

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 239/02
Misc Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicants. M.K. Dm

-Vs-

Respondant(s) H.O.I. Gom

Advocate for the Applicant(s) G.K. Bhattacharya
B. Chandra

Advocate for the Respondant(s) Case B.K. Phomora H. S. C.

Notes of the Registry

Date

Order of the Tribunal

2/8

Due to absence of the lawyers, the
case is left over to 9/8/2002.

M/s
A. B. S. S. S.
7/8

79.576.574

6.8.02

80.576.574

11/8/02

11/8/02

Heard learned counsel for
the parties.

Issue notice on the respon-
dents to show cause as to why the
the application shall not be admi-
tted and also issue notice to show
cause as to why the interim order
shall not be granted suspending the
order of transfer No.ES-3-M(T),
Lumding dated 25.6.2002 transferring
the applicant at DMV as Hd.TC, Guwa-
hati. Returnable by 3 weeks. List
on 30.8.02 for Admission.

In the meantime the transfer

contd/-

Received copy
Boudhina
8/8/02

6.8.02 order shall remain suspended till the returnable date.

Notices prepared
And. Sent to D. Section
for issuing of the
Same to the respondents
through Registered
with AFD 2183 to 2187
Vide D.No. 13-8-02.
Dtd. 9.8.02.

lm

30.8.02

Heard Mr. B. Choudhury, learned counsel for the applicant.

List the matter again on 17.9.2002 for admission.

In the meantime, interim order dated 6.8.2002 shall continue.

Vice-Chairman

Vice-Chairman

Copy of the order dtd.
30-8-02 issued to
the counsel of the
parties.

mb

17.9.02

Reply has been filed by the Respondents. Mr. B. Choudhury, learned counsel for the applicant stated that he has received the reply in Court today.

List the matter for admission on 27.9.2002. In the meantime, interim order dated 6.8.2002 shall continue to operate.

Vice-Chairman

18.9.2002

Ms on behalf
of the Respondents has
been submitted.

mb

27.9.02

Mr. B. Choudhury, learned counsel for the applicant ^{made a} prayer has made on behalf of Mr. G. K. Bhattacharjee, learned Sr. counsel and stated that he is in out of station and prays for adjournment. The learned counsel for the respondents has no objection. Prayer is allowed. Written statement has already been filed. The case may now be listed for hearing on 15.11.02 for hearing. In the meantime the interim order dated 6.8.02 shall continue.

Member

Order dtd 27/9/02
Communicated

Received
11/10/02

lm

3/N

B

OA 239/2021

Notes of the Registry	Date	Order of the Tribunal
Wks has been likened. 26.11.02	15.11.	Due to Ws unit sitting at swelling, the case is adjourned to 27.11.2021. A.K. Zey 15.11.
Order dt. 27/11/02 Commenced to the parties concerned. 27/12	27.11.02	On the prayer of learned counsel for the applicant case is adjourned to 4.12.02 for hearing. In the meantime, the interim order dated 30.7.02 shall continue till that day. Vice-Chairman
Wks has been likened 3.12.02	4.12.02	Mr. B. Choudhury, learned counsel for the applicant stated that his senior counsel Mr. G.K. Bhattacharyya could not appear as he is not well and wants the case for adjournment. Prayer is allowed. List on 13.12.2002 for hearing. In the meantime, interim order dated 6.8.2002 shall continue. Vice-Chairman
4-12-2002 Additional Affidavit has been filed by applicant	13.12.02	Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is disposed of in terms of the order. No order as to costs. Vice-Chairman
Received true copy from Choudhury 13.12.02		
19.12.2002 Copy of the order has been sent to the office for posting the same to the L/Adv. on the receipt of		

Notes of the Registry	Date	Order of the Tribunal
<p>[Faint, illegible text in the first column, likely bleed-through from the reverse side of the page.]</p>	<p>[Faint, illegible text in the second column, likely bleed-through from the reverse side of the page.]</p>	<p>[Faint, illegible text in the third column, likely bleed-through from the reverse side of the page.]</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A.No. 239of 2002.

DATE OF DECISION... 13-12-2002

Sri Mrinal Kanti Das

APPLICANT(S)

S/Sri G.K.Bhattacharyya and B.Choudhury

ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri S. Saram.

ADVOCATE FOR THE
RESPONDENT(S)

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

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 Vice-Chairman.

No.

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 239 of 2002.

Date of Order : This the 13th Day of December, 2002.

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

Sri Mrinal Kanti Das,
Son of Late Nakul Ch. Das,
presently serving as Head
Ticket Collector,
R/o Railway Quarter Campus,
Maligaon, Guwahati-11.

. . Applicant

By Advocate S/Sri G.K.Bhattacharyya
and B.Choudhury.

- Versus -

1. Union of India,
represented by the General
Manager, N.F.Railway,
Maligaon, Guwahati-11.
2. Divisional Railway Manager,
N.F.Railway, Lunding,
District-Nagaon, Assam.
3. Divisional Railway Manager(P)
N.F.Railway, Lunding,
Nagaon.
4. Divisional Commercial Manager,
N.F.Railway, Lunding.
5. Senior Area Manager,
N.F.Railway, Guwahati.

. . . Respondents

By Advocate Sri S.Sarma.

O R D E R

CHOWDHURY J. (V.C)

In this application under Section 19 of the Administrative Tribunal Act 1985 the applicant has assailed the order dated 25.6.2002 transferring and posting the applicant at Dimapur as Head Ticket Collector in the existing pay scale. The legitimacy of the said order is assailed in this application as arbitrary and discriminatory.

2. Mr B.Choudhury, learned counsel appearing on behalf of the applicant has stated and contended that the impugned

Contd..2

order is perse arbitrary so much as that the said order was passed at the instance of CBI who recommended the Deputy Chief Vigilance Officer (T) to transfer the applicant from Guwahati. Mr Choudhury, the learned counsel submitted that the order was passed by the Railway authority without applying its mind and the said order was passed only at the behest of the CBI. Mr Choudhury further submitted that as per Railway Board's own circular if a person is to transfer at the instance of vigilance organisation to facilitate proper enquiries, the authority is duty bound to take care of the genuine grievance of the employee concerned before passing such order in terms of Railway Board's letter No. E(NG)II/77/TR/112 dated 6.2.78 and 27.5.78.


3. Mr S.Sarma, learned counsel appearing on behalf of the Railway standing counsel submitted that the transfer order was passed on administrative ground with the approval of the competent authority. Mr Srama further submitted that the order was passed bonafide and in the interest of public service. Countering the submission of Mr Choudhury Mr Sarma referred to the order dated 3.9.2002 wherein the Railway authority initiated a proceeding under the provisions of Railway Servants (Displine and Appeal) Rules 1968 on the allegation referred to in the said communication. Mr Choudhury submitted that on the basis of the disciplinary proceeding dated 3.9.2002 the impugned transfer order was passed at the behest of the CBI.

4. I have given my anxious consideration on the matter. On perusal of the records it transpires that the disciplinary proceeding was initiated against the applicant on receipt of some complaint. By the communication dated 3.9.2002 the applicant was requested to submit his written statement

9

of defence against the allegation. Apparently no illegality is found and discernible in the transfer order. The circular referred to by Mr Choudhury that in the area of transfer at the instance of vigilance organisation, special police establishment and in that purpose the authorities are asked to take care of the genuine grievance of the employee concerned before taking a final decision. Considering the facts and circumstances of the case I am of the view that ends of justice will be met if a direction is given on the applicant to submit a detailed representation indicating his grievances to the concerned authority. Accordingly the applicant is directed to submit a detail representation within a period of 15 days from the date of receipt of the copy of this order, and if such representation is filed, the respondents shall consider and dispose of the same within a period of two months thereafter.

Subject to the observations made above the application stands disposed of. There shall, however, be no order as to costs.


(D.N.CHOWDHURY)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI

BENCH: GUWAHATI

(An Application under Section 19
of the Administrative Tribunal Act, 1985)

O.A. NO. 239 OF 2002

Sri Mrinal Kanti Das

▪ Applicant

-Vs-

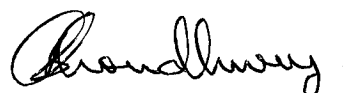
Union of India and others

▪ Respondents

I N D E X

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Filed by


Bikram Choudhury

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:

GUWAHATI

(An Application under Section 19
of the Administrative Tribunal Act, 1985)

O.A. NO. OF 2002

Sri Mrinal Kanti Das,
Son of Late Nakul Ch. Das,
presently serving as Head
Ticket Collector,
R/o Railway Quarter Campus.
Maligaon, Guwahati-11

▪ Applicant

- Versus -

1. Union of India,
Represented by the General
Manager, N.F. Railway,
Maligaon, Guwahati --11.
2. Divisional Railway Manager,
N.F. Railway, Lumding,
District- Nagaon, Assam.
3. Divisional Railway Manager(P),
N.F. Railway, Lumding,
Nagaon.

Mrinal Kanti Das,
Filed by the applicant
through Bikram Choudhury
Advocate
30.7.02

4. Divisional Commercial Manager

N.F. Railway, Luming.

5. Senior Area Manager,

N.F. Railway, Guwahati

• Respondents

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

(i) Order no. ES-3-M (T) dt. 25.06.2002 issued from the office of respondent No.3 transferring the applicant from Guwahati and posting him at Dimapur in the same pay scale on administrative ground.

(ii) Action of the authorities in transferring the applicant in violation of statutory rules / various railway circulars governing transfer of a servant.

2. JURISDICTION OF THE HON'BLE TRIBUNAL :

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

ms

3. LIMITATION :

The applicant further declares that the application is within the limitation prescribed under Section 21 of the Administration Tribunal Act, 1985.

4. FACTS OF THE CASE :

1. That the applicant begs to state that he belongs to the Scheduled Caste community and in the year 1986 he joined the railway service as Ticket Collector. The applicant further states that in the same year he was promoted to the post of Senior Ticket Collector.

2. That the applicant begs to state in the year 1993 due to restructuring of the cadre of ticket checking staff, the applicant was promoted to the post of Head Ticket Collector vide office ordered no. E-39-24 (TC) Pt. IV (T) Loose dt. 31.7.93 and in the order a total of 13 Senior Ticket Collectors were promoted to the post of Head Ticket Collector, out of which 8 Senior Ticket Collectors were retained at Guwahati on promotion. At present according to book of sanction, the total post of Head Ticket Collectors at Guwahati station is 15 and the actual strength is

ms.

14. Out of the 14 Head Ticket Collectors 7 of them are junior to the applicant and 6 are senior to him.

3. That the applicant begs to state that on 20.11.2001, at about 19:00 hours, while the applicant was performing his evening shift duty of Chief Ticket Inspector at Guwahati Station, a man approached him for reservation in 3-Tier Sleeper Class on 5621 Dn N.E Express the following day. The applicant thereafter to assist the person issued a slip to him for purchasing a ticket from the ticket counter as procedure and when the person came back with the ticket he asked one of his colleagues dealing with reservation to allot him a berth and issue a reservation ticket. Accordingly, one reservation ticket was issued on which the applicant asked the person to pay the requisite reservation charge of Rs.20/-. The person immediately handed over a hundred rupee note to the applicant and before he could return the change of Rs. 80/- a number of people in civil clothes entered the Ticket Collector's office and caught hold of the applicant and took him away on the charge of acceptance of bribery. The applicant further state that the next day he was produced before the Special Judge, Guwahati who granted him bail on PR bond

4. That the applicant begs to state that on the next day the Chief Ticket Inspector lodged an FIR with the OC, GRP stating that some persons declaring themselves as CBI personnel took away the applicant on 20.11.2001 without taking any permission from the competent authority and he also reported about the incident before the authorities.

A copy of the F.I.R is annexed herewith and marked as Annexure --I.

5. That, thereafter the applicant was not placed under suspension and he continued to discharge his duties efficiently. As such, he was surprised to receive the impugned order no. ES-3-M (T) dt. 25.6.02 from the office of respondent no 3 whereby the applicant was transferred and posted to Dimapur in his existing pay and scale on administrative ground.

A copy of the impugned ordered dt. 25.6.02 annexed is herewith and marked as Annexure --II.

6. That the applicant begs to state that on making enquiry the applicant has come to know that the CBI has recommended to the Deputy Chief Vigilance

Sum.

Officer (T), Maligaon to transfer the applicant from Guwahati and to carry out the request of the CBI Deputy Chief Vigilance Officer (T), Maligaon asked Respondent No. 4 to transfer the applicant to Dimapur and since advice of Vigilance/ CBI /SPE is made binding on departmental authorities respondent no. 4 mechanically transferred the applicant to Dimapur.

7. That the applicant begs to state that, as stated above, it will be apparent that transfer of the applicant to Dimapur has not been made on administrative ground but to fulfill the wish of CBI. The applicant further states that as per Railway Board's letter no. E(NG) II/77/ TR/112 dt. 6.2.78 and 27.5.78 dealing with transfer at the instance of the Vigilance Organisation/ SPE to facilitate proper enquiries being made, it lays down that in order to ensure that there is no harassment and/ or victimization on this account, the DRM in respect of divisionally controlled staff and the CPO in respect of Headquarters controlled staff may hear representation of genuine grievance, if any made, before a final decision is taken to effect the transfer. But no such representation was called for by the respondent before issuing the transfer order. Moreover, in the impugned order dt. 25.6.2002 further

sum

directed the controlling authority of the applicant to spare him immediately to carry out the order.

The relevant portion of the Railway Board's Letter dt. 6.2.78 and 27.5.78 is annexed here with and marked as ANNEXURE- III

(The applicant craves leave of this Hon'ble Tribunal to rely upon the Master Circular at the time of hearing)

8. That the applicant begs to state that though the impugned order was issued on 25.6.2002 he has not been spared/released and as such unless some interim order is passed the applicant will suffer irreparable loss and injury. The applicant has two school going children and their studies will be disturbed, if the arbitrary order is enforce in mid-session.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

I. For that the impugned order was passed in a most arbitrary manner without proper application of mind and as such the impugned

Sum.

order is bad in law and is liable to be set aside.

II. For that the action of the authorities in transferring the applicant at the instance of CBI in complete violation of the existing instructions/ circulars is bad in law and is liable to be set aside.

III. For that the action of the authorities in issuing the final order of transfer in violation of the Railway Board's letter dt. 6.2.78 and 27.5.78 which allows the person sought to be transferred at the instance of Vigilance Organisation/ SPE to represent before a final decision is taken to effect the transfer and as such the same is bad in law and is liable to be set aside.

IV. For that the action of the authorities is denying/ violating the applicant's right as a railway servant belonging to Schedule caste to be posted in the native district as per various railway circulars is bad in law and is liable to be set aside.

V. For that from the action of the authorities it will be apparent that though the impugned

Ans.

order was issued on administrative ground but it does not fulfill the grounds for transfer on administrative ground as stated in various Railways Circulars and the same was issued at the wish of the CBI and as such the same is bad in law and is liable to be set aside.

VI. For that in view of the matter the impugned order is bad in law and is liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant has no remedy under the service rules.

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

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

8. PRAYER:

ms

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the Respondents to show cause as to why the impugned order dt. 25.06.02 (Annexure -II) should not be set aside and quashed and after perusing the causes shown, if any, and hearing the parties be pleased to set aside the impugned order dt. 25.06.02 (Annexure -II) and/or pass any other order/orders as Your Lordships may deem fit and proper.

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

9. INTERIM ORDER :

It is, further prayed that pending disposal of the application, Your Lordships would be pleased to stay

the operation of the impugned
order dt. 25.6.2002 (Annexure-II)

10. DOES NOT ARISE:

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN
RESPECT OF THE APPLICATION FEE.

- (i) I.P.O No. : 461576574.
- (ii) Date. : 30.7.02.
- (iii) Issued by Guwahati Post Office.
- (iv) Payable at Guwahati.

12. LIST OF ENCLOSURES :

As stated in the INDEX.

ms

VERIFICATION

I, Sri Mrinal Kanti Das, Son of late Nakul Chandra Das, aged about 49 years, presently serving as Head Ticket Collector, R/o Railway Quarter Campus, Maligaon, Guwahati, do hereby verify that the statements made in Paragraphs No. 1, 2, 3 and 8 are true to my personal knowledge and the statements made in paragraphs No. 4, 5 and 7 are believe to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 30th day of July 2002 at Guwahati.

Place: Guwahati

Mrinal Kanti Das.

Signature of the applicant

Date: 30.7.02

- 13 -

ANNEXURE -- I

To,

DRM/P/LMG

Sri ARM/GHY

DCM/GHY

SM/GHY

C/OC/GRP, OC/RPF, N.F. Rly.

It has come to my knowledge in the morning on 21.11.01 at 10 .00 hrs. that Mr. M.K. Das II HDTC/GHY who was deputed to work as CTI/BIC on 20.11.01 in the evening shift, he was "taken up" by some person, shanting CBI without taking any permission from the Rly. ~~At~~ taking any permission from the Rly. Competent authority.

S/d Illegible 21.11.01
Chief Ticket Inspector,

N.F. Railway, Guwahati

Verified to be true copy.
B. S. Choudhury.
Adv.

N.F.Rly.

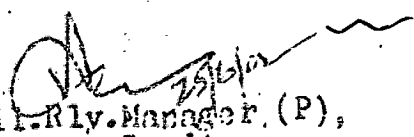
Office order.

Office of the
Divl. Rly. Manager (P),
Lumding. dtd: 25/06/2002,

Shri Mrinal Kanti Das- No. 11 Hd. TC/GHY in scale Rs. 5000-8000/-
is hereby transferred and posted at DMV as Hd. TC vice vacancy in his
existing pay and scale on administrative ground of the

This issue with the approval of the competent authority.


He is eligible T/Pass & joining time and C/G as per extent
rule.


for Divl. Rly. Manager (P),
N.F.Rly.- Lumding.

No. ES-3-M/T) Lumding. dtd: 25/06/2002,

Copy forwarded for information and n/action to:-

- 1) Staff concerned thro:- Proper channel. (2) DCM/LMG, GHY (4) DAO/LMG
- 5) APO/GHY (6) Sr. ARM/GHY (7) OS/ET/B111 (8) SS/DMV, GHY
- 6) SM/GHY, CTI/GHY-They are requested to spare Shri Das-II immediately
to carry out his transfer order and also acknowledge the same
obtaining his acknowledgement.


for Divl. Rly. Manager (P),
N.F.Rly. Lumding.

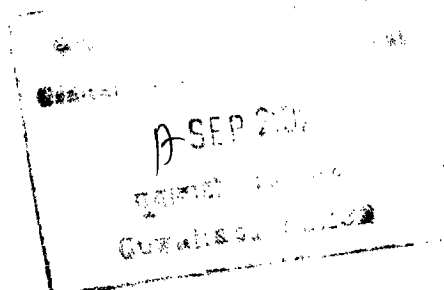
Certified to be true copy.
B. Choudhury
stls

Transfers are ordered in certain cases at the instance of the Vigilance Organisation /Special Police Establishment, to facilitate proper enquiries being made etc. In order to ensure that there is no harassment and /or victimization on this accounts, the DRM in respect of divisionally controlled staff and the CPD in respect of head quarters controlled staff may here representations of genuine grievances, if any made, before a final decision is taken to effect the transfer. This procedure will not however, apply to the cases of transfer of office bearer(s) of the recognized union, who are governed by a separate set of orders.

(Ref: Board's letters No. E (NG) II/ 77/

TR/112 dt. 6.2.78 and 27.5.78)

certified to be true copy.
Bundhway.
Adw.



Filed by
Nidhan Javer
Advocate
Dr. B. K. Sharma
S.C. For Rm.
17/10/02
Sourin Narayan Ray
Divisional Personnel Officer
N.F. Railway, Lumding

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 239 of 2002

Sri Mrinal Kanti Das.

.....Applicant.

- Vs -

Union of India & Ors.

Written statement on behalf of the respondents .

1. That the answering respondents have received the copy of the Written Statement and have gone through the same. Save and except the statement which are not specifically admitted here in below, other statement made in the OA may be treated as total denial. The statement which are not born out of records may also be treated as total denial.

2. That with regard to the statement made in para 1 to 3 of the OA, the answering statement while denying the statement made therein beg to state that detailed reply has been given following paragraphs.

3. That with regard to the statement made in para 4.1 of OA the answering respondents offers no comment on it.

4. That with regard to the statement made in para 4.2 of the OA the answering respondents while denying the statement made in the OA beg to state that the total strength of Head Ticket

Collector is 15 (fifteen) not 14 (fourteen) as stated by the applicant. There are presently 8 (eight) persons senior and 6 (six) persons Juniors to the applicant.

5. That with regard to the statement made in para 4.3 & 4.4 of the answering respondents while denying the contentions made therein beg to state that the incident as highlighted by the applicant has got no bearing in this case.

6. That with regard to the statement made in para 4.5, the answering respondents while denying the contentions made therein beg to state that by an order dated 25.6.2002 (Annexure-2 to the OA), the applicant was transferred from Guwahati to Dimapur Station in his existing pay scale on administrative exigency, and in the interest of the organisation.

7. That with regard to the statement made in para 4.6 and 4.7 of the OA, the answering respondents categorically deny the contentions made therein and reiterate and reaffirm the statement made in above. As stated above the Divisional Railway Manager (P) N.F. Railway Lumding issued the order dated 25.6.2002 on administrative ground with the approval of competent authority. In fact the applicant has been allowed the benefit of Traveling Pass, Joining Time etc as per Rule. The authority concern after following the due process of Law as well as the Railway Board's circulars.

8. That with regard to the statement made in para 4.8 of the OA the answering respondents while denying the contentions made therein beg to state that the order dated 25.6.2002 has been passed in the exigency of service and same is purely an

28
Srinivasan Narayana Rao
Divisional Personnel Officer
N.F. Railway, Lunding

administrative action and thus it is prayed that the Hon'ble Tribunal may be pleased not to interfere in this matter and to dismiss the OA in limine. It is further stated that the personal problems as stated by the applicant cannot be a ground for challenging the order of transfer and as such the OA deserves to be dismissed with cost.

9. That with regard to the statement made in para 5 to 12 the answering Respondent while denying the contention made therein beg to state that in view of the statements made above and the factual matrix of the case, the OA deserves to be dismissed with cost.

10. That the answering Respondents state that the OA filed by the applicant is premature as he did not avail the departmental remedies as required under the Rules. That apart the OA is also bad for non-joinder of necessary parties, estoppel, waiver and acquance and hence same is liable to be dismissed with cost.

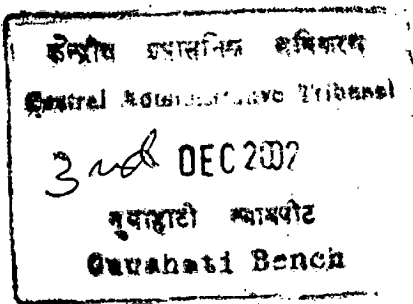
29

VERIFICATION

I Shri Sourindha Narayan Roy....., aged about 58 years, son of Lt. S.C. Roy.., presently working as Divisional personnel officer / controlling N.E. Railway do hereby verify and state that the statement made in paragraphs 1, 9 and 10....., are true to my knowledge and those made in paragraphs 2 to 8..... being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 17th day of Sept. 2002.

Sourindha Narayan Roy .
Deponent
Divisional Personnel Officer
N.E. Railway, Lumding



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI
BENCH

GUWAHATI

IN THE MATTER OF :

O.A. NO. 239/2002

Sri Mrinal Kanti Das,

... Applicant

-Vs-

Union of India & others.

... Respondents

An additional affidavit on
behalf of the applicant.

I, Sri Mrinal Kanti Das, son of late
Nakul Chandra Das, presently serving as Head
Ticket Collector, resident of Railway Quarter
Campus, Maligaon, Guwahati-11, do hereby solemnly
affirm and swear as follows :-

1. That I am the applicant in the above
original application, which I have filed assailing
the impugned transfer order No.ES-3-M(T) dated
25.06.02 (Annexure-II to the original application)
on the ground that the above impugned transfer
order was issued at the instances of CBI/Vigilance
Organisation which is in complete violation of the

existing circulars which allows the persons sought to be transferred at the instances of Vigilance Organisation to represent before a final decision is taken to effect the transfer.

2. That the deponent begs to state that the respondents authorities have filed their written statement in which they have denied the contentions raised by the deponent that the impugned transfer order was issued in consequence of the incident on 20.11.2001 in the office of the Chief Ticket Inspector, Guwahati Station and stated that the incident has got no bearing in this case and the transfer order was issued on administrative ground.

3. That the deponent begs to state that during the pendency of the case the Respondent No. 4 has now issued a charge memorandum No. C/CON/LM/MISC/06 dated 3.09.02 stating that a proceeding has been drawn up against the deponent on the charge that on 20.11.2001 he demanded and accepted illegal gratification of Rs. 100/- from one Sri Manoj Agarwal of Fancy Bazar for providing him a sleeper class berth. As such, this Additional Affidavit is filed to incorporate the subsequent information/facts as part of the record, which are essential for disposal of the case.

A copy of the charge memorandum is annexed

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herewith and marked as
Annexure-IV.

4. That the deponent begs to state that after receipt of the above charge memorandum dated 3.09.2002 where the authorities have contemplated disciplinary proceeding against the deponent on the basis of the incident which occurred on 20.11.2001 in the office of the Chief Ticket Inspector at Guwahati Station it is apparent that the impugned transfer order dated 30.06.2002 has been issued at the behest of the CBI.

5. That the statement made in this affidavit and in paragraphs Nos 2 and 4 are true to my knowledge and those made in paragraph Nos 1 and 3 being matter of record are true to my information derived therefrom which is believe to be true and the rest are my humble submission before this hon'ble Court.

And I sign this affidavit on this the 3rd day of December, 2002 at Guwahati.

Identified by
Bikram Choudhury.
Advocate

Mrinal Kant Das.
Deponent

*Solemnly affirmed and
declared before me by the
deponent who is identified
by Bikram Choudhury, Advocate
on this 3rd of December
2002.*

Sanjay K. Sharma

STANDARD FORM FOR CHARGE SHEET

(Rules of the Railway Servants (Discipline and appeal Rules - 1968)

No. C/CON/LM/MISC/06 (MKD-HdTC-GHY) Date 3 / 09 / 2002

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

Place of issue : DEM (C)/LMG

MEMORANDUM

The president/Railway Board/Undersigned propose (S) to hold an Enquiry against Shri M.K.Das-II/Hd.TC/GHY station under rule -9 of the Railway servants (Discipline and Appeal Rules-1968. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed in the list of documents as per Annexure - III are enclosed.

Shri M.K.Das-II/Hd.TC/GHY station is hereby informed that if he desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure - III) in any time during office hours within 10 days of receipt of this Memorandum. For this purpose he should contact DEM (C)/LMG immediately on receipt of this Memorandum.

3. Shri M.K.Das-II/Hd.TC/GHY station... is further informed that he may if he so desires, take the assistance of any other Railway servants an official of Railway Trade Union (who satisfies the requirements of rule 9 (9) (13) of the Railway Servants (Discipline) and Appeal Rules-1968 and note 1 and or note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the enquiring authority in the event of an oral enquiry being held. For this purpose, he should nominate one or more persons in order to preference. Before nominating the assisting Railway servant (s) of Railway Trade Union official (s) Shri M.K.Das-II/Hd.TC/GHY station... should obtain an undertaking from the nominee (s) that he (they) is (are) willing to assist him during the Disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any in which the nominee (s) had already undertaken to assist and the undertaking should be furnished to the undersigned, DEM (C)/LMG along with the nomination.

4. Shri M.K.Das-II/Hd.TC/GHY station... is hereby directed to submit the undersigned (General Manager, DEM (C)/LMG Railway) a written statement of his defence (which should reach the said (General Manager) within ten days of receipt of this Memorandum if he does not require to inspect any documents for the preparation of the defence within ten days after completion of inspection of documents if he does not to inspect documents, and also (a) to state whether he wishes to be present in person and (b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of this defence.

Contd...2.

10.09.02
26.09.02

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3. Shri . M.K.Das-II/HATC/DMT station. is further informed that if he does not submit his written statement of defence within the period specified in para-2 or does not appear in person before the Enquiring authority or otherwise fails or refuse to comply with the provisions of rules-9 of the Railway Servant(Discipline and (Appenl) Rules-1963 on the orders/direction issued in pursuance of the said rules, the enquiring authority may hold the enquiry exparte.

3. The receipt of this Memorandum may be acknowledged.

My true and lawful name of the President.

Divl. Commercial Manager
P. O. Box 100, Calcutta
P. O. Box 100, Calcutta

Copy to Sh 1, SS/CHY (Name and designation of the lending authority) for information. Strike out whichever is not applicable. To be deleted if cop 1's are given/not given with the Memorandum as the case may be.

** None of the authority (This would imply that whenever a case is referred to the Disciplinary Authority the investigation authority or any authority who are in the custody of the documents or who would be arranging for inspection of documents to enable that authority being mention in the draft memorandum whereas the President is the Disciplinary authority. To be retained wherever President of the Railway Board is the competent.

Northeast Frontier Railway.

Annexure to Standard Form No. 5
Memorandum of Charge sheet under Rule-9 of the R.S.
(D & A) Rules-1963.

Annexure-I

Statement of Articles of the charges framed against
Shri M.K.Das-II/Hd.TC/GHY (Name and designation of the
Railway staff.

ARTICLE-I.

That the said Shri M.K.Das-II/Hd.TC/GHY while
as (here enter definite and distinct articles of the Charges)

Shri M.K.Das-II while remained posted as Head Ticket Collector N.E. Railway, Guwahati Railway Station, Guwahati during the year 2001 failed to maintain absolute integrity and devotion of duty in as much as on 20/11/2001, he demanded and accepted illegal gratification of Rs. 100/- from Shri Monoj Agarwal of Bajoria Market, SRCB Road, Fancy Bazar, Guwahati for providing him a sleeper class berth up to New Jalpaiguri Railway Station in Train No. 5621 (N.E. Express) leaving Guwahati on 21/11/2001 and by the aforesaid act Shri M.K.Das-II contravened the provision of Rule 3.1 (i) (ii) & (iii) of railway service (conduct) Rule, 1966.

20/11/01
Div. Commercial Manager
N. E. Railway/Burea

Annexure-II.

Statement of Imputation of Mis-conduct/Mis-behaviour
in support of the article of the charges framed against
M.K.Das-II/Hd.TC/GHY station.

ARTICLE-I.

While Shri M.K.Das-II, Head Ticket Collector, N.E. Railway was posted at Guwahati Railway Station on 20/11/2001 demanded illegal gratification of Rs. 100/- from one Shri Monoj Agarwal of Bajoria Market SRCB Road, Fancy Bazar, Guwahati for providing him a sleeper Class berth upto New Jalpaiguri Railway Station in Train No. 5621 (N.E. Express) leaving Guwahati on 21/11/2001.

It is alleged that on 20/11/01 Shri Monoj Agarwal approached Shri M.K.Das-II to enquire about the availability of berth in N.E. Express leaving Guwahati on 21/11/01, when the said M.K.Das-II assured him that a sleeper class berth will be provided to him and demanded illegal gratification of Rs. 100/- from Shri Monoj Agarwal. As Shri Monoj Agarwal was not willing to pay the bribe, he lodged a complaint addressed to SP/CBI/ACB/Guwahati for taking legal action against Shri M.K.Das-II. On receipt of the complaint a case no. RC.18 (A)/2001-CHQ was registered and in order to lay trap, a trap laying party was constituted with the following officers/Staff :

Contd2.
Div. Commercial Manager

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1) Shri B.S.Jha, Inspector 2) Shri L.Mangshing, Inspector
 3) Shri Menojit Dey, ASI 4) Shri Biron Suri, Constable
 5) Shri Jitu Deka, Constable. Services of two independent witnesses namely Shri S.H.Singh and Shri S.K.Dubey both of Central Ground Water Board, R.G.Baruah Road, Zoo Tinali, Guwahati-24 were requisitioned.

The trap laying team, witnesses and the complainant assembled in the CBI Office Guwahati on 20/11/01 at about 17.45 hrs. were Inspector B.S.Jha explained the purpose to all concerned and a demonstration regarding reaction of Phenolphthalein Power with solution of sodium carbonate was given. The complainant was asked to produce the cost of the ticket and the bribe amount of Rs. 100/- to be paid to Shri M.K.Das-II Shri Agarwal then produced the following currency notes of

Rs. 50/- G.C.Notes bearing No.

1) 2 DA 515768 & 11) 3 BQ 711812

Rs. 100/- G.C.Notes bearing No.

1) 7 BH 708371 & 11) 1 GB 662864.

One Rs.100/- G.C.Note bearing no.1 GB 662864 was treated with Phenolphthalein Powder and kept in the right side chest pocket of Shri Menoj Agarwal and the remaining G.C.Notes was given to Menoj Agarwal to be kept in his purse for purchasing ticket. He was asked to give tainted G.C.Note of Rs. 100/- only on demand to Shri M.K.Das- II.

A Pre- Trap Panchnama was prepared in this regard at the CBI Office incorporating all the details and the same was attested by both the witnesses.

The trap laying team alongwith the witnesses and the complainant reached Guwahati Railway Station at about 18.45 Hrs. The complainant Shri Menoj Agarwal met Shri M.K.Das-II in the Q/o the CTI H.F.Rly, Guwahati Railway Station alongwith the witness Shri S.H.Singh and reminded him the purpose of his coming there. Shri M.K.Das-II gave the complainant a piece of paper and asked him to give his journey particulars, name address etc. After receiving the said particulars Shri M.K.Das- II wrote a requisition slip addressed to Chief Coaching Clerk, Booking for issuing a sleeper and class ticket Ex. Guwahati to New Jalpaiguri for journey by 5631 on dtd. 21/11/2001 and handed over the same to Shri Agarwal with advise to bring the ticket from counter no.6. Shri Agarwal purchased sleeper class ticket No. 48890 and came back to CTI's office and handed over the ticket to Shri M.K.Das- II. Shri M.K.Das - II asked Shri Rahul Amin, Head ticket Collector to issue berth reservation ticket against the said journey ticket and make necessary entries in the reservation chart. On being asked by Shri M.K.Das- II Shri Rahul Amin issued berth reservation ticket no. 268885 and made necessary entries in the reservation chart of coach no. 6 of 5631 dtd. 21/11/01. Shri M.K.Das-II thereafter collected the journey ticket and berth reservation ticket from Shri Rahul Amin and handed over to Shri Agarwal and demanded Rs. 100/- to be paid to him. On being demanded Shri Agarwal gave tainted G.C.Note No.1 GB 662864. After receiving the said Rs.100/- Shri M.K.Das-II demanded Rs.20/- more being the cost of the reservation charge. At this point of time Shri M.K.Das-II was challenged by the CBI Team for demanding and accepting illegal gratification of Rs.100/- from the complainant. Shri M.K.Das-II immediately dropped the tainted G.C.Note at the floor which was later recovered by the CBI Team. Right hand of Shri M.K.Das-II was washed with the solution of sodium carbonate which turned pink indicating that he had accepted the tainted money from the complainant. The said pink solution was preserved in a clean bottle and sealed. A post trap memorandum vide Panchnama.2 was prepared on the spot and signature of all concerned were taken. By the above acts Shri M.K.Das-II contravened the provision of Rule 3 (1), (ii) & (iii) of Railway Service (Conduct) Rules, 1966.

Annexure-III.

List of documents by which the articles of the charge framed against Shri M.K.Das- II are proposed to be sustained.

- 1) Complaint dtd. 20/11/2001 lodged by Shri Menoj Agarwala.
- 2) DTC Book of Guwahati Railway Station Counter No.6 commencing from 11/11/2001 and closed on 20/11/2001.
- 3) Requisition slip for issuing sleeper class ticket by Chief Ticket Inspector, Guwahati dtd 20/11/2001
- 4) Sleeper Class Ticket No. 45390 from Guwahati to New Jalpaiguri.
- 5) Reservation Chart of 5621 Down for 21/11/01.
- 6) BRT No. 265885.
- 7) BIC Diary of CTIA Office Guwahati from 17/11/01 to 21/11/01.
- 8) Attendance Register of CTIA Office Guwahati opened on 17/09/2001 and closed on 16/10/2001.
- 9) Duty Reaster of CTIA Office, Guwahati from 9/6/01 to 27/11/01
- 10) Exhibit "A" leveled right hand wash.
- 11) One envelope marked Ext.D containing G.C.Note of Rs 100/- denomination bearing no.1 GB 662864 "Tainted Bribe Money".
- 12) Panchnama No.1 dtd. 20/11/2001.
- 13) Panchnama No.2 dtd 20/11/2001.

Annexure-IV.

List of witnesses by whom the articles of the charge framed against Shri M.K.Das-II, Md.TC/GNY. are proposed to be sustained.

- 1) Shri Menoj Agarwal @ Menoj Bajerla, Bajerla Market ARCB Road, Fancy Bazar, Guwahati-1.
- 2) Shri S.N.Singh, Drillers In-Charge Division-VIII, Central Ground Water Board, R.G.Baruah Road Zoo Tiniali, Guwahati-84.
- 3) Shri S.K.Dubey, Driver, Central Ground Water Board, R.G.Baruah Road, Zoo Tiniali, Guwahati-24.
- 4) Shri Drabya Narayan Tripathy, Head coaching clerk, Guwahati Railway Station.
- 5) Shri Baturem Das, Chief Superintendent(Stock) N.F.Railway, Guwahati Station.
- 6) Md.Rahul Amin, Head ticket collector, N.F.Railway, Guwahati.
- 7) Shri Binandiram Bava, Chief Ticket Inspector, N.F.Railway.
- 8) Shri Gautam Chandra Das, Relieving TC, N.F.Railway, Guwahati Station.
- 9) Shri L.Hangshing, Inspector/CBI/ACB/Guwahati.
- 10) Shri Menojit Roy, ASI/CBI/ACB/Guwahati.
- 11) Shri Jitu Deka Constable CBI/ACB/Guwahati.
- 12) Shri Biren Sur, Constable CBI/ACB/Guwahati.
- 13) Shri B.S.Jha, Inspector of Police CBI/ACB/Guwahati.
- 14) Shri A.K.Saha, Dy.Superintendent of police/CBI/ACB/Guwahati.

Div. Commercial Manager (TC)
E. R. Railway (Guwahati)