Intermittent ) (with 12 hrs. shift duty )
- iv) Excluded ( no limitation of hours.)

40  
Sondhar Narayan Ray.  
Divisional Personnel Officer  
N.F. Railway, Lumding



Late Maran Chandra Mazumder was put on 12 hrs. shift duty applicable to 'E.I' category and hence question of payment of O.T.A( for extra 4 hrs. duty beyond 8 hrs. as mentioned by the applicant ) did not arise.

11. That with regard to averments at paragraphs 4.6, 4.7 and 4.8 of the application it is to State that after seeking some relief from separate forum i.e. Human Rights commission, Guwahati, the applicant is debarred under law to seek relief from this Hon'ble Tribunal also while the application before the Human Rights commission for same relief is still under the commissions consideration, It is submitted that this application before the Hon'ble Tribunal is also barred under section 20 of the Central Administrative Tribunal Act- 1985.


The contents of the letter of Divisional Railway Manager Lunding as mentioned at Annexure 'D' to the application is admitted . It is further re-iterated that at the relevant point of time duty roster of Pointsman 'A' and 'B' at Jagiroad Station had been classified as Essentially Intermittent as per classification of Hours of Employment Regulation Act in terms of GM(P) N.F.Rly. Maligaon's letter No. LL-170  
E/123/III/04 (Adj.) dtd: 16.7.75 and dated 22.12.92 respectively and the claim of the Applicant is not admissible under extant rules.

It is further to mention herein that the letter of Divisional Railway Manager/ Lunding was not addressed to the applicant and it can not be taken as a correspondence etc. for the purpose of extending the period of limitation or renewal/ reviving the limitation period

Sarindran Narayan Roy  
Divisional Personnel Officer  
N.F. Railway, Lunding

and can not give the applicant any cause of action for filing the present application before the Hon'ble Tribunal, which has already become barred under Section 21 of the Central Administrative Tribunal Act and also under the Indian Limitation Act.

42  
Sunder Narayan Ray,  
Divisional Personnel Officer,  
N.F. Railway, Lunding

12. That, the allegations made at paragraphs 4.8(i) , 4.8(2) and 4.8(3) are emphatically denied herewith. The matter regarding the Divisional Railway /Lunding's letter has already been dealt with in the paragraph-11 above. It is also denied that there has been any violation of human fundamental right as alleged. It is also denied that the Railway authority had violated its own rule ' Essentially intermittent ' duty hours by detailing all workmen of ' Traffic Section ' for equal amount of working hours; detailing some one for 8 hours and some one for 12 hours a day. It appears that the application suffers from misrepresentation and mis- interpretation of extant rules on the subject by the applicant. The duty hours and responsibilities and nature of work of  Pointsman 'A' and 'B' can not be equated with that of Cabinman-I and II, Shunting Jamadar, Shunting Master, Assistant Station Master. It is also to mention herein that the said Notification of the labour commissioner, Assam , Guwahati is dated : 18.4.98 and relates to contract Labour Regulation and Abolition ) Rules 1971 and has got no application to the present case of the Applicant .

It is also to mention herein that as stated herein before that hours of work has been distributed in various categories of staff in a Station and classification made on the basis of work load, distribution of man-power etc. under Hours of Employment regulation. Accordingly. P/man-A and P.man-B of Jagiroad Station have been classified as 'E.I' and other categories like C/man-I , C/-man-II, Shunting Jamader, Shunting Master, Assistant Station Master etc. have been classified as 'continuous' duly sanctioned by the CCPS/Maligaon and Concurred by the FA & CAO/ N.R.Railway Maligaon with a view to smooth running of the work in a Station. The distribution of works of all staff in a Station can not be same for all staff as the nature of job and the sustained effort / attention etc. of different staff varies according to the nature of job they perform and thus classifications are made. The overtime allowance is admissible to the Staff only when they perform extra duty more than that of his specified duties and beyond the scheduled hours of work. The railway staff are Government employees working under some time scale of pay unlike those under Contractors or Private firm with daily rates of wages etc. Further, the provisions as contained in Chapter -VI-A of the Indian Railways Act, the rules thereto made by the central Government called Railway servants ( Hours of Employment ) Rules 1961 and subsidiary instructions issued in connection therewith are all collectively called the <sup>since</sup> Hours of Employment Regulations and all these are based on Indian Railways Act, these are followed strictly by all concerned on the Railways. The Railway Servants Governed under HOER/ HER are classified as under:-

- 1) Intensive;
- 2) Essentially Intermittent;
- 3) Excluded; and
- 4) Continuous

43  
Savitri Narayan Ray  
Divisional Personnel Officer  
N.F. Railway, Lumding

33  
Srinivas Narayan Ray  
Divisional Personnel Officer  
N.F. Railway, Lumding

The employment of a Railway servant is said to be essentially intermittent when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the Railway servant normally include period of in action aggregating 6 hrs. or more ( including at least one such period of not less than one hour or two such period of not less than half an hour each ) during which the railway servant may be on duty but is not called upon to display their physical activity or sustained attention under the Railway servants ( Hours of employment Rules 1961 which is issued by the Central Government in exercise of the powers conferred by Sub-section (d) of Section 7 I E of the Indian Railways Act 1890 and published in Section 3(i) Part-II of the Gazette of India dated 6.1.62 vide Ministry of Railways (Railway Board) notification No. G.S.R 40 dtd. 23.12.61, the power to classify the employment of a Railway servant as intensive or essentially intermittent within the meaning of section 71-A shall vest with the Head of the Railway Administration or with or officer not below the rank of a senior scale Officer as a temporary measure and copy of every declaration shall be sent to the Regional Labour Commissioner *Concerned*

13. That, with regard to statements at Paragraphs 4.9 and 4.10 of the application it is stated that as the rule does not provide, question of payment of over time allowances does not arise in the circumstances of the case. Late Maran Chandra Mazumder Ex. p/man-A did not perform duty beyond 12 hrs. in a day, and thus was not eligible to earn O.T.A. under rules, and as such question of payment of same doesnot arise. The claim of the applicant are not sustainable under law and

and fact of the case and as such the question of causing harassment or mental agony to the applicant, as alleged in the Application does not arise.

Further, the question of representation to the station Master, Jagiroad or to the Divisional Railway Manager, N.F. Railway or the out-come of any positive result etc. as alleged by the Applicant does not arise since the claim is inadmissible and barred by limitation and no such claim was tenable under law, rules and fact of the case. Further receipt of any such representations are not admitted.

14. That, with regard to the averments at paragraphs 5(a) and 5 (b) and 8 of the application it is submitted that in view of submission made in the foregoing paragraphs of this written statement, none of the grounds for relief as cited by the applicant or relief sought by the applicant are tenable or admissible under law and fact of the case.

15. That the classification etc. as made by the authorities are quite in pursuance to law, and rules <sup>and</sup> are quite valid, legal and proper.

16. That, the respondents crave leave of the Hon'ble Tribunal to permit it to file a additional written statement, if found necessary for ends of Justice.

45  
Sourindra Nayam Roy  
Divisional Personnel Officer  
N.F. Railway, Lumding

VERIFICATION

46  
Sourindra Narayan Roy

Divisional Personnel Officer  
N.F. Railway, Lumding

I Shri Sourindra Narayan Roy  
Son of Late Swresh ch. Roy  
aged about 58 years, at present working as  
Divisional Personnel Officer N.F. Railway  
at Lumding do hereby declare that the statements  
made at paragraphs 10 to 13 are true to my knowledge  
and those made at paragraphs  
4 to 12 are matters of records of  
the case which I believe to be true and the rest  
are my humble submission before the Hon'ble  
Tribunal and I sign this VERIFICATION on this 20<sup>th</sup>  
of November 2001  
day at Lumding.

Sourindra Narayan Roy,  
Divisional Personnel Officer,  
N.F. Rly. Lumding  
Divisional Personnel Officer  
N.F. Railway, Lumding  
for and on behalf of the Union of India.