

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

[Signature]
 29.11.17

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO.

283/02 OF 199

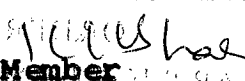




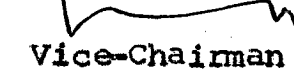



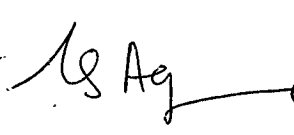
Applicant(s) *Arish Zaman*

Respondent(s) *H.O.D. Jom*

Advocate for Applicant(s) *Harrison Rahman*

Advocate for Respondent(s) *Case B.K. Sharma, Pky. S.C.*

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. Consideration is filed but not filed C F for its submission vide I/O No. 24576468 Dated 23.7.02</p> <p>By, Registrar <i>[Signature]</i></p> <p>Notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post vide D.No. 2461 to 2469 lm Dtd. 4-9-02</p> <p><i>[Signature]</i> 3-9-02</p>	<p>2.9.02</p> <p>mb</p> <p>19.9.02</p>	<p>Heard Mr. H. Rahman, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted. Returnable by two weeks.</p> <p>List on 19.9.2002 for admission.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>List on 4.10.02 for Admission.</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
	4.10.02	On the prayer of Mr.M.Chanda learned counsel on behalf of Mr.H. Rahman case is adjourned to 7.10.02 for Admission. Member  Vice-Chairman 
lm		
	7.10.01	List on 8.11.02 to enable Mr.S. Sarma learned counsel for the respondent to obtain necessary instructions. Member  Vice-Chairman 
lm		
	8.11.02	Mr.S.Sarma learned counsel for the respondents has stated that the Respondents shall file affidavit within two weeks from to-day. List on 11.12.02 to enable the Respondents to file written statement. Member  Vice-Chairman 
lm		
	11.12.02	List again on 9.1.2003 for admission as prayed by Mr. S.Sarma, learned counsel for the respondents to enable them to file reply. Member  Vice-Chairman 
mb		
	9.1.2003	Present: Hon'ble Mr Justice V.S. Aggarwal, Chairman Hon'ble Mr K.K. Sharma, Administrative Member. At the request of Mr H. Rahman, learned counsel for the applicant, list it on 20.1.2003 for admission. Member  Chairman 
nkm		

No reply has been filed

220
8.1.03.

20.1.2003

Put up again on 4.2.2003 for admission.

Sum
Member

[Signature]
Vice-Chairman

mb

4.2.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Administrative Member.

Heard Mr. H. Rahman, learned counsel for the applicant and also Mr. S. Sarma, learned counsel who has appeared on behalf of Standing counsel for the Railway.

The is pending since September 2002. The matter alongwith M.P. No. 137/02 relates to non payment of salary to the applicant since 15.5.2002. Despite the opportunities were granted, the respondents ^{have} failed to submit reply nor any instructions as to under what circumstances the applicant was not paid salary. In the absence of rebutted, we accept the statement in the pleadings as an interim measure. Accordingly, we direct the respondents to pay the salary to the applicant from 15.5.2002. The respondents are also directed to pay the salary regularly.

*Retyped
4.2.2003
[Signature]*

Put up the matter again on 6.3.2003 for admission.

Member

[Signature]
Vice-Chairman

Handwritten notes:

was and from 15.5.2002
the date date of
the order within
the 14 days from the
date of receipt
of the application
In the event of
the application being
admitted to the
No Cash

4.2.2003

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

The Hon'ble Mr. S.K. Hajra, Administrative Member.

Heard Mr. H. Rahman, learned counsel for the applicant and also Mr. S. Sarma, learned counsel who has appeared on behalf of Standing counsel for the Railway.

The case is pending since September, 2002. The matter alongwith M.P. No.137/2002 relates to non payment of salary to the applicant since 15.5.02. Despite opportunities those were granted the respondents had failed to submit reply nor any instructions as to under what circumstances the applicant was not paid salary. In the absence of rebuttal, we accept the statement in the pleadings for an appropriate direction as an interim measure. Accordingly, we direct the respondents to pay the salary to the applicant from 15.5.2002. The respondents are also directed to pay the salary regularly. The respondents are also directed to pay the arrear salary on and from 15.5.2002 till the date of the order within one month from the date of receipt of the order.

Put up the matter again on 6.3.2003 for further orders.

S. Sarma
Member

[Signature]
Vice-Chairman

mb

6.3.2003. Court did not sit today. The case is adjourned to 13/3/2003.

[Signature]
[Signature]

13.3.2003

None appears for the applicant on calling. Put up again on 17.3.2003 for admission and disposal.

[Signature]
Vice-Chairman

mb

Order dtd. 4/2/03
Communicated to the
respondent No. 1 to 5
by Regd. A.M. *[Signature]*
6/2/03
D/No. *[Signature]*

17.3.2003 The respondents are ordered to file written statement within four weeks from today. List the matter on 29.4.2003.

Pendency of the application shall not stand in the way of the respondents to consider the disciplinary proceeding.

No. written statement has been filed

My
28.4.03

Vice-Chairman

mb

No. W/S has been filed

My
6.5.03

29.4. Put up for 7/5/2003 in presence of Mr. M. Rahman Learned Counsel for the appellant.

MS

7.5.2003 On the prayer of learned counsel for the applicant list the matter on 8.5.2003 for orders.

S. Q.
Member

Vice-Chairman

mb

8.5.2003 Let the respondents submit their written statement within ten days from today. List the matter for hearing on 26.5.03. In the meantime the respondents are ordered to file their written statement within ten days.

No. W/S has been filed

My
23.5.03

S. Q.
Member

Vice-Chairman

nkm

26.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Member (A).

Put up again on 9.6.2003 for hearing.

Member

Vice-Chairman

mb

Notes of the Registry

Date

Orders of the Tribunal

9.6.2003

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

The Hon'ble Mr. R.K. Upadhyaya Member (A).

Written statement filed on behalf of the respondent No - 1 to 4.

By
11.6.03.

Reminder filed by the applicant

mb

Mr. H. Rahman, learned counsel for the applicant stated that he has received written statement in Court today and he wants to go through the same. Prayer is allowed. List again on 12.6.2003 for hearing as agreed by the parties.

[Signature]
Member

[Signature]
Vice-Chairman

12.6.2003

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

[Signature]
Member

[Signature]
Vice-Chairman

nkmm

18.6.2003

Copy of the Judgment has been sent to the office for issuing the same to the applicant as well as to the Railway Standby counsel.

HS

Notes of the Registry

Date

Orders of the Tribunal

100

000

000

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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O.A. / ~~XXXX~~ No. .283. . . . of 2002

DATE OF DECISION 12.6.2003

Shri Anisuz ZamanAPPLICANT(S).

Mr Hasibur Rahman ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and othersRESPONDENT(S).

Mr B.K. Sharma, Railway Counsel and
Mr S. Sarma, Advocate ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE MR R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Ho'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL .
GUWAHATI BENCH

Original Application No.283 of 2002

Date of decision: This the 12th day of June 2003

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

The Hon'ble Mr R.K. Upadhyaya, Administrative Member

Shri Anisuz Zaman
S/o Late Abdul Mazid,
Working as Gangman,
Kampur Railway Station, Kampur,
Nagaon, Assam.

.....Applicant

By Advocate Mr Hasibur Rahman.

- versus -

1. The Union of India, represented by
The General Manager,
N.F. Railway,
Maligaon, Guwahati.

2. The Sr. Divisional Engineer,
N.F. Railway,
Lumding, Nagaon.

3. The Permanent Way Inspector, Grade-I,
N.F. Railway,
Chapormukh, Nagaon, Assam.

4. The Permanent Way Inspector (East),
N.F. Railway,
Chapormukh, Nagaon, Assam.

5. Shri Jauhar Jha, Gangman,
Posted at Kampur Railway Station,
Nagaon, Assam.

.....Respondents

By Advocates Mr B.K. Sharma, Railway Counsel
and Mr S. Sarma.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The sole controversy rests on the issue of discharging duties by the applicant at his place of work. According to the applicant he is continuously reporting at the place of work on and from 15.5.2002, but till institution of this application he was not allowed to

work at Kampur by the Gang Incharge at the instance of the Permanent Way Inspector I (PWI-I for short). According to the applicant he was unauthorisedly debarred from discharging his duties.

2. The respondents contested and filed their written statement denying and disputing the claim of the applicant. In the written statement the respondents contended that the applicant was not attending to his duties and as a matter of fact a disciplinary proceeding was initiated against him on 6.7.2002 for the alleged absence of the applicant from duty on and from 15.5.2002 and the disciplinary proceeding is pending.

3. We have heard Mr H. Rahman, learned counsel for the applicant as well as Mr S. Sarma, learned counsel for the respondents. Mr H. Rahman submitted that the respondents unauthorisedly were not allowing the applicant to discharge his duties. The learned counsel submitted that the applicant reported in his place of work at Kampur and thereafter on his transfer from Kampur to Laopani, the applicant reported to the Gang Incharge of Gang No.24 at Laopani on 15.9.2002 and was discharging his duties at Laopani with effect from 15.9.2002/18.9.2002 and thereafter he was not allowed to perform his duties nor was he paid his salary. Mr S. Sarma, learned counsel for the respondents, on the other hand submitted that the question of not allowing the applicant to perform his duties did not arise since he did not even report for his duties.

4. In our opinion, the entire issue requires to be decided on assessment of the facts. As a matter of fact, the disciplinary proceeding is pending on the same issue which.....

which requires to be resolved with utmost expedition. Admittedly, the applicant is not placed under suspension. Therefore, there cannot be any impediment in not allowing the applicant to work at the place of work. According to the applicant he has been unauthorisedly refused work at the place of work by the PWI I, N.F. Railway, Chaparmukh.

5. On hearing the learned counsel for the parties and on consideration of the fact and circumstances, we direct the applicant to report to the Senior Divisional Manager, N.F. Railway, Lumding on or before 16.6.2003 and the Senior Divisional Manager should direct the concerned authority to detail him at the place of work either at Kampur or Laopani. The Senior Divisional Manager will also look after the grievance of the applicant and take appropriate measure under the law for payment of his salary etc. as admissible under the rules. In the meantime, the competent authority, namely the respondent authority including the Assistant Divisional Engineer, N.F. Railway, Jagiroad are directed to complete the disciplinary proceeding expeditiously. Since the applicant has already submitted his written statement as far back as 14.9.2002, the respondents shall complete the proceeding preferably within three months from today. The respondents shall take all necessary steps to resolve the impasse and take appropriate steps for release of the salary/allowances etc. to the applicant in accordance with law.

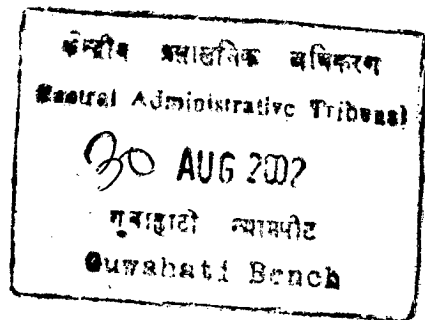
6. The application thus stands disposed of. There shall, however, be no order as to costs.



(R. K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN



DISTRICT:- NAGAON

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH: GUWAHATI.

Original Application No. 283 / 2002.

Shri Anisuz Zaman.

Petitioner.

- Versus -

Union of India and ors.

..... Respondents.

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Filed by :-

Advocate.

No slips
-VS
29/8/02

7.9

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

Anisuz Zaman
Filed by Haimur Radwan
Advocate

An application under Section 19 of
the Central Administrative Tribunal
Act, 1985.

ORIGINAL APPLICATION NO. 283 / 2002.

Shri Anisuz Zaman,
S/o late Abdul Mazid,
working as Gangman, Kampur Railway
Station, Kampur, Distt- Nagaon,
Assam.

..... Applicant.

- Versus -

1. The Union of India, represented
by the General Manager, N.F. Railway,
Maligaon, Guwahati- 11.
2. Sr. Divisional Engineer, N.F.
Railway, Lumding, Distt- Nagaon,
3. Permanent Way Inspector, Grade- I,
N.F. Railway, Chapormukh, Distt-
Nagaon, Assam.
4. Permanent Way Inspector(East),
N.F. Railway, Chapormukh, Distt-
Nagaon, Assam.
5. Shri Jauhar Jha, Gangman, Posted
at Kampur Railway Station,
Distt- Nagaon.

..... Opposite Party
Respondents.

6.7.02

Parted in new

7.9.02

Rem 14.9.02

Disis Amn

1. Particulars of the order against which,
this application is made

This application is made against the inaction on the part of the respondents to allow the applicant to resume his duties without any reason.

II JURISDICTION:

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

III. LIMITATION :-

The applicant further declares that this application is filed within the prescribed period of limitation.

IV: FACTS OF THE CASE:-

1. That your humble applicant is a citizen of India and is a permanent resident of village Moirabari in the district of Norigaon(Assam) within the jurisdiction of this Tribunal. The applicant is a citizen of India by birth and presently working as Gangman in Kampur Railway Station under the PWI(East), Chapormukh.

2. That your humble applicant was initially appointed on 5.5.1992 as Gangman and was posted at Kampur Railway Station. Your applicant was allotted a railway quarter in the Gangman Colony within the railway area of Kampur Railway Station.

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Anisul Zaman

3. That your humble applicant begs to state that one Sri Jauhar Jha Gangman working with the applicant was also allotted a railway quarter in the same locality where the applicant was allotted a railway quarter. As both the quarters are located in the same vicinity adjacent to each other, some times some quarrel took place on some flimsy ground and it took a serious turn between the applicant and his neighbour Sri Jauhar Jha.

4. That your humble applicant begs to state that one such incident took place on 28.3.2002 between the family members of the applicant and his neighbour Sri Jauhar Jha and the department transferred both the applicant as well as Sri Jauhar Jha on this ground.

5. That your humble applicant begs to state that both the applicant and the respondent No 5 Sri Jauhar Jha was transferred by ~~the~~ the administration from Kampur Railway Station. ^{But} the matter was compromised at the initiation of the department and ultimately the transfer order was cancelled.

Though the transfer order was cancelled the enmity between the applicant and the respondent No. 5 continued and the respondents tried to disturb the family members of your applicant at any time on the flimsy ground.

6. That your humble applicant begs to state that the son of your applicant is a student of

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Anisus Zanoel

Class IX studying in Kampur Higher Secondary School and the other son is also studying in the Kampur Higher Secondary School in Class- VII. ^{The} ~~The~~ opposite party - respondent No. 5 disturbed the atmosphere of the area by playing radio, TV etc. during the study time of the students as Sri J. Jha is free from that problem as he has no school going children and as such, the atmosphere was created disturbing for study. The students of other quarters also felt disturbed badly due to nuisance created by the family members of Sri Jauhar Jha.

7. That your applicant begs to state that as the problems created by Sri ^{J.} Jha and his family members and disturbed the applicant, your applicant has no other alternative but to ~~xxx~~ report the matter from time to time before the railway authority and the railway authority could not take any action on the ~~xxxxxx~~ ~~xxx~~ ground that these are purely personal matter and family matters and having no alternative, your applicant filed an ^{as} ejahar before the Kampur police station ~~xxx~~ there was no railway police posted in Kampur railway station.

8. That your humble applicant begs to state that sometimes on the basis of the ejahar police took preventive action and sometimes the police also neglected the situation as the area is not falls within the purview of the Kampur police station

and it is within the jurisdiction of the railway police as the residential quarters are located in the railway area. Normally, the state police is not interested to take up the matter by encroaching upon the jurisdiction of the railway police and as such, sometimes the State Police neglected the cases falls within the jurisdiction of the railway police.

9. That your humble applicant begs to state that taking advantage of this situation the respondent No. 5 and their family members started the trouble and to harass the applicant's son specially in the evening when the sons are studying, the opposite party started playing TV with full volume or they have ^{started} ~~stated~~ playing tape-recorder and created a noisy scene to create the disturbances at the time of reading. This way the opposite party Sri Jauhar Jha Gangman ^{was} regularly giving trouble to the students who were residing in the railway quarter.

10. That on on 12.5.2002, when your applicant ^{he} was on duty and ~~XXXX~~ was away from his quarter, The eldest son of your humble applicant while coming from the school i.e. from Kampur Higher Secondary School, he was hit by a motor cycle causing serious injury by one Sri Ratul Deka who was driving the motor cycle.

11. That your humble applicant begs to state that the eye witnesses told the police that Sri Ratul Deka

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Anisus Zard

the motor cyclist hit the applicant's son intentionally caused serious injury to the applicant's son , the State Police, took up the matter for investigation and arrested Sri Ratul Deka , driver of the the motor cycle. On enquiry Sri Ratul Deka stated before the police that he was ^{engaged} ~~engaged~~ by Sri Jauhar Jha for causing damage to the family members and particularly the son of the applicant who is a student of Class IX in Kampur Higher Secondary School and the boy was also identified by Sri Jauhar Jha to Sri Ratul Deka so that Ratul Deka who was hired by the opposite party ^{can} ~~and~~ take revenge to the applicant's son.

12. That your humble applicant begs to state that on the basis of the investigation by the police , the police has also arrested Sri Jauhar Jha on the basis of the statements made by Sri Ratul Deka before the police.

13. That your humble applicant begs to state that as the humble applicant was on duty and away from the spot of accident where the son of your applicant was injured, your applicant was informed by his colleagues that his son got injured in a motor cycle accident.

14. That your humble applicant after hearing the news of accident of his son rushed to the spot ~~and~~ as his son was seriously injured by the motor cycle

accident , he was busy to give medical aid and he could not file any FIR before the police . The police has suo moto took up the matter for investigation.

15. That your applicant begs to state that next day also your humble applicant was performing his duty and on 14.5.2002 your applicant was availing his week-end rest and he was in his residence.

16. That your applicant begs to state that the PWI(East) Chapormukh, as a routine duty came to the Kampur railway station and after hearing the news about the accident of your applicant's son came to the quarter of your humble applicant and he advised the applicant to avail the rest on 14.5.2002 and instructed your applicant to take care of his son and he left for Chapormukh.

17. That your applicant begs to state that the next day on 15.5.2002 your applicant went to his office incharge for reporting his duty, but he was told that the PWI(East), Chapormukh instructed the incharge of the Gang not to allow your applicant for performing his duty.

18. That your humble applicant begs to state that as he was told by the incharge that as per verbal instruction PWI(East), Chapormukh, directed the incharge not to allow the applicant to join

and it was instructed by the incharge to go to Laopani railway station as he has been transferred from Kampur to Laopani and to perform his duty there.

19. That your humble applicant begs to state that as per the instructions of the gang incharge, your applicant asked for the transfer order from Kampur to Laopani, but he was told that no formal order was issued and the applicant is directed to go to Laopani.

20. That your humble applicant begs to state that when he went to Laopani reporting for duty he was told by the Gang incharge of Laopani that there is no order and as such, your applicant was not allowed to join at Laopani.

21. That your humble applicant begs to state that as there was no official order of transfer of the applicant, he tried to contact the PWI(East) at Chapormukh and the incharge PWI- I to ventilate his grievances before the authority, but he was not allowed to meet any of the permanent Way Inspectors (East) or PWI- I. As such, your applicant could not join his duty after 15.5.2002.

22. That your humble petitioner/applicant begs to state that as your applicant failed to meet the PWI(East) and PWI- I, your applicant tried to contact the Divisional Engineer to meet him at Lumding so

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Anisur Zaman

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that he can ventilate his grievance to the officer at Lumding. But he was not allowed to meet the officer by the office Superintendent and so he could not either to meet the officer or to join his duty.

23. That your humble applicant begs to state that as he could not meet any of the officers and no formal order was received by the applicant, he was forced to go to Laopani by the incharge of his gang, i.e. Gang No. 25 at Kampur, he could not go to laopani on transfer nor he was allowed to join at Kampur. In this way he was moving from pillar to post, But he was not allowed to join in his office by any authority.

24. That your humble applicant begs to state that finding no other alternative your applicant submitted an application in writing and it was sent through registered post to the PWI- 1 who is the incharge of the Gang No. 25 at Kampur and stationed at Chapormukh.

A copy of the application dtd. 29.5.2002 with registered receipt is enclosed herewith and marked as Annexures 1 and 1/A respectively.

25. That your humble applicant begs to state that after submission of the application through registered post your applicant was waiting for reply or any order but he was neither informed nor communicated by the

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Adv's 2002-03

by the authority and still your applicant is moving for justice.

26. That your humble applicant begs to state that thereafter when the PWI- 1 is not responded against your applicant's application, he was compelled to submit an appeal before the authority, Senior Divisional Engineer, NF Railway, Lumding stating all the facts by a registered letter as he was not allowed to meet the Sr. Divisional Engineer by the Office Superintendent of the Senior Division office.

27. That your applicant begs to state that in his appeal dtd. 15.7.2002 he has stated everything before the Sr. Divisional Engineer how your applicant was debarred from performing his duty since 15.5.2002 and how he was forced to carry out his transfer order from Kampur to Laopani without any official order and without any formal communication and only he was forced to go to Laopani from Kampur by the Incharge of Gang No. 25.

A copy of the appeal dtd. 15.7.2002 is enclosed herewith along with the registered receipt which are marked as Annexures 2 2 and 2/A respectively.

28. That your humble applicant begs to state that your applicant is a peace loving and ~~law~~ ^{law} abiding citizen and there is no adverse remarks against your applicant. But there was a report against

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Anis Zamel

Sri Jauhar Jha from the Police Station of Kampur which was addressed to PWI- I. The said report was submitted by the officer incharge of Kampur Police station against Sri Jauhar Jha and it was requested by the police officer in his report to transfer sri Jauhar Jha from Kampur Railway station to maintain the peaceful ~~at~~ atmosphere in the locality.

A copy of the police report is enclosed herewith and marked as Annexure- 3.

29. That your applicant begs to state that though there was a police report against Sri Jauhar Jha , the railway authority has not taken any action against the said Sri Jha who is mainly responsible for polluting the atmosphere in Kampur Railway station colony and for which there was a report from the police after investigation in many cases. But Sri Jha is still continuing in the said Kampur railway station though there was earlier a transfer order which was ultimately cancelled by the authority. It may be mentioned herein that Sri Jha may be transferred from Kampur railway station as he has no school going children at present. On the other hand, the eldest son of your applicant is a student of Class IX in Kampur Higher Secondary School and in Laopani there is no school within the radius of 5 KMs from Laopani station. The second son of your applicant is also a student of Class VII in Kampur Higher Scondary School .

30. That your humble applicant begs to state

state that from 15.5.2002 your applicant is running from pillar to post for redressal of his grievances but he was not given a fair and proper treatment by the respondents and he was not allowed to meet any of the officers for which the applicant had to file an appeal before the Sr. Divisional Engineer that too by a registered post. But still no action is initiated and no order has been communicated to your applicant and the applicant is not allowed to perform his official duty in a manner which is not proper and against the rule of law.

31. That your humble applicant begs to state that he is still attending his office every day with a hope to get any reply or order from the office but he was not allowed to perform his duty at Kampur railway station in Gang ND. 25 under which your applicant was working up to 14.5.2002. Your applicant was never taken any leave from the office and on 14.5.2002 was a week end rest day as per roster of duty in which your applicant was working up to 14.5.2002. But on 15.5.2002 he was debarred from performing his duty and till date he was not allowed to perform his duty for the reasons best known to the authority.

32. That your applicant begs to state that as your applicant was illegally debarred from performing his official duty, he tried to meet the PWI 11, Chapormukh and the Sr. Divisional Engineer,

AC
Anisul Zaman

Lumding ,but he was not allowed to meet either the PWI- 1 at Chapormukh or the Sr. Divisional Engineer and as such, your applicant submitted his application in writing , but the applications were submitted under registered post. There is no other alternative but to submit the application under registered post as his application was not accepted either by the office or by the PWI and he could not meet the Sr. Divisional Engineer,Lumding.

33. That your humble applicant begs to state that as your applicant ~~has been debarred~~ is not allowed to perform his duty from 15.5.2002 and your applicant has submitted the appeal before the authority on 15.7.2002 and till today no order was issued nor any fofmal communication was issued to your applicant and to allow the applicant to perform his official duty ,your applicant has no other alternative and efficacious remedy, but to file this application before this Hon'ble Tribunal for redressal of his grievances and to allow him to attend to his duties.

V. LEGAL GROUNDS FOR RELIEF:-

- a) For that your humble applicant is debarred from performing his duties illegally and without any authority of law from 15.5.2002 and he was not allowed to meet the PWI- 1 at Chapormukh and the Senior Divisional Engineer, Lumding.
- b). For that your applicant was debarred from performing the official duty illegally by the authority

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Anis Zameel

and no office order was issued to your applicant inspite of the application submitted by the applicant before the authority.

c) For that your applicant is a regular and permanent employee of the railway who was working as gangman ~~and~~ at Gang No. 25 of Kampur railway station up to 14.5.2002 and thereafter he was not allowed to perform his duties for the reasons best known to him.

d) For that your applicant is entitled to perform his official duty as per law after availing a week end rest as per roster and your applicant has availed the week end rest on 14.5.2002 and on 15.5.2002 your applicant was told by the incharge not to allow to perform his duty as per order of the PWI- 1. But the order was neither communicated to the office nor any order was handed over to your applicant for the reasons best known to the respondents.

e). For that the Sr. Divisional Engineer is the ultimate authority and the Head of the Department before whom your applicant has submitted an application on 15.7.2002, but thereafter also no reply was received by your applicant and the applicant was debarred from performing his duty for which he is legally intitled to as a regular gangman and not as a casual gangman.

28
Avisis Zamed.

f) For that in any view of the matter, your applicant is entitled to perform his duty in Kampur Railway Station in Gangma No. 25 . Till 14.5.2002 he was working in the same place, and no formal order of transfer nor order for absence was issued and your applicant regularly attending the office for performing his duties ,but he was not allowed to perform his duties.

g). For that your applicant was not allowed to put his signature in the attendance register without any reason and no order is issued to your applicant officially in writing in spite of the application submitted by the applicant before the PWI- 1 and the Sr. Divisional Engineer, Lumding.

VI. DETAILS OF REMEDY EXHAUSTED:-

There is no remedy except filing this application before this Hon'ble Tribunal as your humble applicant exhausted all the remedies available to him.

VII. MATTERS NOT PENDING IN ANY OTHER COURT /TRIBUNAL :

The applicant declares that he has not filed any other application before any court/tribunal.

VIII RELIEF PRAYED FOR:-

That the respondents may be directed to allow the applicant to perform his official duty immediately and to mark "Present" from 15.5.2002 as he was

21
Anisies Zamel

regularly attending office for duties ,but he was prevented from performing his assigned duty by the authority without any legal authority of law, and to direct to pay regular salary as a regular employee from 15.5.2002 onwards as your applicant is regularly attending his duty at Kampur in which station he was posted till today and/or to pass such further order or orders as your Lordships may seem fit and proper.

IX. INTERIM RELIEF PRAYED FOR:-

NIL

X PARTICULARS OF THE POSTAL ORDER:-

1. Postal order No. 7 G 576468.
2. Date of issue:- 23.7.2002
3. Issued from:- G.P.O., Guwahati.
4. Payable at Guwahati.

XI. DETAILS OF INDEX:-

An index showing the particulars of the document is enclosed.

XII LIST OF ENCLOSURES:-

As per index.

VERIFICATION

I, Shri Anis^u Zaman, Son of Sri Abdul Mazid, aged about 40 years, working as Gangman at Kampur Railway Station, Distt- Nagaon (Assam), do hereby solemnly affirm and state as follows:-

1. That I am the applicant in the above application and as such, I ~~am acquainted with the facts~~ and circumstances of the case.
2. That I am fully competent to verify this application and I do hereby verify this application as true to my knowledge and belief and I have not suppressed any material facts.

And I sign this verification on this the 29 th day of August, 2002 at Guwahati.

Place:- Guwahati

Date:- 29.8.2002

Anis^u Zaman
Declarant.

18
Regd. Post with A/DTo,
(Shri Mohan Deoraja P.W.I.-1
N.F. Railway, Chaparmukh.Through Shri S.K. Roy P.W.I. (E), N.F. Railway Chaparmukh
Dated Kamrup the 29th day of May, 2002.Sub:- Application for permission to join on duty.

Sir,

Most humbly and fervently I beg to state that I am a Senior Trackman and I have been doing my duty as a senior trackman, very sincerely and complying with each and every orders of the authority under the Gang No. 25 at Kamrup upto 12-5-2002, but while I have gone to join my duty on 13-5-2002 the PWI-(E) N.F. Railway Chaparmukh verbally ordered me not to join my duty until further orders without showing any reasons. Since then I am absenting in my duty as per the verbal order of the said PWI (E).

That Sir, I have several times requested the said PWI (E) to allow me to join duty but the said PWI (E) still does not allow me.

That Sir, I am very poor man. There are four members in my family namely, my wife, my two sons, who are reading in class IX. My wife's operation was recently done. I am the sole earning members of my family and I am bread winner of my family. So my family is suffering great hardship in livelihood. I have no any other source of income except my service salary. Also my whole family including myself depends upon my salaries in livelihood.

Under the circumstances set forth above I humbly fervently pray you to kindly allow me to join my duty and help my poor family in their livelihood.

And for this act of your kindness I am in duty bound shall ever pray.

Yours faithfully,

Anisus Zameel

29.5.2002

(Mr. Anisus Zameel)
Senior Trackman
Under Gang No. 25, Kamrup
rent of Railway Quarter,
Kamrup, Nagaon Assam.

Copy to:-

1. Sri Mohan Deoraja, PWI-I
N.F. Railway, Chaparmukh for
information & necessary action.

Anisus Zameel

29.5.2002

(Mr. Anisus Zameel)
Sr. Trackman Under Gang No. 25
Kamrup.

Attended
P. S. Mohan
Adv.

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SHARDA JM 05/05/2002 12:05

HAGAON HPO (782001)
 RL B 6349
 Counter No:2, CP-Code:20
 To: S K ROY, CHAPRA MUKH
 CHAPRA MUKH



Wt: 10 grams,
 PS: 21.00, , 29/05/2002, 12:43
 Have a nice day

HAGAON HPO (782001)
 RL B 6350
 Counter No:2, CP-Code:20
 To: M DEORAJA, CHAPRA MUKH
 CHAPRA MUKH



Wt: 05 grams,
 PS: 21.00, , 29/05/2002, 12:43
 Have a nice day

Attested
 R. Sharma
 Adv.

To

The Sr. Divisional Engineer,
N.F. Railway, Lumding,

Sub:- Appeal against the illegal action of PWI(E),
Chapormukh.

Sir,

Most humbly and respectfully I beg to state the following few lines for favour of your kind consideration and necessary action.

1. That Sir, I myself Sri Anisuz Zaman and Shri Jauhar Jha both are working as Gangman at Kampur under the Permanent Way Inspector of Chapormukh JN.
2. That Sir, on 28th March, 2002 a quarrel took place between the family members of myself and my neighbour Sri Jauhar Jha regarding some small matter and taking advantage of this quarrel, the PWI, Chapormukh threatened us to transfer elsewhere.
3. That Sir, Sri Jauhar Jha and his family members always started quarreling with my family members unnecessarily and that it leads to enmity between us from 12.5.2002 while my son Arifuz Zaman who is a student of Class IXth in Kampur Higher Secondary School came from the school, one Sri Ratul Deka who was engaged by Sri Jauhar Jha, Gangman hit my son by the Motor-cycle which caused serious injuries to my son. At the time of incident I was on duty and the incident took place on the road. The police came and started investigation and on the basis of the information received from the public Sri Ratul Deka, owner of the motor cycle and Sri Jauhar Jha was arrested by the local police in connection with the said case. The police

Altered
R S Mahdy
Adv.

has taken up the investigation by their own and I have not submitted any ejahar or any report to the police. The police only called me for a statement. As I was not present at the scene of accident, I could not mention anything and I took my son for treatment.

4. That Sir, Sri Jauhar Jha Gangman of Kampur was in the police lock up on 12.5.2002 and on 13.5.2002 Sri S.K. Roy, PWI(E) Chapormukh came to Kampur and on arrival he came to know about the accident of my son. Then Sri S.K. Roy came to my quarter to see my son and he advised me to take rest on 14.5.2002 as it was the rest day for me and the PWI^(E) instructed me to take care of my son for better treatment.

5. That Sir, on 15.5.2002 when I came to report for my duty after availing rest on 14.5.2002 the gangman incharge (of my gang) instructed me not to go for duty as it was ordered by PWI(E), Chapormukh that I may be transferred to Laopani. But no formal order was issued to me. Then I tried to contact the Asstt. Engineer, Jagiroad as I was not allowed to join my duty after availing leave. But the office clerk of AEN office, Jagiroad did not allow me to meet the Asstt. Executive Engineer, Jagiroad as no formal order was issued to me and no Memo was served upon me. Then again, I tried to contact PWI(E) on 21.5.2002 but the said PWI also did not pass any order for my resumption of duty. Only I was told by the PWI(E) to move from Kampur to Laopani as I have been transferred to Laopani. But no office order was issued in my favour transferring me to Laopani.

Altered
R. Mahab
Jdu.

- 2 -

6. That Sir, on 29th May 2002 I have submitted an application for joining my duty in the office of the PWI(1) at Chapormukh under registered post as I was not allowed to join my duty by Sri S.K. Roy, PWI(E)

7. That Sir, the said application was sent by registered post, and a copy of the said application was also submitted to Sri S.K. Roy PWI(E) P.N.F. Railway Chapormukh. But till today no order has been issued as yet either by the PWI(E) or by PWI(1) or I am allowed to meet the Asstt. Executive Engineer at Jagiroad.

It may be mentioned herein that as against the illegal ~~action~~ action of Sri Jauhar Jha several gangmen and ^{the} railway staff of Kampur, Railway Station lodged complaints to your honour. In their complaint it was also stated that how my son was hit by the motorcycle of Ratul Deka and Ratul Deka was engaged by Sri Jauhar Jha as stated before the police by Sri Ratul Deka. On the basis of the statement made by Ratul Deka, Sri Jauhar Jha was arrested by the police, and for the reasons of his arrest I am unnecessarily harassed by the PWI(E) and I have been transferred by the PWI(E) from Kampur to Leopeni and Sri Jauhar Jha who is the culprit in connection with the police case is allowed to stay in the same place of Kampur in ^{spite} ~~respect~~ of various complaints lodged by the railway staff to your honour. Now, neither I am allowed by the PWI(1) to perform my duty at Kampur nor my salary bill is prepared from 15.5.2002 and I am pressing hard for maintaining my family.

Attended
R.S. Thakur
Adv.

It is, therefore, prayed before your honour to conduct an enquiry for the incident and to take report independently and do justice in this case so that I am a poor paid employee may not suffer in the hands of PWI(E) as I was not allowed to perform my duty either at Kampur or at Loopani and I ^{am} suffering a lot for not attending my duty at Kampur from 15.5.2002. I hope and trust, that being a senior officer and the head of the department will be pleased to allow me to perform my duty at Kampur and will be pleased to pass necessary orders directing the PWI(E) to allow me to continue my service at Kampur and to treat the period from 15.5.2002 as on duty considering the facts and circumstances of this case and for which I shall be grateful to you.

Yours faithfully,

Anisuz Zaman
(Anisuz Zaman)
Senior Track Man, 15.7.20
Under Gang No. 25, Kampur,
Distt. Nagaon.

Attended
R.S. Thakur
Adv.

Attached
 X Stinky.
 Adv.

बीमा नहीं NOT INSURED		क्रमांक 3980
प्रमाणित एवं डाक टिकटों का मूल्य Amount of Stamps affixed	रु १० Rs. 10/-	डाक No.
प्राप्त किया Received & Registered	प्राप्त किया Received & Registered	तारीख मोहर Date Stamp
प्रानेवाले का नाम Addressed to	प्रानेवाले का नाम Addressed to	प्रानेवाले का नाम Addressed to
प्रानेवाले का नाम Addressed to	प्रानेवाले का नाम Addressed to	प्रानेवाले का नाम Addressed to

- 10 -

ANNEXURE- III

To

The P.W.I- 1
Chapormukh Railway Station,

Dated Kampur P.S. 25th May, 2002.

Sub:- Report against the Gangman Sri Jauhar Jha
and his wife of Kampur Railway Station.

Sir,

I have the honour to report that the gangman Sri Jauhari Jha of Kampur Railway Station residing at Kampur Railway colony quarter created trouble among the locality of the colony as well as the adjacent ~~xxxx~~ residing families since 7/8 months back. His wife used ~~xx~~ such slang language which are not tolerable by the locality.. It is the jurisdiction of the GRPF There is no any GRPF at Kampur Railway Station, the wife of Sri Jauhar Jha stated that the local police could not do anything . At any moment there is any ^{occupied} serious breach of peace in that area.

Therefore, I pray that necessary action may kindly be taken immediately to prevent any serious incident and oblige.

Yours faithfully,
Sd/- Illegible,
O/C, Kampur P.S.

Copy to:-
S.R.P. Pandu for information and taking necessary
action.

Sd/-

Alleged
R Sthabur
Adv.



To the P.W. - 5 Chapasemukh Rly Station
Dated Kamrup P.S. the 20th May/2002.

Sub: Report against gangman Sri Janshar Jha
and his wife of Kamrup Rly station.

Sir,

I have the honour to report that gangman
Sri Janshar Jha of Kamrup Rly station residing
at Kamrup Rly colony creates great trouble
among the locality of the colony as well as
adjacent residing families since 7/8 month back.
His wife used such strong language which are
not tolerable by the locality. It is the jurisdiction
of G.R.P.F. There is no any G.R.P.F. of Kamrup Rly
station. Wife of the Janshar Jha stated that local
police could not do anything. At any moment
there is any serious breach of peace occurred
in that area.

Therefore I pray that necessary action
may kindly be taken immediately to prevent any
serious incident and oblige.

Yours faithfully,

Na

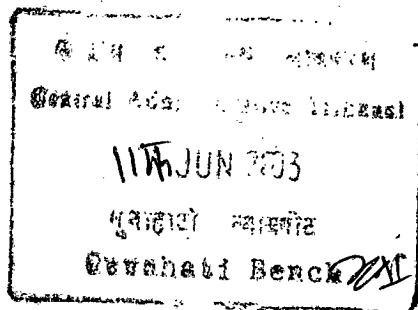
Officer In Charge
Kamrup Police Station
Nagpur (Asam)
Date: 20/5/2002

Copy to the SRP pander

and necessary action

Officer In Charge
Kamrup Police Station
Nagpur (Asam)
Date: 20/5/2002

Attended
R. S. Haldy
Adv.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 283/2002

Sri Anisuz Zaman

-VS-

Union of India & Ors
WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS NO. 1 TO 4.

1. That the above respondents have received the copy of the OA filed by the applicant and have gone through the same. Save and except the statement which are not specifically admitted hereintelow, rests may be treated as total denial. The above respondents have also denied the statements made without any supporting documents.
2. That with regard to the statement made in para I, II and III the answering respondents do not admit anything contrary to the relevant records.
3. That with regard to the statement made in para (V.1 and IV.2 offer no comment on it.
4. That with regard to the statement made in para IV.3 of the OA the answering respondents while denying the contentions made therein beg to state that the applicant is at a habit of creating trouble to his neighbours and his fellow gangman. The respondent No 5. on 24/11/2002 lodged an F.I.R. against the applicant stating that the applicant assaulted him and his wife causing serious injury. In fact, the other gangman of the said colony also made numbers of complaints against the applicant. Series of representations have been received from the said gangmen against the applicant, alleging that he is in the habit of causing nuisance to the said Railway Colony. It is stated that the

Filed by
Shyam Kumar
Advocate
3/5/03
Souvikta Varayan Ray
Divisional Personnel Officer
N.F. Railway, Lumding

applicant in this OA has admitted the fact that he engaged himself on some quarrel on flimsy grounds with his neighbour.

5. That with regard to the statement made in para IV.4 of the OA the answering respondents while denying the contentions made therein beg to state that by and order dated 20.5.2002 the applicant was transferred from Gang No.25 to Gang No. 24 within the rang about 5 K.M. However, the applicant apprehending his transfer kept on absenting himself from duty w.e.f. 13.5.2002 without any intimation and permission. The aforementioned order dated 20.5.2002 was proceeded by another similar order dated 13.5.2002 but the applicant never received the copies of the said transfer orders. Situated thus the copy of the said transfer order was pasted in his residence and in the notice board where he last worked. The refusal of service was in fact witnessed by his 4 colleagues.

A copy of the said transfer order dated 20.5.2002 indicating the signature of the witness is annexed herewith and marked as Annexure- R/1

6. That with regard to the statement made in para IV.5 of the OA the answering respondents while reiterating and reaffirming the statement made above beg to state that the contentions raised by the applicant is not correct. It is also pertinent to mention here that taking into consideration the repeated complains made by the other Gangman it can be safely presumed that the respondent No.5 never caused any disturbance to the present applicant or any other Gangmen. However, since the dispute arose outside the duty hours and same were personal in nature, it became difficult for the respondents to take action against those

Soumitra Narayan Ray
Divisional Personnel Officer
N.F. Railway, Lumding

complains.

7. That with regard to the statement made in para IV.6, IV.7, IV.8 & IV.9 of the OA the answering respondents while denying the contentions made therein beg to state that the contention raised by the applicant in this para has got nothing to do with the service conditions of the applicant as the matters are personal and this Tribunal has got no jurisdiction to entertain these matter as same thus fall under Section 14 (c) of the Administrative Tribunal Act, 1985.

8. That with regard to the statement made in para IV.10 to IV.14 of the OA the answering respondents while denying the contentions made therein beg to state that the statement highlighted by the applicant has got no relevancy in the present case and those statements are not correct and hence denied.

9. That with regard to the statement made in para IV.15 of the OA the answering respondents while denying the contentions made therein beg to state that after issuance of the transfer order dated 13.5.2002 the applicant left the office and till date he has not reported to his duty.

10. That with regard to the statement made in para IV.16 of the OA the answering respondents while denying the contentions made therein beg to state that the applicant refused to accept the said transfer order dated 13.5.2002 and he left office without any intimation. The PWI (west) Chapormukh while on duty came to the Kamrup Railway Station and visited the Railway Quarter of the applicant and tried to serve the copy on the applicant in his residence, but he refused to accept the same. Having no other alternative the said authority had to serve the copy by posting the same in

Soumitra Narayan Ray
Divisional Personnel Officer
N.F. Railway, Lumding

his residence and in the notice board.

11. That with regard to the statement made in para IV.17 of the OA the answering respondents while reiterating and reaffirming the statement made above beg to state that in terms of the transfer order dated 13.5.2002 the applicant was transferred and spared from Gang No.25 and as such he was to report for duty in Gang No.24 (new place of posting) but the applicant neither reported duty in Gang No.25 nor in Gang No.24 till date.

12. That with regard to the statement made in para IV.18 to IV.23 of the OA the answering respondents beg to state that in terms of the transfer orders dated 13.5.2002 and 20.5.2002 the applicant never resumed his duty and the fact of his absence was never made known to the authority. The applicant as per the rules is required to present himself by filing joining report but no such joining report was submitted by the applicant and he remained absent unauthorisely to avoid the order of transfer.

13. That with regard to the statement made in para IV.24, IV.25, IV.26, IV.27 of the OA the answering respondents while denying the contentions made therein beg to state that the applicant submitted the Annexure-1 representation dated 29.5.2002 praying for allowing him to resume duty, but he never presented himself in the office. It is pertinent to mention here that even for drawal of salary he never reported to the office.

14. That with regard to the statement made in para IV.28 of the OA answering respondents while reiterating and reaffirming the statement made above beg to state that since the applicant never presented himself before the authority for joining duty, it was not possible for the respondents to

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Soumitra Verayam Ray
Divisional Personnel Officer
M.F. Railway, Lumding

allow him to resume duty. It is stated that the distance between Gang No.25 and 24 is around 5-6 K.M. and taking into consideration the aforesaid minimum distance the applicant was transferred in the interest of public.

15. That with regard to the statement made in para IV.29 of the OA the answering respondents beg to state that from the statement made by the applicant it is clear that the applicant is not happy by the said order of transfer which he stated in the earlier paras as not received. That applicant had the knowledge of the aforesaid order of transfer dated 13.5.2002 on the same dated while was on duty but when it was made ready for service to him the authority found that he left duty before duty hours and till date he has not returned to his duty. The reasons stated by the applicant for allowing him to remain in Gang No.24 has got no basis. The order of transfer dated 13.5.2002 which was followed by another order dated 20.5.2002 were issued in the interest of public and he was posted at the nearest available place of posting so as to avoid any hardship.

16. That with regard to the statement made in para IV.30 to IV.33 the answering respondents while denying the contention made therein begs to state that on 13.5.2003 the applicant worked for some time but when the official concerned tried to hand over him the copy of the transfer order, he refused to accept the same and left the office without any intimation, and till date he has not submitted proper application for resumption of duty nor presented himself before any authority for his joining.

17. That with regard to the statement made in para V to VIII of the OA the answering respondents deny the correctness of the same and state that since the applicant

Savitri Narayan Roy.
Divisional Personnel Officer
N.F. Railway, Lumding

has suppressed the material facts before the Hon'ble Tribunal he is not entitled to any relief.

18. That the answering respondents beg to state that the applicant while preferring the Original Application has suppressed the material fact regarding the receipt of the transfer order and thereby sought to seek redressal of his grievances regarding regularisation of his absence period for which already a proceeding has been initiated. The applicant admittedly has not come before this Hon'ble Tribunal, with clean hand and as such he is not entitled to any relief whatsoever. It is stated that the applicant who has admittedly kept himself away from duty and kept on requesting the authority for resumption of his duty without presenting himself physically before the authority, in such a situation it is difficult for the authority to allow him to resume duty since there is no order of suspension in existence it is the duty of the applicant to present himself physically before the authority instead of submitting registered letter. Under the peculiar facts and circumstances this OA deserves to be dismissed with cost.

19. That the answering respondents beg to state that the OA is premature and beg for non-joinder of necessary parties so also the OA is hit by the principles of waiver, acquiescence and estopped and same is liable to be dismissed with cost, with a further direction to the applicant to resume his duty and transfer place of posting without further delay and to participate in the departmental proceeding.

VERIFICATION

I Shri Somendra Narayan Ray, aged about 59 yrs. years, son of Late Suresh Ch. Ray, resident of Lumding, presently working as Divisional Personnel Officer N.F. Railway, Lumding do hereby verify and state that the statement made in paragraphs 1-3 and 19. 11, 12, 13, 14, 15, 16, 17, 18 are true to my knowledge and those made in para 4, 5, 6, 7, 9, 10 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. I am also authorised and competent to sign this verification on behalf of all the Respondents.

And I sign this verification on this 28th day of May, 2003,

Somendra Narayan Ray
Deputy
Divisional Personnel Officer
N.F. Railway, Lumding

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ANNEXURE - R/1

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M.F.M.Y.

Office of the
Assistant Divisional Engineer
Jagiroad.

Dt: 20-05-2002.

OFFICE ORDER.

The following transfer and posting order are issued to take immediate effect.

Shri Anisus Jamal, Sr. Trackman of Gang No. 25 in scale Rs. 2650 - 4000/- under Section Engineer (P. Way)/CPK is hereby transfer and posted in Gang No. 24 under the same subordinate.

[Signature] 20/5/02
Assistant Divisional Engineer
Jagiroad.

NO: E/283/6/JID- 304

Dt: 20-05-2002.

Copy forwarded for information and N/Action to :-

1. Section Engineer (P. Way)/CPK.
2. P/Case.
3. Staff concerned.

[Signature] 20/5/02
Assistant Divisional Engineer
Jagiroad.

Refused to receive

[Signature]
21-5-02
P.W./CPK (E)

Witness

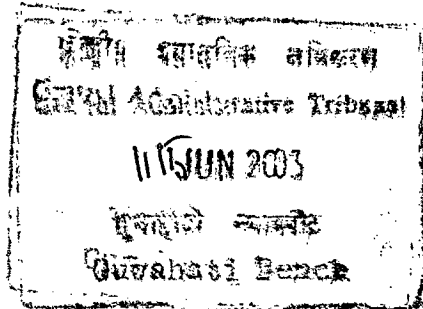
Dimbeswar Das

LTI of Muzishw Dhotak

Deba Kumar Das RAN ST mem.
Bipin C. Samal

Attested

[Signature]
Advocate



48
Filed by -
Sharbun Rahman
Advocate
11/6/2003

District:- Nagaon

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI

Original Application No. 283/2002

Shri Anisuz Zaman Applicant

- Versus -

m The Union of India and ors.

. Respondents

In the matter of:-

Rejoinder filed by the applicant
in reply to the written-statement
filed by the Respondents No. 1 to 4.

I, Sri Anisuz Zaman, son of Abdul Mazid, working as Gangman in Laopani Railway Station and I am the applicant in the Original Application No. 283/02. A copy of the written statement filed by the respondents No. 1 to 4 was served upon me. Having gone through the said written statement, I have understood the contents thereof and I file my rejoinder as follows:-

1. That in reply to the statements made in paragraph 4, it is not correct that the respondent No. 5 lodged an FIR against the present applicant stating that the applicant assaulted the respondent No. 5 and his wife causing serious injury. While the respondents

No. 1 to 4 filed a Written statement, they are not supposed to file statement on behalf of the respondent No. 5 as the Respondent No. 5 Sri Jauhar Jhan was made a party in the Original Application No. 283/02 and a copy of the application was served upon him by the applicant. Sri Jauhar Jha, respondent No. 5 who is the opposite party in O.A. No. 283/2002 has not submitted any affidavit. The written statement filed by the respondents No. 1 to 4 state that the FIR lodged by the respondent No. 5 against the applicant and in the said statement it is stated that the applicant is in the habit of causing nuisance to the said Railway colony which is not correct. Rather, the respondent No. 5 is always creating problems in the railway colony and so, the officer-in-Charge of the Kampur police station lodged a written complaint to the PWI-1, Chapormukh Railway Station that Sri Jauhar Jha, respondent No. 5 created trouble among the locality of the railway colony. So, at any moment it was apprehended that there may be serious breach of peace occur in that area. In the said complaint it was requested to the PWI-1 to take immediately preventive action. (The copy of the complaint submitted by the O/C, Kampur Police Station is enclosed as Annexure- 3, Page 25 in O.A. No. 283/02)

From the above, police report it is established that Sri Jauhar Jha, respondent No. 5 is always creating problems in the railway colony and

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the respondents No. 1 to 4 while certified the action of the respondent No. 5 by stating that the respondent No. 5 lodged the FIR against the applicant. The respondent No. 5 being a party in the above case is totally silent about lodging of an FIR. But the respondent Nos. 1 to 4 have stated in favour of the respondent No. 5.

2. That in reply to the statement made in paragraph 5, it is not correct that the applicant was transferred from Kampur Railway Station to Laopani Railway Station by the order dated 13.5.2002. On 13.5.2002 your humble applicant was performing his duties and there was no transfer order issued to your humble applicant nor it was handed over to your applicant. In fact, on 13.5.2002 there was no transfer order and, as such, the respondents could not produce the transfer order issued on 13.5.2002 but the respondents have annexed the order of transfer issued on 20.5.2002 which your applicant has already carried out. The transfer order dtd. 20.5.2002 was already annexed by the applicant in Misc. Case No. 137/02 as Annexure- B at page 19, which he has already carried out on 20.9.2002 and the resumption order was annexed as Annexure- C in Misc. Case No. 137/02 at Page 20.

It may be mentioned herein that Misc. Case No. 137/02 was disposed of by the Hon'ble Tribunal as the applicant have already carried out the order of transfer, as stated in the petition.

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3. That in reply to the statement made in paragraph 6, it is not correct that there was any complaint from other gangman against the applicant as stated by the respondents No. 1 to 4. As per the police report submitted by the Officer incharge of the Kampur Police Station that all the complaints are against the respondent No. 5. But as the respondents No. 1 - 4 supported the respondent No. 5 for his all illegal activities, the applicant was made a scapegoat and he has been transferred ^{from} to Kampur Railway Station to Laopani Railway Station and the respondent No. 5 was protected by the respondents No. 1 to 4 as per the conduct of the respondents No. 1 to 4. The respondents No. 1 to 4 certified the respondent No. 5 in the written statement in paragraph 4 as well as in paragraph 6. Even if any FIR lodged by the respondent No. 5 as against the ~~respondent~~ applicant as stated in paragraph 4 of the written statement, it was not the respondents No. 1 to 4 that they have any say in this matter, as the respondent No. 5 is silent and not file any affidavit in connection with the above case.

4. That in reply to the statements made in paragraph 9, it is not correct that the transfer order dtd. 13.5.2002 was issued to the applicant and he has not reported for duty as stated in the written statement. The correct fact is that on 13.5.2002 your applicant was performing his duties and no order of transfer was ever issued or handed over to your

applicant and in fact theret/ was no transfer order on 13.5.2002 as stated in the written statement.

5. That in reply to the statement made in paragraph 10, the deponent begs to state that it is not correct that the applicant refused to accept the transfer order dtd. 13.5.2002 and he left the office without any intimation. PWI-(West), Chapormukh came to Kampur Railway Station only on 7.9.2002 and pasted some papers which were a Memorandum of Charges dtd. 6.7.2002 (b) transfer order dtd. 20.5.2002 and those were pasted on 7.9.2002 after filing of the Original Case on 2.9.2002. The applicant filed the Original Application No. 283/2002 on 2.9.2002. The Hon'ble Tribunal asked the Railway Advocate to obtain instruction from the railway and the case was listed on 7.9.02. On 7.9.02 no instruction was received by the railway advocate as a result of which again the case was listed on 16.9.02. In the meantime, on 7.9.2002 the PWI pasted some papers on the front door of the railway quarter of the applicant for which your applicant by filing a Misc. Case No. 173/02 informed the Hon'ble Tribunal about the subsequent development after filing of the Original Application. PWI-(West) Chapormukh did not mention the date on which date he had to serve the copy of the transfer order and it was hanged in the Notice Board. As per the Railway Establishment Manual, the procedure already prescribed how to serve the notice if the applicant is avoiding to receive any order or he is unauthorisedly absent himself from duty. The procedure

prescribed in the Discipline and Appeal Rules and instructions was not followed by the respondents.

6. That in reply to the statements made in paragraphs 11, 12 and 13 of the Written statement it is not correct that the transfer order dtd. 13.5.2002 was not carried out by the applicant as a result of which another transfer order was issued to the applicant on 20.5.2002. In fact, on 13.5.2002 there was no transfer order and till today it was not handed over nor it was submitted before the Tribunal by the respondents. The transfer order issued on 20.5.2002 was pasted at the front door of the residence of the applicant on 7.9.2002 which your applicant has already carried out and performed his duty at Laopani Railway Station continuously for three days on 15.9.02, 16.9.02, 17.9.02 and 18.9.02 with his colleagues Sri Desi Hira, Dagor Hira and Sri Ranjan which can be verified by the Hon'ble Tribunal by examining the above named gangmen. After performing three days duty in Laopani he was obstructed to perform the duty by Sri Bhalua Hira as he was advised by PWI- 1 not to allow your applicant to perform the duty.

7. That in reply to the statement made in paragraph 14, it is not correct that the applicant never presented himself before the authority for joining duty and it was not possible for the respondents to allow him to resume duty. In fact, the applicant has already carried out the transfer order issued on

on 20.5.2002 and he has submitted the joining report in ~~Laopani~~ Railway Station and performed his duty there and so the Hon'ble Tribunal by its order dtd. 17.3.2002 disposed of the Misc. Case No. 137/02 as the transfer order has been carried out, by the applicant.

8. That in reply to the statements made in paragraph 16 the applicant begs to state that while the respondents No. 1 to 4 have already stated in all the paragraphs that your applicant was absent from duty from 13.5.2002 to receive the transfer order. In paragraph 16 the respondents stated that on 13.5.2002 the applicant worked for some time, but the official concerned tried to hand over him the copy of the transfer order which he refused to accept and left the office and till ^{had} date he ~~is~~ not submitted proper application for resumption of duty. The ~~xx~~ applicant always tried to resume his duty and the respondents have illegally obstructed your applicant to perform his duty for which the Original Application No. 283/2002 has been filed by the applicant under the compelling circumstances. Your applicant begs to state that it is not the pleasure of the applicant being a Class-IV staff without getting his salary for no fault of his own since May, 2002 for which this application has been filed before this Hon'ble Tribunal.

9. That in reply to the statement made in paragraph 18 of the written statement, your applicant begs to state that your applicant was obstructed to perform his duties unauthorisedly by the respondents and so from 15.5.2002 your applicant tried to resume his duties and have submitted his application by registered post as nobody was ready to accept his application even. Your applicant had to submit the application one after another by registered post and he was residing in the railway colony at Kampur Railway station which ~~xx~~ was allotted by the department and he was always residing in the same quarter. Respondents No. 1 to 4 never served any transfer order or the Memorandum of charges to the applicant if the applicant is unauthorised absent as per the allegation of the Charge Memorandum which was pasted on the residence of the applicant. The applicant filed the Original Application No. 283/2002 on 2.9.2002 after exhausting all the remedies available to him with a prayer to allow him to perform his duties from 15.5.2002 and when the original application was filed before the Tribunal on 2.9.2002, the Memorandum of charges and the copy of the transfer order was pasted on the residence of your applicant on 7.9.02. So, your applicant filed a Misc. Case No. 137/02 for subsequent development of the subject matter. Your applicant has already submitted reply to the show cause and in his reply your applicant himself demanded an independent enquiry to prove the allegation made in the Memorandum.

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Copies of the reply submitted on 14.9.2002 is enclosed herewith and marked as Annexure- A

Furthermore, your applicant was never placed under suspension till today for the reasons best known to the respondents. If the applicant is unauthorised absent as stated in the Memorandum of Charges, the respondents are not restrained by any authority to take any legal action as per the Railway Discipline & Appeal Rules. The Railway Discipline and Appeal Rules provides to take action against a railway servant who is unauthorisedly absent by issuing the Memorandum of Charges as per the procedure of law. But till today your applicant is not yet suspended. On the other hand, the railway authority respondents No.1 to 4 filed a Misc. Case No. 50/2003 before the Hon'ble Tribunal ~~that~~ ^{prayer} ~~prayer~~ to direct the opposite party - applicant to carry out the transfer order and to direct to participate and co-operate in the proceeding pursuant to the Memorandum of Charges dtd. 6.9.02. Your applicant while submitting his reply on the Memorandum of Charges himself demanded an independent enquiry to prove the allegation levelled against the applicant. But till today no enquiry nothing of the sort was started after issuance of the Memorandum of Charges and in this respect there is no bar imposed by the Hon'ble Tribunal to go ahead with ~~the~~ the enquiry.

VERIFICATION

I, Shri Anisuz Zaman, son of Sri Abdul Mazid, aged about 49 years, working as Gangman at Laopani Railway Station in the district of Nagaon, do hereby solemnly affirm and say as follows:-

1. That I am the applicant in the above application, and, as such, I am acquainted with the facts and circumstances of the case.

2. That I am fully competent to verify this application and I do hereby verify this application as true to my knowledge and belief and I have not suppressed any material facts .

And

I sign this verification on this the 11th day of June, 2003 at Guwahati.

Anisuz Zaman
Declarant

Place:-

Date:-

To,
The Asstt. Divisional Engineer,
Jagiroad, Assam

Reply to the memorandum of charges communicated under No. E. 17412-424
Dated 6.7.2002

Sir,

While I was in my residence that is the departmental quarter which has been allotted to me at the Kampur Railway Station, the above memorandum was found pasted on the door of my official quarter by the PWI-I, Chapormukh. When I was inside my quarter on 7-9-2002, it was not necessary to paste the memorandum of charges which was shown to be issued on 6-7-2002. In the said memorandum of charges, the articles of charges were brought against me mentioning therein that I was absent unauthorizely from the official duty from 14-5-2002 till date. The allegation brought against me is totally false and concocted story as on 14-5-2002, I was availing my weekened rest day after performing my duty and thereafter I was not allowed to perform my duty for the reason best known to you. I personally tried to meet the PWI-I, my controlling officer, then I was not allowed to meet my PWI, Chapormukh and ultimately I sent a registered letter which was duly acknowledged by your office. Thereafter when I couldnot meet anybody I was compelled to submit another letter by registered post to the Sr. Divisional Engineer, Lumding. But neither I was allowed to meet anybody nor any reply has been received from the PWI, Chapormukh. Finding no alternative I filed a case before the Central Administrative Tribunal, Gauhati on 2-9-2002, which was registered as original application No. 283/2002. After filling of the case before the Hon'ble Central Administrative Tribunal on 2-9-2002, you have prepared the chargesheet which was ultimately pasted on the door of my residence showing the date of issue on 6-7-2002.

The allegation which was levelled against me by your so called memorandum of charges which was shown to be issued on 6-7-2002, was not handed over to me nor officially communicated the same to me till date of filing my case on 2-9-2002. As per rule of official communication, if the dilinquent is not available you could have sent the memorandum of charges by registered post or by peon-book as decided by the various courts as to how to communicate the office order. But your tactics failed as the chargesheet was shown to be issued on 6-7-2002, which was not communicated till the date of filling my case. When I filed the case on 2-9-2002, you immediately adopted the idea of pasting the memorandum of charges in front of my quarter on 7-9-2002 showing some witnesses who are working under you. The witnesses who were shown to be signed as witnesses are nobody but your under staff and they are bound to carry out your order, otherwise they know that they will suffer like me.

It is, therefore prayed before you to cancel the memorandum of charges and withdraw the allegation or you must prove it by conducting an independent enquiry as per rule for which I shall be gratefull to you.

Yours faithfully

Sd/ Anisuz Zaman

14-9-2002

certified to be
true copy
Rang Shankar
Thakur
Advocate.