

30/100

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
GUWATI BENCH ::::: GUNAHATIOn 10/01/2001 ORDER SHEET

APPLICATION NO

89 OF 2001

Applicant (s) Balen DasRespondent(s) U.O.I. GovtAdvocate for Applicant(s) Mr. N. Dutta, U. Bhuyan, S.D. BhuyanAdvocate for Respondent(s) Ranikanta advocate, Sanjivita

Notes of the Registry Date Order of the Tribunal

7.3.01

On the prayer of learned counsel for the applicant case is adjourned to 14.3.01 for Admission.

Vice-Chairman

Heard learned counsel for the parties.

Application is admitted. Call for records. Issue notice on the respondents. Returnable by 2 weeks. List on 11.4.01 for orders.

Issue notice to show cause as to why the impugned order bearing No. E/41/157/Pt. IV-II(T) dated 9.2.2001 shall not be granted so far the applicant is concerned. In the meantime the impugned order dated 9.2.2001 shall remain suspended. so far the applicant is concerned.

T. C. Bhattacharya
Member Vice-Chairman

46-3-2001
Service of Notice
issued to the
respondent vide D.O.O.
1009-1012 dt. 19.3.2001.
RCB

N
2
O.A.-89 of 2001

11.4.01 List on 16.5.01 to enable the respondents to file written statement.

Interim order passed earlier shall continue.

23.4.2001
Notice duly served
on respondent No. 1, 2, 3, 4

Vice-Chairman

lm

Den
16.5.01 List on 20.6.2001 to enable the respondents to file written statement.

Interim order passed earlier shall continue.

22/5/01

Order dtd 16/5/01
communicated to
Sri B.K. Sarma, RH
Adv. ride DINO
1834 dtd 22/5/01

lm

20.5.01

h
Vice-Chairman

On the prayer of learned Railway
counsel for the respondents 4 weeks time
is allowed for filing of written statement.
List on 18.7.01 for orders.

No. written statement
has been filed.

lm

My
19.6.01

18.7.01

I C U Sharan

Member

On the prayer of Mr. S. Sarma learned
counsel for the respondents 4 weeks time
is allowed for filing of written statement.
List on 17.8.01.

No. W/statement
has been filed.

Den

lm

17.7.01

No. written statement
has been filed.

My
16.8.01

lm

10/8/01

14.9.01

I C U Sharan
Member

At the request of Mr. S. Sarma,
learned counsel for the respondents 4 weeks
time is allowed for filing of written
statement. List on 14.9.01 for orders.
Meanwhile, the interim order dated
14.3.01 shall continue.

I C U Sharan

Member

No. w/s has been
filed.

My
11.9.01

No. written statement
has been filed.

ab

List on 10/10/01 to enable the respondents
to file written statement.

Vice-Chairman

(3)

3

Notes of the Registry [Date] Order of the Tribunal

Mr. written statement has been filed by students to file written statement.

Vice-Chairman

no prints, nothing else to do but **pg** 108, 110, 111

28.11.01 Mr S.Sarma, learned counsel for the respondents, prays for time to file written statement. Prayer allowed.

No written Statement
has been filed.

List on 2.1.2002 for order.

U.S. Army
Member

Nt. wts has been 2.1.02 List on 30.1.02 to enable the
Insel respondents to file written statement.

I C Ullman
Member

Monogram ^{1m} ~~Monogram 1m~~ ~~Monogram 1m~~ ~~Monogram 1m~~

500S.2.8

18. 3. 2002 1m

4

Member

Prayer has been made by learned coun-
sel for the applicant for adjournment of
the case on the ground that written statement
has been received by the applicant today.
Prayer is allowed. List on 5.4.2002 for
hearing.

CCUShan
Vice-Chairman

mb

Notes of the Registry Date Order of the Tribunal

(4)

5.4.2002

Wks has been
listed.

3/
11.4.02

Mr. S. Sengupta, learned counsel for the respondents is requested to produce the note No. C/SS/PTS/94 dated 9.2.2001 from the CCM as referred in the impugned order dated 9.2.2001 and the connected records on the next date.

List the case again for hearing on 12.4.2002.

Vice-Chairman

bb

12.4.02

Mr. U. Bhuyan, learned counsel for the applicant has requested for adjournment on the ground of his illness. Mr. S. Sengupta learned counsel for the respondents has produced the records as directed. Prayer is accepted. List on 3.5.02 for hearing. The records be kept on file.

I C Ushan

Member

3.5.2002

Wks has been listed.

3/
16.5.02

None present for the applicant and Mr. S. Sengupta, learned Railway counsel for the respondents is also on accommodation.

List the case again for hearing on 17.5.2002.

I C Ushan

Member

bb

17.5.02

Heard learned counsel for the parties. Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs.

I C Ushan

Member

lm

Recd judgment
D 17.5.2002
in 8th 105/2001
in 1st 105/2001
RA/Recd
13/5/2002

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

DATE OF DECISION... 17-5-2002

1. Shri Balen Das
2. Shri Chandra Kanta Hazarika

APPLICANT(S)

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

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

ADVOCATE FOR THE APPLICANT

VERSUS—

Union of India & Ors.

RESPONDENT(S)

Mr.S.Sangupta, Railway counsel

ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

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

Judgment delivered by Hon'ble ADMINISTRATIVE MEMBER

LC Usha

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

1. Original Application No. 105 of 2001

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

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

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

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

-Vs-

1. Union of India, through the General Manager,
N.F.Railway, Maligaon, Guwahati-11.

2. The General Manager(P), N.F.Railway
Maligaon , Guwahati-11

3. The Chief Commercial Manager(G)
N.F.Railway, Maligaon, Guwahati-11

4. The Station Master, Guwahati Railway Station,
N.F.Railway, Guwahati-1

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

By Advocate Mr.S.Sengupta, Railway counsel.

2. Original Application No.89 of 2001

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

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

-Vs-

1. North East Frontier Railways,
Maligaon, Guwahati-11

Through the General Manager,

2. Chief Commercial Manager, North East Frontier Railway
Maligaon, Guwahati-11

U. Bhuyan

contd/-2

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

By Advocate Mr.S.Sengupta, Railway counsel

O_R_D_E_R.

K.K.SHARMA MEMBER(ADMN):

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

"North East Frontier Railway

OFFICE ORDER

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

<u>Sl.No.</u>	<u>Name</u>	<u>Designation</u>
---------------	-------------	--------------------

1.	Shri C.K.Hazarika,	CPC/Ghy/Guwahati Parcel office.
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2.	Shri B.Das,	Sr.CC/Ghy, -do-
----	-------------	-----------------

This has approval of the competent authority.
For General Manager(P), MLG.

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

U.U.Shaury
contd/-

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

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

contd/- *LC Usha*

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

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

IC (Chahay)
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

DISTRICT : KAMRUP

In the Central Administrative Tribunal, Guwahati Bench,

G u w a h a t i

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

O.A. No. 89 of 2001

Shri Balen Das

- Applicant

-Versus-

N.F. Railway and others - Respondents,

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1.	-	Application	1-12
2.	-	Verification	13
3.	"A"	Posting Order dtd 20-5-1991	14
4.	"B"	Office Order dated 9-2-2001	15
5.	"C"	Representation of the applicant dated 22-2- 2001.	16

Balen Das,
Applicant 27-2-2001

27.2.2001/2

Filed by:-
Sri Balen Das --- applicant
through:-
Lij of Bluyan
Advocate

DISTRICT : KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNALS, GUWAHATI BENCH

G U W A H A T I

[An application under Section 19 of the Administrative
Tribunals, Act, 1985.]

O. A. NO. 89 of 2001

I. Particulars of the Applicant :-

1. Sri Balen Das,

Son of Sri Amrit Das,

Resident of Village - Bhattacharjee,

P.O. - Bhattacharjee, P.S. - Azara,

Dist. - Kamrup.

II. Particulars of the Respondents :-

1. North East Frontier Railways,

Maligaon, Guwahati - 11;

Through the General Manager.

2. Chief Commercial Manager,

North East Frontier Railway,

Maligaon, Guwahati - 11.

3. General ...

Balen Das

3. General Manager (Personnel),

North East Frontier Railway,

Maligaon, Guwahati - 11.

4. Divisional Commercial Manager,

Lumding Division,

North East Frontier Railway,

Lumding - 782 447.

III. Particulars of the order against which the application is made :-

The application is directed against the office order bearing No.E/41/157/Pt.-IV-II(T) dated 9.2.2001 issued from the office of the General Manager (Personnel), North East Frontier Railway, Maligaon, Guwahati - 11. By the said order the applicant has been transferred to Katihar Division.

IV. JURISDICTION OF THE TRIBUNAL :-

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

V. Limitation :-

The applicant declares that the present application is within the limitation prescribed

under

Balen RN

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under section 21 of the Administrative Tribunals Act, 1985.

VI. Facts of the Case :-

(1) The applicant is a citizen of India and is as such entitled to all the rights and privileges guaranteed to the citizens of India by the constitution of India and the laws framed thereunder. The applicant also belongs to the Scheduled Caste Community and is as such entitled to all the protection guaranteed to the members of the Scheduled Caste Community.

(2) The applicant was selected for appointment as Commercial Clerk in the North East Frontier Railway ("NF Railway" hereafter). The recruitment of the applicant was against the back-log of Scheduled Caste (S.C.) vacancies. On his selection the applicant successfully completed his training. Thereafter, vide order dated 20-5-91, the applicant was posted as Commercial Clerk at Lumding. The applicant joined service on 11-6-1991 as Commercial Clerk.

A copy of the said order dated 20-5-91 is enclosed herewith and marked as Annexure "A".

(3) Since.....

Balen Das

(3) Since his joining in service, the applicant has been posted in the following major stations:-

1991	-	Lumding Station
1991	-	Borlungfer (Karbi Anglong)
1991-92	-	Nagaon
1993(7 months)-	-	Dimapur
1993	-	Maibong
1994	-	Harlong
1995	-	Dimapur
Since 27-6-99	-	Guwahati Parcel Office.

In addition to the aforesaid postings, the applicant was also placed in other station/places such as Hojai, Samaguri, Puranigudam etc for short duration.

(4) Thus it is quite evident that in his short service career, the applicant has been subjected to frequent transfer and change of postings. In a span of about 10 (ten) years, he has served in 8(eight) major places, besides posting for short duration in other stations. Be that as it may, the applicant is serving at the Gauhati Parcel Office in Lumding Division since 27-6-99. Presently, the applicant is serving as the Senior Commercial Clerk in the Gauhati Parcel office at Guwahati Railway Station under Lumding Division.

(5) The

Balen Rws

(5) The applicant has not served at Guwahati for about one and a half years. His wife is pregnant at present and because of the same he is attending office from his residence at Bhattapara. The applicant has a son who is aged about 4 years and who is studying in Sankardev Sishu Niketan, Palashbari in Assamese medium.

(6) While the applicant has hardly completed 1 1/2 (one & a half) years at Guwahati he was taken aback when he came to know that a transfer order was issued from the office of the Respondent No.3 on 9-2-2001 transferring the applicant and another to Katihar Division. The applicant made necessary enquiries and thereafter obtained a copy of the said office order on 20-2-2001. On perusal of the same it is seen that the said order was passed as per the desire of the Respondent No.2 vide his office Note dated 9-2-2001. The applicant and another of Lumding Division have been transferred to Katihar Division on administrative ground and it is stated that they may be posted at any station under Katihar Division. It is stated that the said order has the approval of the competent authority.

A copy of the said order dated 9-2-2001 is enclosed herewith and marked as Annexure "B".

(7) The applicant states that pursuant to the said order he has not yet been served with any

transfer . . .

Balen Das

transfer order by the Divisional authorities of Lumding, particularly, the Respondent No.4, who is the administrative authority of the applicant. The transfer order has not yet given effect to and the applicant is still continuing as the Senior Commercial Clerk at Guwahati Parcel Office in the Guwahati Railway Station under Lumding Division.

(8)

It may be mentioned that on 7-2-2001 at about 5-15 P.M., the applicant was approached in his office by one person who identified himself as Shri B. Roy. He wanted delivery of 2 consignments. On perusal of the Railway Receipt, the applicant found that it did not have the endorsement of the consignee Shri N.A. Gokhale. Shri Roy also could produce any authority letter from the consignee for taking the delivery. The applicant, therefore, refused to hand over the said consignments to Shri B. Roy. The applicant also refused to hand over the consignments because it was already well past 5 P.M., which is the closing time of the Godown. Shri Roy returned after about half an hour asking the applicant to talk to his boss Shri Gokhale over telephone. But the applicant pointed out that there is no PNT telephone facility in his office. Shri Roy then left the place but once again returned after half an hour with an application forwarded by the Station Manager, Guwahati, who asked the applicant to make the delivery. As per the desire of his higher

authority,

Boalen *Ans*

- 7 -

authority, the applicant issued paper delivery of the consignments to Shri Ray and advised him to take physical delivery of the consignments on the next day.

It appears that Shri Roy lodged a complaint in the Head office at Maligaon on 8-2-2001 against the applicant alleging harassment. On 9-2-2001, the Respondent No.2 called the applicant to his office. The Respondent No.2 simply asked the applicant about his name and grade and thereafter told him that he would be transferred.

(9) Being aggrieved by the transfer order, the applicant submitted a representation dated 22-2-2001 to the Respondent No.2 through proper channel. In the said representation the applicant stated that he has worked in more than 10 stations outside Guwahati in the last 8 years. He further stated that in his service career, there is no adverse remarks against him but he has been transferred to Katihar Division on administrative ground. The applicant stated that at present his wife is pregnant and under medical treatment. His son is studying in an Assamese medium School and in Katihar or in any station of Katihar Division there is no Assamese medium School. He has also stated that he has to look after his aged and infirm mother besides his wife and child. He therefore prayed that review and revocation of the transfer order.

A copy of the said representation dated 22-2-2001 is enclosed herewith and marked as Annexure "C".

Paaten Rm

9. That the applicant has not been informed anything by the Respondents in connection with his representation. The Respondents are sitting over the representation without taking any action/steps thereon. The impugned action of the Respondents in transferring the applicant to a different Division has caused serious prejudice to the applicant and entails civil consequences. His representation on the subject is also lying unattended. The applicant is aggrieved by the same. Hence, the present application.

VII. GROUNDs :-

(i) For that the impugned orders dated 9-2-2001 is bad in law and is as well as on fact and is as such liable to be set aside and quashed.

(ii) For that the applicant has been subjected to frequent transfer without any proper justification. In his present posting at Guwahati he has hardly rendered 1½ years of service. In a short service career he has been transferred and posted in 8 major places (it will be 9 if the present transfer is included). In addition to the above, he was also placed in various other stations for short duration. Such frequent transfers as

has been ...

Balen Ram

has been judicially declared can be held to be mala fide. The applicant states that he has been subjected to frequent transfer without any justifiable cause or reason and the same amounts to a mala fide exercise of power.

(iii) For that the impugned orders has not been passed in the public interest or for reasons of administrative exigencies. The applicant submits that the impugned transfer is clearly a punitive one though it is under the garb of "administrative ground". The impugned transfer order has been vitiated, inasmuch as, the same has not been passed by his administrative/controlling authority, that is, the Respondent No.4. The same has been passed by the Respondent No.3 as desired by the Respondent No.2. Whether there is any administrative requirement or necessity for such a transfer is best known to the Respondent No.4 who is the administrative and controlling authority of the applicant but in the present case he has been totally kept outside the picture and the entire decision has been taken by the Respondents No.2 and 3. The applicant submits that his transfer is an outcome of the situation narrated in paragraph VI.8 above. The applicant had only discharged his duties but for the same he has been penalised. The impugned transfer being a punitive one is wholly unsustainable.

(iv) For that transfer in the Railways are normally made intra-division. All the previous transfer and postings of the applicant were also within the same Lumding Division. But the impugned transfer is not inter division and the applicant has been transferred from Lumding Division to the Katihar Division. Though

Bafen *RMS*

it is stated that the said transfer is on administrative ground, nothing has been stated as to where the applicant is to be posted on transfer. It is simply stated that the applicant and the other person may be posted at any station under the Katihar Division. The same only reflects that there is no administrative necessity or public interest involved in the transfer of the applicant.

(v) For that the impugned transfer order of the applicant if given effect would adversely affect the applicant and his dependent. The applicant's wife is pregnant and is presently under medical supervision. His son is studying in an Assamese medium School and is now in the midst of his academic session. There is no assamese medium School in Katihar or in any Station under Katihar Division. Therefore the impugned transfer would jeopardise the academic career of the applicant's son. Besides, it is a well settled convention and practice that mid-session transfer should not be effected , in as much as, the same totally disturbs the family harmony of a Government servant.

(vi) For that the applicant has been subjected to unfair treatment causing injustice to him. The Respondents are also sitting over the representation of the applicant without taking any action

thereon . . .

Balen Dmz

action thereon. The impugned action is violative of Article 14 of the Constitution of India and requires appropriate intervention of this Hon'ble Tribunal.

(vii) For that the applicant belongs to the Scheduled Caste Community and he was appointed against the Scheduled Caste back-log. The Railway Board has laid down guidelines in its communication bearing No.E(CST)/70/CM/15/3 dated 19-11-70; No.E(CST)60/CM/100 dated 8-12-76 stating that the railway employees belonging to the reserved categories such as S.C. and S.T. should be preferably posted in their home district. In the present case, the home district of the applicant is Kamrup. The impugned action is therefore not in conformity with the declared policy and professed norms of the railway administration. Thus, this has vitiated the impugned order.

(viii) For that in any view of the matter the impugned order of transfer is liable to be appropriately interfered with by this Hon'ble Tribunal.

VIII. DETAILS OF THE REMEDIES EXHAUSTED :-

The applicant had submitted representation

before

Balen Ram

before the Respondent No.2 but nothing has been done as yet on the said representation.

IX. Matters not previously filed or pending before any other Court/Tribunal :-

The applicant has not filed any other case/application in any other Court or Tribunal.

X. Reliefs sought for :-

Under the facts and circumstances of the the case the applicant prays for the following reliefs :-

- (i) to set aside and quash the office Order No.E/41/157/Pt.IV-II(T) dated 9-2-2001 issued from the office of the Respondent No.3 (Annexure "B");
- (ii) to direct the Respondents to allow the applicant to continue as Senior Commercial Clerk at Guwahati Parcel Office in the Guwahati Railway Station ^{under} in Lumding Division;
- (iii) to pass such further order or orders as this Hon'ble Tribunal may deem fit and proper;
- (iv) cost . . .

Balen Ras

(iv) cost of the proceeding ;

The applicant further prays for the following interim reliefs pending disposal of the present application :-

To stay/suspend the operation of the office order No.E/41/157/Pt.IV-II(T) dated 9-2-2001 issued from the office of the Respondent No.3(Annexure "B") till the disposal of the present application.

XI. Particulars of the Postal Order :-

Postal Order No. : 59422522

Dated : 27th February, 2001.

Issuing P.O. : Guwahati G.P.O. payable at Guwahati G.P.O.

XII. List of Enclosures :-

The index showing the particulars of document is enclosed.

Verification

Balen Ram

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Verification

I, Shri Balen Das, Son of Sri Amrit Das, aged about 35 years, by profession service, resident of village and P.O. - Bhattapara in the district of Kamrup (Assam) do hereby say that I am the applicant in the accompanying application. I am acquainted with the facts and circumstances of the case. I have verified the statements made in paragraphs I to XII of the accompanying petition and those are true to my knowledge and I have not suppressed any material facts.

Dated Guwahati, the
27th February, 2001.

Balen Das
Applicant

-14-

NORTHEAST FRONTIER RAILWAY

No. E/41/143-Pt-X(T)(Commr) Clerk

Maligaon, 20- 5-1990.

To, Shri Balbir Das. CSC
CC at Office.Sub:- Posting of Commercial Clerk in
scale Rs. 975-1540/-.

On successful completion of training in Goods and Coaching subjects, you are hereby directed to report to DRM(P) Lmb for duty as Commercial Clerk in scale Rs. 975-1540/- (RP) immediately. No. joining time is allowed.

One 2nd Class Pass covering journey Ex-KYQ to Lmb is enclosed.

For CHIEF COMMERCIAL SUFDT. (P):MLG:

Copy forwarded for information and necessary action to :-

1. DAO/Lmb
2. Supdt./ZTS/APD in terms of his letter No. Z/TR/92/PV6211 dated 1-5-91. He will please arrange to send the LPC of the staff to the Division shown against each.
3. DRM(P)/Lmb on satisfactory completion of training and passing the test the above named staff is not available for absorption as Commercial Clerk against vacancy in the Division and directed to report to him for duty in scale Rs. 975-1540/- (RP) on the terms and conditions as admissible to the temporary staff. The RSC Application of Shri Balbir Das for the post of Commercial Clerk together with M/C and other relevant papers and Indemnity Bond executed by him is/are enclosed. Shri Balbir Das has deposited security money amounting to Rs. 300/- with the Chief Cashier/MLG vide MRT Note No. 5009/28 dated 1-6-90.

DA: One RSC Form No. _____
together with M/C No. _____
issued by _____
and other enclosures and Indemnity Bond.

For CHIEF COMMERCIAL SUFDT. (P):MLG:

Pb/-5.5.90.

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Ujjwal Bhuyan

NORTHEAST FRONTIER RAILWAY:

OFFICE ORDER

As desired by CCM vide his office Note No. C/SS/PTS/94 dt. 28/9/2001, the following staff of Lumding Division who were working at Guwahati Perce Office are hereby transferred to Katihar Division on administrative ground with immediate effect. They may be posted at any Station under KIR Division in the existing pay and grade.

S. NO.	Name	Designation.
1.	Sri C.K. Hazarika, CPC/GHY	Guwahati Perce Office
2.	Shri B.Das, Sr.CC/GHY.	- do -

This has the approval of competent authority.

c/SS/PTS/94 dt 9/2/01

for General Manager (P)MLG.

NO:E/41/157/Pt-IVII(T) Maligaon, dt. 9-02-2001

Copy forwarded for information and necessary action to:-

1. FALCAG/MLG.
2. CCM/PM/MLG.
3. DIRM(P)KIR.
4. DIRM(P)LMG. -P/Cause and S/Sheet of the concerned employees may be send to DIRM(P)KIR immediately.
5. Sr. DCW/KIR.
6. Sr.DCW/MLG- He will please spare the staff concerned under intimation to this office.
7. DAG/KIR.
8. DAG/IMG.
9. Staff concerned

for General Manager (P)MLG.

only recommendation for transfer to Katihar for these two persons.

Wifd Bhuwan

To,

The chief Commercial Manager.
 N.F. Railway, Maligaon.
 Through, proper channel.

Sub: Prayer for Review and Revocation of transfer order.

Ref: GM (P)/MLG Lerrer No. E/41/157/PT IVII (T) Dated 9-2-2001.

Honourable Sir,

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

Sir,

I have been working as parcel cleark in parcel office of GHY Rly Stn Last $1\frac{1}{2}$ year with sincere performance of duty. Before posting at GHY Rly Station. I have worked more than ten station out side of Ghy last eight year's as Reliving commercial cleark and in my past service period there has been nothing any remark's against me. But as per your note No. c/ss/PTS/94 Dt. 9-2-2001, I have been transfer to Katihar Division on administrative ground. In this circumstance, I like to submit the following few lines for considered my transfer order.

- (I) Sir, at present my wife in pregnant and now under treatment of doctor at Ghy.
- (II) I have one son who is reading now in Assamese medium school. In Katihar itself or in any station of same Division there is no Assamese Medium School. As such, the academic career of my son will be doomed.
- (III) AT present, I stay at my home with my old aged mother, wife and one school going son and now my mother in bed sick and at my home there is no male person to look after them in absence of me. Moreover I am also a diabetes patient.

Under the above circumstance stated above I shall be highly oblige if you are kindly reconsider the transfer order for this act of your kindness. I shall remain ever grateful to you.

Your's faithfully

Balen Das.

(B. Das)

Dated 22/2/2001

SrCC/Ghy Rly Station

10 Cops
 Wm. J. Meijan
 Wm. J. Meijan
 Wm. J. Meijan

8 MAR 2002

Filed by :
Sukumar Adhikari
Railways
Guwahati
Guwahati
8.3.2002

29

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT GUWAHATI,
GUWAHATI BENCH, GUWAHATI.

Leena Sarm
7.3.2002

IN THE MATTER OF :

O. A. No. 89 of 2001

Sri Balen Das

Vs.

1. Northeast Frontier Railway,
Maligaon, Guwahati
Through the General Manager.

2. Chief Commercial Manager,
Northeast Frontier Railway,
Maligaon, Guwahati.

3. General Manager(Personnel),
N. F. Railway, Maligaon,
Guwahati.

4. Divisional Commercial Manager,
Lumding Division,
N. F. Railway, Lumding.

- AND -

IN THE MATTER OF :

Written Statement for and on behalf of the
respondents.

The answering respondents most respectfully beg to
sheweth as under :

Contd.....2

शासकीय रेलवे (ভারত)
by Chief Comm. Manager/Gen
to the Hon. Compt.
N. F. Railway, Maligaon
Orchard-VII/2001

मालगांव रेलवे मैनेजरेजमेंट कॉम्पनी
रेलवे मैनेजरेजमेंट कॉम्पनी
रेलवे मैनेजरेजमेंट कॉम्पनी
रेलवे मैनेजरेजमेंट कॉम्पनी

-: 2 :-

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/averments in the application which are specifically admitted hereunder, all other averments/allegations to the contrary are denied herewith and the applicant is put to strictest proof of all such averments.
3. That, for the sake of brevity, the respondents have been advised to confine their replies only on those averments of the applicant in the application which are relevant and are material for a proper decision in the case and all other allegations to the contrary in the application are denied herewith and the meticulous denial of each and every allegations have been avoided without admitting correctness of any such allegations/averments.
4. That, the application has been filed against some officials only and not against Union of India. As Government of India has not been impleaded in the application no suit or proceeding is tenable against Union of India and the application is hit under the provisions of Article 300 of the Constitution of India.
5. That, the application is fit one to be dismissed in limine under the fact and under law.

Contd.....3

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6. That, the application is pre-mature. The applicant has come up before the Hon'ble Tribunal without availing all the remedies available to him under the service rules to redressal of any alleged grievances and as such the application is fit one to be rejected/dismissed under Section 20(1) of the Administrative Tribunals Act, 1985.

7. That, the transfer of an employee is an incidence of service and for work interest, the employer can post any staff from one place to another for work interest/administrative necessities, wherever the service of that particular staff are warranted for work necessities and better utilisation, and the personal interest of staff should not be an hindrance to such transfer in a Government job which are transferable in nature.

8. That, the case suffers on ground of mis-representation and mis-interpretation of rules and laws as well as non-joinder of necessary parties in the application.

9. That, the application is vexatious one having no valid cause of action for filing the application.

10. That, with regard to everments at paragraphs VI.1, VI.2 and VI.3 of the application it is to state that nothing are accepted except those which are borne on records. The applicant has been holding a transferable job and like other similar staff there is nothing new in his transfer from one place to

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another for work interest and especially when he belongs to the Commercial department where monetary matters and public interaction are involved.

11. That, with regard to averments at paragraph VI.4, VI.6 and VI.7 of the application, it is to reiterate that the service under the Government of India is transferable anywhere in India ~~xxxxxxxx~~^{also} in the event of requirement on administrative ground ^{for exigencies of service.} Like all other Government set up, the Railway administration work under hierarchical system, wherein the Zonal Railways the General Manager is the head of the entire Zone and under him the various Heads of Department work as incharge of the respective department, to whom the sub-ordinate officers and Divisional officers of the department etc. are accountable.

It is completely a wrong and misleading contention that the Respondent No. 4 i.e. the Divisional Commercial Manager, Lending Division is the proper administrative authority for issuing any transfer order of the applicant, as alleged. It is to state herein that the Chief Commercial Manager, as head of the Department of the Commercial Department/Organisation, has got full administrative authority to deploy any staff of the Commercial Department of the Railways where ever he wants to put such staff ^{within the Zonal Railways} on administrative necessity and he is not to account for same to his sub-ordinate officials e.g. Divisional Authorities etc.

Contd. 5

Leena Sarma
প্রতিপন্থ প্রতিপন্থ
Chief Commr. Manager/GM
P. Bellary, Meligaon
Question-70107

It is also a wrong statement that the transfer order is yet to be given effect to, as alleged. The staff(applicant) against whom the transfer order has been issued has only been allowed to continue stay at Guwahati Parcel office in pursuance to the stay order dated 14.3.2001 passed by the Hon'ble Tribunal.

The statement made at paragraph VI.7 of the application appears to be contradictory to one another. While he has annexed a copy of the Order of transfer as Annexure-B to the application he contends that the transfer order has not been issued by the Divisional Authorities. Such pleas are quite unacceptable and aimed at to avoid the administrative transfer.

12. That, with regard to averments at paragraph VI.5 of the application it is to submit that from the own statement of the applicant it is seen that though the applicant is posted at Guwahati, his family resides in his own residence at Bhotte-pur and his son is studying at Palasbari. As regards the medical facilities it is to state that now-a-days Railway Medical facilities like Hospital and Health Units are available at close proximity of almost all the Railway Station over the Railway. The applicants contention about educational and medical facilities etc. are not tenable as to nullify the transfer order.

13. That, with regard to paragraphs VI.6 and VI.7 of the application it is submitted that the office order dated 9.2.2001 in question, copy of which has been annexed as Annexure-B to the application clearly lays down that the transfer has been made with immediate effect on administrative ground.

The Chief Commercial Manager, N.F. Railway who is the Head of the Department of the Commercial Department of the Railways is the competent authority to effect transfer of any staff from one place to another place within the jurisdiction of the N.F. Railway Zone on administrative ground. Katihar Division is within the N.F. Railway Zone. Transfer is one of the incidence of Railway Service and not a punishment and there is no bar in transferring any staff for greater interest of the Administration. By now, he has also completed more than 2½ years service at Guwahati Railway station itself. It is also not necessary to specify in the transfer order as to the exact station where his service will be utilised in the Katihar Division. After he joins in the Katihar Division, the Division will inform him about the station where his service is ~~wrong~~ urgently required (i.e. the exact station where he will be posted in the Division).

It is reiterated that the applicant has been transferred on administrative interest and there is nothing wrong if the transfer has the approval of the respondent No.2 i.e. Chief Commercial Manager, N.F. Railway who is the head of the Commercial Organisation of the entire N.F. Railway. It is not correct that the transfer order can be issued by the DCM/Lunding (Respondent No.4) only.

It is submitted that instead of carrying out such administrative order, the applicant has simply been attempting to find out some holes in the said transfer order and find out some ways as to how such transfer can be evaded.

Leena Soma
S. P. Biju, Manager/Gen
General Manager, Malabar
Gurukul-Vidya
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14. That, with regard to averments made at paragraphs VI.8, VI.9 and VI.10 of the application it is stated that except these statements which are either borne on records or specifically admitted hereunder, all other averments as made in these paragraphs are denied herewith and the applicant is put to strictest proof of same. It is submitted that none of the allegations/averments as made in these paragraphs are admitted as correct and hence these are denied herewith. There is nothing on record that the transfer was made for any incident as narrated by the applicant or any such incident as narrated by the applicant took place. It thus appears that all such stories/narrations are nothing but cooked-up stories made purposely to derive illegal gain and to mislead the Hon'ble Tribunal as to put some imputations on the bonafide transfer order passed against the applicant.

It is emphatically denied that the impugned order dated 9.2.2001 has been issued by the authorities on a complaint by any customer or for any alleged harassment to such customer, as narrated by the applicant at paragraphs VI.8 and VI.9 of the O.A..

In the face of the applicant's own statement that it appears to him that a complaint was lodged in the Head Office against him on 8.2.2001 (i.e. one day before the transfer order dated 9.2.2001), it was completely improper on the part of complainant to connect this transfer with any complaint, about which he is not sure and especially when such imputation is

thrown against the Head of the Commercial Department of the N.F. Railway. It is completely a wrong statement that the Respondent No.2 threatened the applicant that he would be transferred. Further, no disciplinary action was drawn or no explanation was also called for from the staff (i.e. the applicant) for any such alleged incident. As such all such allegations are baseless and simply made on presumption etc. and not based on reality.

It is submitted that the transfer and posting orders are issued as per requirement of the Railway administration and the applicant has no right to remain posted at one place at his own sweet will. It is denied that the case/order for transfer warranted any review or revocation as alleged by the applicant or the applicant has got any valid cause or right for filing this application for getting this valid transfer order nullified especially when the job in the Railway is transferable one to anywhere and there is no wrong in the case of the applicant too when he has been transferred within this Railway i.e. N.F. Railway. Further, medical facilities for the staff as well as for their family members are available at different places in the division of the Railways also and the transfer on administrative interest cannot be hauled up on the alleged ground of education of the children and medical ground. There are provisions for retention of the Railway quarters till the School/College sessions are over besides provisions for educational concession and hostel subsidies for children of Railway employees. Moreover, necessary transfer allowances and travelling facilities are also provided by the Railway administration.

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Leena Saarna

Again, no representation dated 22.2.2001 appears to have been received and as such no question of sitting over the representation without taking any action arises. It is also denied that the action of the respondents in transferring the applicant to a different division has caused :

i) Serious prejudice to the applicant.

and

ii) entails civil consequences.

It is to mention herein that the applicant has not acquired any right for retention at the Guwhati Station for number of years at his sweet will. Rather, it is submitted that he was appointed for service on the N.F. Railway Zone and it is a coincidence or chance that he was posted at Lunding Division in Assam for some period. No prejudice has been caused to the applicant by issue of an order of transfer to another division of his home Railway i.e. N.F. Railway. Further, question of entailing Civil consequences also does not arise in the case as transfer is an incidence to the service and it is not a punishment and the applicant is not to suffer in pay, loss of seniority as promotion prospect or other service benefits etc. All such allegations are completely unfounded, baseless and motivated to nullify the administrative transfer order validly issued for proper work management.

15. That, with regard to ground for relief sought for as stated in paragraphs VII and X of the O.A. it is submitted that in view of the fact of the case and laws/rules involved and the submissions made herein before in different paragraphs

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Leena Savma

म. गुरु राधिक रेड्ड (काशीर).
Mr. Gurdh Singh. Manager/Chair
Mr. Gurdh Singh. Manager/Chair
G. P. Railway, Mysore
gurudh.singh-781001

of the Written Statement, none of the grounds put forward by the applicant are sustainable and the allegations are not admitted and hence the applicant is not entitled to any relief, as sought for by him. All the allegations made at paragraph VII are incorrect and hence denied herewith.

It is however pertinent to mention/reiterate herein the following aspects :

i) That, the applicant was recruited for service on the N.F. Railway Zone and not for service in a particular place or Division. It is a coincidence that he was posted in Lundin Division for some period and such posting in a particular place of posting or a particular Division of the N.F. Railway does not confer any right on the applicant for retention in a particular place of posting or particular Division of the Railways.

ii) That, transfer is one of the incidence to service and is not a punishment.

iii) That for work necessities, administrative convenience/administrative interest, staff can be transferred from one place of posting to another or from one division of the Home Railway to the other Divisions of the Home Railway and no rule or law forbids such transfer. Even, the extent provisions in the laid rules e.g. Rule 226 and Rule 227 of the Indian Railway Establishment Code permits such transfer.

Conne^{ctio}n

In this copies of the above said Rules 226 and 227
- R.I. are annexed hereto as Annexures I and II respectively
for ready perusal.

Leena Sarma

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State Manager
Central Manager
P. G. Dept. Manager
P. Railway Manager
Numbered Pages

-: 11 :-

iv) The contention of the applicant that he being a scheduled caste employee cannot be transferred outside his district or state, is not a correct approach and it is not applicable in the instant case. It is submitted that a good number of scheduled caste employees are working in this Railway organisation and if transfer of such staff are stalled in this manner, then the work and functioning of this life-line will be disrupted and stalled and such pleas are not sustainable in the present case and hence not accepted. It is submitted that for exigencies of service any staff can be posted in any place of the Railways. Further, the Katihar Division falls within the N.F. Railway Zone (i.e. his home Railway). There has been no irregularity in transferring the applicant to the Katihar Division of the N.F. Railway Zone on administrative grounds.

v) It is denied that the transfer order was passed without justifiable cause or reason and the same amount to a malafide exercise of power and same has not been passed in the public interest or for reasons of administrative exigencies or that the same is clearly a punitive one and has been passed under the garb of "administrative ground". It is also emphatically denied that the alleged transfer is punitive or has got any connection or cause due to any alleged so called occurrence of harassment to any customer. It is denied that the transfer cannot stand judicial scrutiny and is liable to be set aside and quashed or that the transfer is contrary to and in derogation of the policy guide lines, as alleged, or

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Leena Sarma

it violated service jurisprudence. It is denied that the transfer order was passed without application of mind or ^{disturb} the order should be cancelled as it would ^{disturb} the family harmony etc. of the applicant. If his argument are to stand, then it appears that the Railway administration would be debarred to transfer any staff on work interest which might affect the personal interest etc. of the staff. There are Railway Hos- pitals etc. at Ketihar Division, and, educational and hostel facilities are also subsidised by the Railway administration.

It is reiterated that the transfer order had to be passed in work interest and individual interest of any staff cannot stand in the way of implementation of a valid order passed by a competent authority on valid grounds.

It is also pertinent to mention herein that due to shortage of Commercial staff and running of vacancies unfilled for long time, the Commercial work in the Katihar Division has been suffering due to shortage of trained hands etc. and it is very necessary to post staff there for smooth running of office/work so that Commercial work, which involves Governments/Railway finance also, do not suffer and it is one of the prime duties of the head of the Commercial department of the Railways to ensure Railways interest and smooth management and distribution of work/staff.

vi) That, there is nothing on record that the transfer was made for any incident as narrated by the applicant or any such incidents as narrated by the applicant took place. It thus appears that all such stories/narrations are nothing

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but cooked-up stories made purposely to derive illegal gain and to mislead the Hon'ble Tribunal as to put some imputation on the bonafide transfer order passed against the applicant.

It is emphatically denied that the impugned order dated 9.2.2001 has been issued by the authorities on a complaint by any customer as alleged or is not bonafide one, or, has been issued as a measure of penalty for any alleged occurrence of harassment as narrated by the applicant in paragraph VI.9 of the application.

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

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

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

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ix) That, it is quite incorrect that the applicant has been subjected to unfair treatment causing injustice to him or that any of his alleged representation still remains pending or that the impugned order violates Article 14 of the Constitution. No such representations are on record.

It is also to mention herein that there is no question of violation of Article 14 of the Constitution especially when his transfer has been effected/ordered as permitted under statutory rules as mentioned herein before as framed under Article 309 of the Constitution of India, and the equality clause is not applicable in this case.

x) That, it is also not correct that the transfer order was not given effect to as alleged. It was only in obedience to Hon'ble Tribunal's stay order that the applicant has been allowed to work in Parcel Office till further orders of the Hon'ble Tribunal.

xi) That, it is denied that the transfer order was not in public interest or it is malafide as alleged by the applicant.

It may also be mentioned herein that before transferring the staff all points as stated/agitated by the applicant including the medical facilities etc. were already kept in mind/considered by the Railway administration.

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16. That, all the actions taken in the case are quite valid, legal and proper.

17. That, respondents crave leave of the Hon'ble Tribunal to permit them to file additional Written Statement, if found necessary for proper ends of justice.

18. That, under the facts and circumstances stated above, there is no merit in the O.A. and the same is liable to be dismissed with cost.

VERIFICATION

I, Leena Sarma son of
Dr. Dimleswar Sarma aged about 38 years
at present working as Deputy Chief Commercial Manager, N. F. Railway, Maligaon do hereby solemnly affirm that the statements made at Paragraphs 1, 2 and 3 are true to my knowledge and those made at Paragraphs 10, 11, 13, 14 and 15 are based on record of the case, which are believed by me to be true and the rest are my humble submissions before the Hon'ble Tribunal.

Leena Sarma

DEPUTY CHIEF COMMERCIAL MANAGER
NORTHEAST FRONTIER RAILWAY
MALIGAON COMM. MGR. - 11
FOR AND ON BEHALF OF
UNION OF INDIA Maligaon
Guwahati, 781012

7.3.2002

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

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

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

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

(i) where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or

(ii) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or

(iii) Where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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