

of 100

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

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 11/2002

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal :: Guwahati Bench
Guwahati

ORDER SHEET

APPLICATION NO. 11/02/2002

Applicant(s) Ashim Kr Deb.

Respondent(s) 2 OL & ORS.

Advocate for Applicant(s) Sri G.K. Bhattacharyya, B. Choudhury

Advocate for Respondent(s) C.G. S.C. & Ry Adv.

Notes of the Registry	Date	Order of the Tribunal
<p>This is to certify that Rs. 50/- deposited vide No. 7653/1740 Dated 1.7.1.02 by Dy. Registrar</p> <p><i>NS</i> <i>17/01/02</i></p>	18.1.02	<p>Heard Mr. G.K. Bhattacharjee learned counsel for the applicant and Mr. S. Sengupta learned Railway counsel for the Respondents.</p> <p>The applicant has challenged legality of the order dated 1.1.2002 Annexure 1 transferring the applicant from the Microwave Organisation in the Telecommunication Department to the post of Safaiwala in the Medical Department. After hearing the learned counsel for the parties the application is admitted. The respondents are directed to show cause as to why the operation of the impugned order dated 1.1.02 shall not be granted. Meanwhile, the operation of the impugned order dated 1.1.02 is stayed till the next date, so far as it relates to the applicant. List on 20.2.02 for the orders.</p>

Steps taken. Notice prepared and sent to Dls for ems of the Respondent No 1 to 5 by Regd A/D.

1/2/02

Sl No 362 N 366
Dtd 8/2/02

lm

CC Shaha
Member

Order dtd. 20/2/02
Communicated to the
Parties Council

do
26/2

20.2.02

The Respondents are yet to file the written statement. Mr. S. Sengupta learned Railway counsel prays for time to file written statement. Prayer is allowed. List on 22.3.02 for orders.

No. written statement
has been filed.

do
21.3.02

In the meantime, the interim order dated 18.1.02 shall continue.


Vice-Chairman

lm

22.3.02

Order dtd 22/3/02
Communicated to the Parties
Council.

do
27/3/02

At the request of Mr. S. Sengupta learned Railway counsel four weeks time is allowed for filing of written statement. List on 26.4.02 for filing of written statement and further orders. Meanwhile, the interim order dated 18.1.02 shall continue.

No. written statement
has been filed.

lm

do
24.4.02

26.4.02

List on 17.5.02 to enable the respondents to file written statement. Meanwhile, the interim order dated 18.1.02 shall continue.


Member

Order dtd. 26/4/02
Communicated to
the Parties Council.

do
29/4

lm


Vice-Chairman

No. written statement 17.5.02
has been filed.

do
16.5.02

Mr. S. Sengupta, learned Railway Standing counsel for the Respondents requests for further time to file written statement. List on 21.6.2002 for orders. Meanwhile, interim order dated 18.1.2002 shall continue.

Order dtd. 17/5/02
Communicated to the
Parties Council.

do
20/5/02

mb


Member

No. w/s has been filed.

do
20.6.02

M

Notes of the Registry

Date

Order of the Tribunal

21.6.02

Written statement has been filed. Case is ready for hearing on 2.8.02.

K. C. Shan Member

21-6-2002

lm

W/s submitted on behalf of the Respondents.

2.8.02

Due to absence of the lawyers, the case is left over to 6/8/02.

~~24.6.02~~

Ms. A. B. 28

6.8.02

As agreed by the learned counsel for the parties the case is adjourned to 23.8.02 for hearing.

Vice-Chairman

lm

23.8.2002

Mr. B. Choudhury appearing for Mr. G. K. Bhattacharyya, learned Sr. counsel for the applicant prays for adjournment of the case on account of his personal ground.

Mr. S. Sengupta, learned counsel for the respondents has no objection.

Prayer is accepted. List the case again for hearing on 13.9.2002.

K. C. Shan Member

bb

10.9.02

List for hearing on 13.9.02.

Vice-Chairman

lm

13-9.

Heard Mr. G. K. Bhattacharyya, (learned) Counsel for the appellant & Mr. S. Sengupta, learned Counsel for the respondent, Hearing concluded, Judgment reserved.

Ms. A. B. 28

Record bearing no. E/283/15600-
P.I. submitted by
Mr. Sengupta, learned Counsel
for the respondent, sent
to handle v.c. along with
the case file.
A. B. 28
13/9.

4

Notes of the Registry

Date

Order of the Tribunal

20.9.02

List on 20.9.2002 in presence of Mr. S. Sengupta, learned counsel for the Railway for *for further hearing with records*


Vice-Chairman

mb

24.9.02

Hearing Concluded,
Judgment reserved.

*mb
A.K. Singh
24/9,*

26.9.02

Judgment delivered in open court, kept in separate sheet. The application is dismissed in terms of the order. No order as to costs.


Vice-Chairman

mb

*Received
Bikram Choudhary
1/10/02*

6/11/2002

Copy of the Judgment has been sent to the D/Sec. for serving the same to the L/Os. by the Regdn.

AS

b

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~No. 11.. of. 2002..&x

DATE OF DECISION 26th Sept 2002

Sri Ashim Kumar Dev APPLICANT(S)

Mr.G.K.Bhattacharyya & B.Choudhury ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Others. RESPONDENT(S)

Mr.S.Sengupta. 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.

hw

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.11 of 2002.

Date of Order : This the 26th Day of September, 2002.

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

Sri Ashim Kumar Dev
S/o of Sri Amulya Bhusan Deb
Presently residing at Sitalabari
Colony, Lumding. . . . Applicant.

By Sr. Advocate Mr.G.K.Bhattacharjyya & Bikram
Choudhury.

- Versus -

1. Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati.
2. General Manager (P)
N.F.Railway, Maligaon.
3. Medical Director
Central Hospital, Maligaon
Guwahati.
4. Deputy Chief Signal &
Telecommunication Engineer
Microwave, N.F.Railway
Maligaon.
5. Senior Section Engineer (R)
Microwave, Lumding. . . . Respondents.

By Mr.S.Sengupta, learned counsel.

O R D E R

CHOWDHURY J.(V.C.) :

This application under section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the order dated 28.11.2001 passed by the respondent No.2 General Manager (P), N.F.Railway, Maligaon, Guwahati recalling the earlier order dated 31.8.2001 in respect of the inter departmental transfer

Contd./2

and the consequent order dated 1.1.2002 by which the applicant was transferred and posted as Safaiwala under Medical Director, Central Hospital, Maligaon in the following circumstances :

1. The applicant was recruited as Safaiwala a Group "D" post after holding the selection in 23.6.98. The applicant accordingly joined the said post. While serving as such the applicant submitted an application before the respondent No.2 through proper channel praying for his transfer from Safaiwala in H&MI/Pandu/N.F.Railway to MW Organisation under Dy CSTE/MW/MLG on accepting the bottam seniority. The applicant furnished the detail particulars, wherein it was mentioned his date of birth as 11.7.1971 and his date of appointment as 23.6.1998. The said application was duly forwarded by the Medical Director, Central Hospital, Maligaon to the GM(P), Maligaon, N.F.Railway with full service particulars of the applicant. By office order dated 31.8.2001 the respondents acted upon his application and passed an order transferring him from Medical Department to Signal and Telecommunication Department in MW Organisation on his own request and posted as Khalasi in the pay scale of Rs.2550-3200/- under Dy.CSTE/MLG subject to the terms and conditions mentioned in the communication. The said order was passed with the approval of the Chief Communication Engineer the competent authority. Consequent to the aforementioned office order the

applicant was posted as Khalasi in the same pay scale at Lunding under SSE/MW/R/MLG at his own request vide office order No.283/1/2/(MW)Pt.III-629 dated 7.9.2001. In terms of the aforementioned order the applicant was transferred to Telecommunication department at his own request vide order dated 17.10.2001 passed on behalf of the the Medical Director, Central Hospital/MLG. By order dated 10.10.2001 the applicant was spared from the establishment of the Medical Department enabling him to report the new assignment as Khalasi at Dy.CSTE/MW/MLG. The applicant accordingly joined on 29.10.2001. While the applicant was working in the Microwave Department at Lunding he was served with the impugned letter No.E/283/156(N)/Pt.I dated 28.11.2001 addressed to the Medical Director, Central Hospital, Maligaon on behalf of the G.M.(P)/MLG whereby the Medical Director, Central Hospital was informed that the inter department transfer order of the applicant as Safaiwala from Medical Department to MW Organisation as Khalasi at his own request which was issued vide office order dated 31.8.2001 was to be treated as cancelled and the Medical Director was directed not to release the applicant from his end. By the impugned order dated 1.1.2002 the applicant was transferred and posted as Safaiwala under MD/CH/MLG in the same pay scale, legitimacy of which is assailed as arbitrary, discriminatory and unlawful.

2. The respondents submitted its written statement and contended the case of the applicant. In the written

statement the respondents pleaded that after serving for about 3 years 14 days in the parent organisation i.e. Medical Department as Safaiwala he applied for inter departmental transfer as Khalasi to another department under Dy.CSTE/Microwave/Maligaon, N.F.Railway and his application was forwarded by the Medical Director, Central Hospital, N.F.Railway, Maligaon vide letter dated 21.8.2001. His application for such inter-departmental transfer was however escaped proper scrutiny in office and his transfer request was wrongly processed though the Railway Board Orders on the subject clearly stipulated that request for change of category from Safaiwala was not to be entertained for five years from the date of their appointment. In the meantime transfer order was issued and the applicant joined in the Signal Department in the new category post i.e. Khalasi under Signal Department. On detection of the above mistake, order was issued by General Manager (P), Maligaon on 28.11.2001 cancelling the previous order of change of category and the inter departmental transfer and DSTE/MW/Maligaon also issued order dated 14.12.2001 for repatriating the applicant to his former post of Safaiwala in his parent department. In the written statement the respondents also stated that several similar requests from the staff who were senior in service to that of the applicant in Medical as well as other departments were also lying pending and had not processed keeping in view the Railway Board instructions. Since the order was

passed erroneously the impugned steps were taken by the respondents bonafide with a view to protect the public interest.

3. Mr.G.K.Bhattacharyya, learned Sr.counsel for the applicant assisted by Mr.Bikram Chaudhury, assailing the impugned order contended that the authority fell into obvious error in reviewing its own order to the detriment of the interest of the applicant in a most unlawful fashion. Mr.G.K.Bhattacharyya, learned Sr. counsel submitted that all the relevant facts were placed before the authority and the entire service profile of the applicant was known to the authority and thereafter it took a decision on assessing all the relevant factors. Mr.Bhattacharyya submitted that the plea raised by the respondents for reviewing its order for not completing five years of service cannot be sustained on the face of its own Railway Board policy decision dated 29.8.1997. The learned counsel submitted that the restriction of five years service is not a complete embargo. The aforementioned restriction is not to be construed to arrest the movement of Safaiwala to other categories. Mr.Bhattacharyya also brought ^{to} my notice to the procedure in respect of recruitment of Group-"D" Railway servant and more particularly, the provision mentioned in Clause (xiv) pertaining to Recruitment by transfer. The learned counsel submitted that under the aforementioned provisions Safaiwala of all departments may be transferred

to the Mechanical Engineering, and Transportation (Power) Deptt., Traffic & Commercial Deptt. and to the work side of Engineering Deptt. Such transfers should not, however, exceed 10% of the annual intake of Safaiwala provided the following conditions are fulfilled :

"(a) be literate where necessary.

(b) possess physical standards prescribed for recruitment to that Department/workshop.

(c) be less than 35 years of age except in the case of staff transferred to categories lying in the channel of promotion of running staff for which age of 28 years would apply; the age limit being relaxed by 3 years in the case of persons belonging to scheduled castes and scheduled tribes only in the case of transfer to categories lying in the channel of promotion of running staff and not in any other cases; and

(d) have the aptitude for work to which they are to be transferred."

4. Countering the submission of Mr.G.K.Bhattacharyya, learned Sr. counsel for the applicant, Mr.S.Sengupta, learned Railway Standing counsel submitted that five years restriction would not construe to stop the movement of Safaiwala to other categories provided the special provision mentioned in Indian Railway Establishment Manual, Vol-I, Revised Edition 1989 thereof are complied with. Mr.Sengupta, learned Railway Standing counsel submitted that as per the correction slip no.132 Para 179 (xv)(A) is substituted indicating the recruitment by transfer. Mr.Sengupta in course of his submission referred to Advance Correction Slip No.132 of IREM, Vol-I (1989 Edition) which is reproduced below :-

(A) Gangmen in regular employment may be transferred to the Mechanical Engineering and Transportation (Power) Deptt., Traffic & Commercial Deptt. and to the Works side of Engineering Deptt. Such transfers should not, however, exceed 10% of the annual intake of Gangmen nor 10% of annual intake in the relevant recruitment categories of each of these Departments to which Gangmen are transferred. Khalasis of the Stores Department and Safaiwalas of all Departments may likewise be transferred to the Mechanical Workshops, but will be reckoned against the same 10% annual quota of vacancies in the Workshops as is open for absorption of Gangmen. The Railway servants concerned should be suitable in all respects, i.e.

- (a) be literate where necessary,
- (b) Possess physical standards prescribed for recruitment to that Department/Workshop,
- (c) have the aptitude for work to which they are to be transferred.
- (d) be at least 45 years of age in the case of Gangmen and 35 years of age in the case of Stores Khalasis and Safaiwalas of all Deptts.

(B) regular Gangmen who are transferred to Works Branch/Workshops/Traffic and Commercial Deptt. will count half the length of continuous service for seniority in the new cadre in which they are absorbed. Similarly Stores Khalasis and Safaiwalas of all Departments who are absorbed in the Workshops against the 10% quota will count seniority to the extent of half the length of continuous service. However, Gangmen above the age of 45 years and Store Khalasis and Safaiwalas upto the age of 33 years who are transferred over and above the quota of 10% will not be eligible to count any portion of their service for the purpose of seniority."

Mr.Sengupta submitted that the applicant did not complete 35 years as on the date when the application was made or on the date on which the order was reviewed. Since the applicant did not complete 35 years at the time when

application was made or when the order was reviewed and also the 5 years service as pointed out, the authority thought it fit to review its earlier order.

5. On the conspectus the application of the applicant for his transfer from Medical Department as Safaiwala to the Mechanical Workshop was considered and accordingly order was passed to that extent. But subsequently, when it was brought to the notice of the authority the authority passed the impugned order. The records indicated that the applicant submitted application for transfer on 31.7.2001, on that day the applicant was 3 years 14 days as Safaiwala. The Medical Department forwarded his application on 21.8.2001. The authority processed it on 22.8.2001 and accordingly was passed on 31.8.2001. The matter was thereafter again brought to the notice of the authority in the Note sheet dated 12.11.2001. The concerned authority examined all the aspects and it was observed that the order dated 31.8.2001 was issue in violation of the Board Circular and accordingly the authority cancelled the same.

6. From the materials made available to me it was apparent that the applicant was not eligible to be considered for transfer to the Mechanical wing. The authority, however, at the first instance accepted the application of the applicant. Mr.G.K.Bhattacharyya, learned Sr. counsel for the applicant submitted that the authority accepted the request of the applicant and passed the order dated 31.8.2001 with full responsibility. Though

the guidelines of transfer prescribed the period of service, the employer was within its competence to relax the same and the authority, by accepting the request of the applicant, consciously passed the order dated 31.8.2001 on thereby impliedly relaxing the condition of the Railway Board Circular, submitted Mr. Bhattacharyya. However, the records placed before me did not indicate any such exercise on the part of the authority. The application for transfer from Medical Department to Mechanical wing of the applicant was accepted in a routine manner without addressing its mind to the eligibility conditions. It only considered the vacancy positions. Admittedly the applicant did not complete five years as Safaiwala from the date of his appointment. As per the Railway Board's letter No.E(NG)I-97/TR/39 dated 29.8.97 the request for change of category from Safaiwala could not be considered for five years from the date of appointment. Mr.G.K.Bhattacharyya, the learned Sr. counsel, referring to Paragraph 2 of the said letter submitted that it did not deter movement of Safaiwalas to other categories as specific provision of IREM-1989 vide Para 179 (xv)(A). Needless to state that such transfer was to be confined 10% annual quota of vacancies in the workshops, which is not the case here. Subsequently, when the matter was brought to the attention of the authority, corrective measures were taken. There is no illegality in reviewing an administrative decision in the facts and

circumstances of the case.

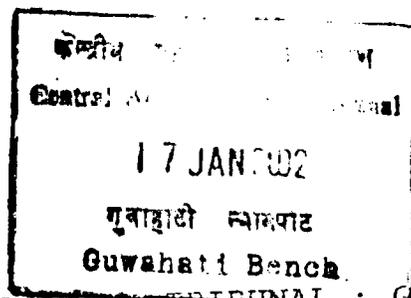
For all the reasons stated above, the application is liable to be dismissed and accordingly the same is dismissed. There shall, however, be no order as to costs.

The interim order passed on 18.1.2002 stands vacated.



(D.N.CHOWDHURY)
VICE CHAIRMAN

BB



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH, GUWAHATI

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

O.A. No. 11 /2002

Sri Ashim Kumar Deb, ..Applicant

-Versus-

Union of India & others ... Respondents

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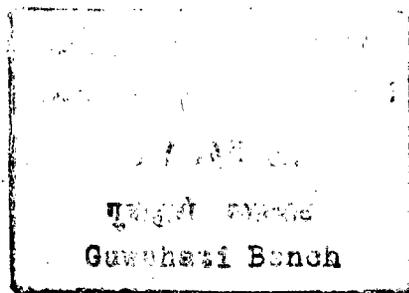
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Filed by

Bikram Choudhury
(Bikram Choudhury)

17-01-02

Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH, GUWAHATI

18
Ashim Kumar Deb.
Filed by the applicant
through Bikram Choudhury
Advocate
17.01.02

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

O.A. No. /2002

Sri Ashim Kumar Deb,
Son of Sri Amulya Bhusan Deb,
Presently residing at Sitalabari
Colony, Lunding.

... Applicant

-Versus-

1. Union of India,
(Represented by the General
Manager, N.F. Railway,
Maligaon, Guwahati).
2. General Manager (P),
N.F. Railway, Maligaon.
3. Medical Director,
Central Hospital, Maligaon,
Guwahati.
4. Deputy Chief Signal &
Telecommunication Engineer,
Microwave, N.F. Railway,
Maligaon.

Contd...

5. Senior Section Engineer (R),
Microwave, Lunding.

... Respondents

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

- (i) Order No. E/283/156(N)/Pt.I dated 28.11.01 passed by the Respondent No.2 cancelling the inter-departmental transfer of the applicant.
- (ii) Office Order No. E/283/1/1 (MW) Pt. VIII dated 1.1.2002 passed by the Respondent No.4 purportedly transferring the applicant from the Microwave Department to the post of Safaiwala under the Respondent No.3.

2. JURISDICTION OF THE TRIBUNAL

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

3. LIMITATION

The applicant further declares that the application is within the limitation prescribed U/s 21

Meaning of the Administrative Tribunals Act, 1985.

Safaiwala

For p. 15 do

Signal & Tel. Dem.

4. FACTS OF THE CASE

- 1. That, the applicant on being selected in a recruitment interview and after completion of all

Contd...

A. K. Dev.

formalities was by order No. E/227/2-Pt.III date 23.6.98 appointed as a Safaiwala in Group 'D' by the Respondent No.3 at Pandu. The applicant had duly joined his duties and he continued to serve the departmental faithfully.

2. That, after working for some years the applicant came to know that there was absolutely no scope for advancement in the Medical Department and as such he on 17.7.2001 submitted an application to the Respondent No.2 through proper channel praying that he be transferred and posted to the Mircrowave Organisation under the Respondent No.4. The aforesaid application was duly forwarded to the Respondent No.2.

Copies of the application and forwarding letter are annexed herewith and marked as Annexure- I & II respectively.

3. That, the office of the Respondent No.2 duly processed the said application filed by the applicant and the Respondent No.2 by his order No. E/283/156 (N) Pt. - I dated 31.8.01 transferred the applicant from the Medical Department to the Signal & Telecommunication Department at his own request and posted him as Khalashi under Respondent No.4. In pursuance to the said order the Respondent No.4 by his office order No. E/283/1/2 (MW) Pt. III-629 dated 7.9.2001 posted the applicant as Khalashi in Lunding under Respondent No.5 at his own request. The

Contd.

A. K. Dev.

Respondent No.3 also by his office order No. E/283/2 (CCNSVY) Part - IV dated 17.10.2001 issued order transferring him to the Telecommunication department and by his order date 19.10.01 spared him from the establishment to report for duty in the telecommunication department.

Copies of the aforesaid communication are annexed herewith and marked as Annexure-III, IV, V, VI and VII respectively.

4. That, the applicant on being spared joined as Khalashi in the Microwave Lunding under Respondent No.5 and his last pay certificate from the Medical department and other formalities for inter-departmental transfer were also completed.

Copies of his joining report and LPC are annexed herewith and marked as Annexure- VIII and IX respectively.

5. That, after joining the Microwave Department at Lunding the applicant has been rendering service and he has received salary from the new department till date. As such, the applicant was surprised when he came to know that the Respondent No.2 by the impugned letter No. E/283/156 (N)/Pt. I dated 28.11.01 addressed to the Respondent No.3 had cancelled the inter-departmental transfer of the applicant. Since the applicant had already joined the new post there could be no question of canceling the said inter-departmental transfer and

Contd..

A. K. Dev.

apparently no action was taken and a copy of the order was not served on the applicant.

A copy of the letter dated 28.11.01 obtained by the applicant is annexed herewith and marked as Annexure-X.

6. That the applicant has now come to know that the Respondent No.4 by his office order No. E/283/1/1 (MW) Pt. VIII date 1.1.2002 has among others transferred the applicant, who is serving as a Helper in the Microwave Department, Lunding to the Medical Department as Safaiwala.

A copy of the said order is annexed herewith and marked as Annexure-XI.

7. That the applicant begs to state that he has aged ailing parents who are dependent on him and he has already started his establishment in Lunding by taking up rented accommodation. The impugned transfer order are apparently arbitrary and passed without jurisdiction and the applicant has been advised that he has a good chance of succeeding in the application and as such unless some interim orders are passed the applicant will suffer irreparable loss and injury.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

I. For that the impugned orders were passed in a most arbitrary manner without proper application of mind and as such the impugned orders are bad in law and are liable to set aside.

II. For that the applicant had submitted an application for his inter-departmental transfer to the Microwave Organisation and the Respondent No.2 after obtaining the approval of Chief Communication Engineer had transferred the applicant from the Medical department to the Signal and Communication Department by accepting bottom seniority of Khalashi in the Microwave Department and he had duly joined the new department and has drawn his salary and as such it is not now open to the authorities to cancel the same and as such the impugned orders are bad in law and are liable to be set aside.

III. For that the authorities after considering the application of the applicant and after obtaining approval from the concerned authorities had issued the inter-departmental transfer order and the applicant had acted on the said orders and as such it is not now open to the authorities to go back and cancel the orders and as such the impugned orders are bad in law and are liable to set aside.

IV. For that since the inter-departmental order was already given effect too and the same cannot be cancelled without any justifiable reason and as such the ~~the same is not effect~~ impugned orders are bad in law and are liable to be set aside.

V. For that the applicant was working in the Microwave Organisation and he was transferred to the Medical Department and the impugned order was passed by the Respondent No.4 who does not have any jurisdiction to pass inter-departmental transfer order and as such the

Contd..

impugned orders having been passed without any jurisdiction is bad in law and are liable to be set aside.

VI. For that in any view of the matter the impugned orders are bad in law and liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED

The applicant has no effective remedy under the Rules.

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

That applicant further declares that he had 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

It is therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the opposite parties to show cause as to why the impugned orders dated 28.11.01 (Annexure-X) and 1.01.02 (Annexure-XI) should not be set aside and quashed and after perusing the causes shown, if any and hearing the parties, set aside the impugned

Contd..

order dated 28.11.01 (Annexure-X) and 1.01.01 and/or pass any other order/orders as Your Lordships may deem fit and proper.

And for which act the applicant as in duty bound shall ever pray.

9. INTERIM ORDER, IF ANY, PRAYED FOR :-

It is, further prayed that pending disposal of the application, Your Lordships would be pleased to stay the operation of the impugned order dated 1.01.02 (Annexure-XI) which has not yet not been given effect to.

10. NOT APPLICABLE

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

I.P.O. No 76SS1740 dated 17.01.02 issued by the Guwahati Post Office payable at Guwahati is enclosed.

12. LIST OF ENCOLOSURES :-

As stated in the Index.

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26

VERIFICATION

I, Sri Ashim Kumar Dev, son of Sri Amulya Bhusan Dev, aged about 31 years, presently residing at Sitalabari Colony, Luming, Dist. Nagaon do hereby verify that the contents in paragraphs No. 1 and 7 are true to my personal knowledge and those in paragraphs No. 2, 3, 4, 5 and 6 are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 17th day of January, 2002 at Guwahati.

Place :- Guwahati.

Date 17.01.02.

✓ Ashim Kumar Dev.

SIGNATURE OF THE APPLICANT.

To

The General Manager (P)
N.F.Railway , MALIGAON, GUWAHATI

Through Proper Channel .

21.8.2001

Sir ,

Sub.- Prayer for posting in MW organization under
DyCSTE/MW/MLG.

I beg to lay before you the following few lines for your kind and
Sympathetic consideration please :-

1. That Sir,I am working as safaiwala under H&MI/Pandu/N.F.Rly.
 2. That Sir, there is no scope for advancement in Medical department.
- And for this I am willing for my transfer in MW organization
Under DyCSTE/MW/MLG on accepting bottom seniority. I therefore,
request you to consider my case sympathetically.

Necessary biodata in support of my candidature is appended below.

- 1.Name :- Sri Ashim Kumar Dev.
- 2.Father's Name:- Sri Anulya Bhusan Dev.
- 3.Date of birth :- 11/07/1971.
- 4.Educational qualification:-Passed class VIII.
- 5.Date of appointment:-23/06/1998.
- 6.Department :- Medical under H&MI/Pandu.
- 7.Place of working:- H&MI/PANDU.
- 8.Cast :- UR.
- 9.Any DAR/VIG :- NO.

With regards,
Your's faithfully

Ashim Kumar Dev.

(ASHIM KUMAR DEV)
Safaiwala/H&MI/PNO
N.F.Railway.

12
12
x (20)

29.10.01
- without authentication

Attested by
Bikram Choudhury
Advocate

N. F. Railway.

Office of the
Medical Director
Maligaon, Guwahati-781011

No. E/283/2 (Censvy) Pt. IV

Dated. 21-08-2001.

To
GM(P)/Maligaon,
N. F. Railway.

Sub:- Inter departmental transfer.

An application submitted by Sri Ashim Kumar Dev, Safaiwala/HQMI/I/PNG under MD/CH/MLG is forwarded herewith for disposal please. His service particulars are furnished herewith:-

- 1) Name :- Ashim Kumar Dev
- 2) Designation :- Safaiwala
- 3) Pay and Scale :- B.2790/- in scale B.2550-3200/-
- 4) Qualification :- Class-VIII
- 5) Date of birth :- 11-07-1971
- 6) Date of appointment:- 23-06-1998
- 7) Any BAR/Vig :- No
- 8) Caste :- UR

This issues with the approval of the Competent Authority.

DA : As above.

[Signature]
21/8/01
For Medical Director
Central Hospital/Maligaon.

Attested by

[Signature]
Bikram Choudhury
ACCUPT

N. P. RAJHAY,

OFFICE ORDER,

Shri Ashim Kx. Doy, Satiwala in scale Rs. 2550-3200/- under Medical Director/Central Hospital/Maligaon is transferred from Medical Department to Signal and Telecommunication Department ~~MS~~ at his own request and posted as Khalasi in scale Rs. 2550-3200/- under Dy. CSE/MS/PLG subject to following terms and conditions :-

- 1) That he will accept bottom seniority of Khalasi of MS/Organisation. ✓
- 2) That he is free from SPB/Vig./DAR case.
- 3) He is not admissible any transfer facilities viz CTG, transfer pass/journey time etc.

This issues with the approval of Chief Communication Engineer.

(K. SAHA)

SENIOR PERSONNEL OFFICER (EST)
for GENERAL MANAGER (P)/MALIGAON.

NO. E/203/155 (N) Pt. I

Maligaon, date-31/08/01.

Copy forwarded for information and necessary action to :-

- 1) Medical Director/Central Hospital/Maligaon. This is in reference to his Letter Number E/203/2 (Consvy) Pt. IV dated 21/08/2001.
- 2) CCE/Maligaon.
- 3) Dy. CSE/MS/Maligaon.

(K. SAHA)

SENIOR PERSONNEL OFFICER (EST)
for GENERAL MANAGER (P)/MALIGAON.

SLC

Attested by
Sikham Choudhury
Assistant

N. F. RailwayOFFICE ORDER

The following transfer and posting order are issued to take with immediate effect:-

- 1) Sri Ashim Kr. Deb, Safaiwala in scale Rs. 2550-3700/- is hereby posted as Khalasi in the same pay & scale at Lumding under SSE/MW/R/MX LMG at his own request.
- 2) Sri Nikhil Mohon Deb, Khalasi/Helper in scale of Rs. 2650-4000/- is hereby transferred and posted at Maligaon under SSE/MW/Lab/MLG in the same pay and scale at his own request.

Transfer grant is not admissible as per extent rule.

This issues with the approval of the competent authority.

BSTE/MW/Maligaon
for By. CSTE/MW/Maligaon

NO. E/283/1/2 (MW) Pt. III - 29

Dt. 7-09-2001

7-09-2001

Copy to:-

1. CSTE/MLG for information please.
2. PA & CPD/ENGA/MLG
3. ASTE/MW/LMG, MLC, SGUJ.
4. MB/Ch/MLG for information in ref. to CPO's office order No. E/283/166/N/Pt. III dt. 31.8.01
5. APO/Medical for information please.
6. SSE/R/MW/MLG, LMG & SGUJ.
7. SSE/MW/P & Lab/MLG.
8. Staff concerned.
9. 8/copies for P/case.

BSTE/MW/Maligaon
for By. CSTE/MW/Maligaon

Attested by

Shyam Choudhury
Attested

ANNEXURE

N. F. Railway

OFFICE ORDER

The following transfer and posting order are issued to take with immediate effects:-

- 1) Sri Ashim Kr. Dev, Safaiwala in scale Rs.2550-3200/- is hereby posted as Khalasi in the same pay & scale at Lunding under SSE/MW/R/MLG LMG at his own request.
- 2) Sri Nikhil Mohon Deb, Khalasi/Helper in scale of Rs.2650-4000/- is hereby transferred and posted at Maligaon under SSE/MW/Lab/MLG in the same pay and scale at his own request.

Transfer grant is not admissible as per extent rule.

This issues with the approval of the competent authority.


DSTE/MW/Maligaon
for Dy. CSTE/MW/Maligaon

No. E/283/1/2 (MW) Pt. III C 29

Dt. 7-09-2001

Copy to:-

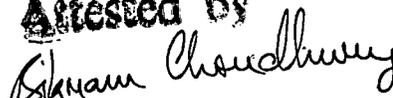
1. CSTE/MLG for information please.
2. FA & CAO/ENGA/MLG
3. ASTE/MW/LMG, MLG, SGUJ
4. MD/CH/MLG for information in ref. to CPO's office order No. E/283/166/N/Pt. III dt. 31.8.01
5. APO/Medical for information please.
6. SSE/R/MW/MLG, LMG & SGUJ
7. SSE/MW/F & Lab/MLG
8. Staff concerned
9. S/copies for P/case.


DSTE/MW/Maligaon
for Dy. CSTE/MW/Maligaon


26.9.01

Despatched
27.9.01

Attested by


Attested

- 15 -
N. F. Railway.

Office of Medical Director
Central Hospital/Maligaon.

OFFICE ORDER

Dated. 17-10-2001.

In terms of GM(P)/Maligaon's Office Order No.E/283/156(N) Pt.I dated. 31-08-2001 and Dy.CSTE/MW/Maligaon's Office Order No.E/283/1/2(MW) Pt.III-629 dt. 7-9-2001, Sri Ashim K. Dev, Safaiwala/Pandu in scale Rs.2550-3200/- is hereby transferred to Telecommunication department at his own request and posted as Khalasi in scale Rs.2550,200/- under Dy.CSTE/MW/MLG.

Since the transfer has been ordered on his own request and accepting bottom seniority, he is not entitled to get transfer benefits like Transfer on Administrative ground.-

This has the approval of the competent authority.

For Medical Director
Central Hospital/MLG

No.E/283/2(Consvy.) Pt.IV

dt.17-10-2001

Copy forwarded for information and necessary action to:-

- 1)GM(P)/MLG
- 2) FA & CAO/EN/MLG
- 3)Dy.CSTE/MW/MLG
- 4) Staff concerned
- 5)H&M/PNO. He will please spare the staff immediately.
- 6)Bill Clerk at office with one spare copy for P/Case file.

17/10/01
For Medical Director
Central Hospital/MLG

Attested by

Sikram Choudhary

Attested

N.F.Railway

Office of the
H&MI/IC/PNO
N.F.Railway.

Date: 19.10.2001

No.H/EST/1-2001

To
Shri Ashim Kr. Dev
Safaiwala, Pandu.

Sub:- Sparing.

Ref:- MD's L/No. E/183/2 (Consy)
Pt. IV dt. 17-10-2001.

You are hereby spared from this establishment
to report your duty at Dy.CSTE/MW/MLG as Khalasi in
the scale Rs. 2250-3200/- on date (P.N.) your balance of casual leave
is 7 days.

H&MI/IC/PNO 19.10.2001
G. U. S. Rly, Pandu.

Copy forwarded for information and necessary
action to:-

- 1) MD/MLG.
- 2) Dy.CSTE/MW/MLG

H&MI/IC/PNO
G. U. S. Rly, Pandu.

Attested by
Ashim Choudhury
19/10/01

To,

SSE/ MW/LMG

N.F. Rly.

Sub: Joining report.

Sir,

With reference to your letter No. E/203/1/2(MW) Pt. III 629 dated 7.9.01 join as Kha/Microwave/Lunding on date 29.10.01.

Date: 29.10.2001

Lunding

Yours faithfully,

(Ashim Kumar Dev.)

Kha/MW/LMG.

Copy to :

1. Dy. CSTE/MW/MLG
2. SSE//MW/F/MLG
3. Staff Copy. For information please.

Attested by

Bikram Choudhary

~~Attested~~

LAST PAY CERTIFICATE

Department Medical Office MD/CH/Maligaon
 Shri Ashim Kr. Deb, Safaiwala/Pandur

19.....
 19.....
 19.....
 Last pay certificate of (a) Shri Ashim Kr. Deb of the (b) Safaiwala/Pandur
 Proceeding on transfer to Ry ESTE/MW/Maligaon
 retiring on pension. Certified that Shri Ashim Kr. Deb made over-
 charge of his duties on the fore noon of the 19-10-2001
 and that he has received his pay and allowances of the
 following rates upto and for the 31-10-2001
 and the necessary deduction from his pay on account of service and other funds have been made as
 follows upto and for the 31-10-2001

Rate of pay and allowances other than Travelling Allowances		Deduction from pay for Service Fund and Provident Fund including the postal Life Insurance Endowment Assurance and monthly Allowances Fund.	
Pay as	Rate	Name of fund	Rate
Basic Pay	2720 00	SRPF	227 00
DA	1224 00	Prop. Tax	40 00
HRA	408 00	GIS	15 00
SCA	40 00	Total	282 00
COMV Hire	75 00		
Arise DA	161 00		
	Total 4628		

- The following sums are outstanding against him in the book of this office
- The following sums are to the office
- The following sums represent claims preferred by the officer but which have not been passed:
 ① Fest Adv (D.P) = Rs 1500.00 sanction in 2001-2002 to be recovered in 10 instalments @ Rs 150/- P.M. upto
- Recovery has been made of the rate of Rs on account of family remittances at the rate of ② No Rly. QRS. as render his occupation per month.
- The P. F. Account number of the employee is 01940120-NE
- Station Maligaon
- Date 03/11/2001

1/(a) Here enter title Christian and surname in full.
 1/(b) Here enter the office of service to which he belongs.
 1/(c) The details of income tax recovered should be furnished on the reverse.

Shri Ashim Kr. Deb, Safaiwala/Pandur has availed only 1 (one) set of Privilege Pass upto 31-10-2001

Attested by
Bhuvan Choudhury
 ASSTANT

Gross Salary	Amount exempted from Income Tax Assessment		Income Tax and Surcharge recovered	
	Rs.	P.	Rs.	P.
Drawn for the month of	AMOUNT			
March 199				
April 199				
May 199				
June 199				
July 199				
August 199				
September 199				
October 199				
November 199				
December 199				
January 199				
February 199				

Last Pay certificate of Shri
Aslam K. B. Dab,
Safaiwala/Panoli
 Preceding on Transfer ~~leave~~
 Retiring on Pension
 to By CSTE/MN/MLG
 No E/12/2001 dt. 03/11/2001

forwarding to the DAO/MLG
By CSTE/MN/MLG
W. D. D. D. D. D.

Signature.....
5/7/01
 Designation A. P. O. / Medical
N. P. Rly. / C.H. / MLG

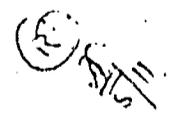
Copy forwarded to F.A.C.N.C./P/M
DAO/MLG

Copy forwarded to.....

Countersigned and forwarded
 to the.....

Signature.....

Designation.....



ANNEXURE X

20/8/2001 - Appn for transfer to MW Orgn
31/8/2001 - Allow Br III

N. F. RAILWAY

OFFICE OF THE
GM (P)/MALIGACH.
Date: 28/11/01

NO. E/283/156(N)/Pt.I

P 12

To :
The Medical Director,
Central Hospital/Maligaon.

28/11/2001

Sub : Inter Depttl. transfer of Sri
Ashim Kumar Dev, Safaiwala.

Ref : Your L/No. E/283/2/Consrvy/Pt.II
dated 21/08/2001.

Inter departmental transfer order of Sri Ashim Kumar Dev, Safaiwala from Medical Deptt. to MW organisation as Khelasi in scale B. 2550-3200/- under Dy. CSTP/MW/MIG at his own request which was issued vide this office order of even number dated 31/08/2001 may be treated as cancelled. Hence, Sri Dev should not be released from your end.

This issued with the approval of CPO/Admn.

(M.N. THAKUR)
SPO/EST
for GENERAL MANAGER (P)/MIG

Copy to :

1. Dy. CSTP/MW/MIG. He is requested to release Sri Dev from MW Organisation to MD/CH/MIG if he has already joined under MW Organisation on being spared by MD/CH/MIG.
2. CCE/MIG.

for GENERAL MANAGER (P)/MIG

CLASSIV Rly

Servant
Attested by
Bikram Choudhury
Director

P 40 pcc XIV (pcc 15)

- 21 -

38
X

NORTHEAST FRONTIER RAILWAY

OFFICE ORDER

The following transfer and posting order are issued to take with immediate effect, -

- 1). Sri. Mrinal Kanti Dey, Tech/III/KDPR in scale Rs. 3050-4590/- working under SSE/R/MW/NJP is hereby transferred and posted at LPN under SSE/MW/R/LMG in the same pay and scale by down grading the post of Tech/II/T/MW.
- 2). Sri Sankar Mandal, Tech/III/T/SGUJ in scale Rs. 3050-4590/- working under SSE/R/MW/NJP is transferred in the same pay and scale and posted at NJP under SSE/R/MW/NJP.
- 3). Sri Jadu Debnath, Helper/I/SGUJ in scale Rs. 2650-4000/- is transferred in the same pay and scale and posted at NJP under SSE/MW/NJP against existing vacancy.
- 4). Sri Rakesh Rajak, Sub-Helper/II/MLG in scale Rs. 2550-3200/- is transferred in the same pay and scale and posted at LMG under SSE/R/MW/LMG.
- 5). Sri S. Bhowmick, JE/II/T/MW/APDJ in scale Rs. 5000-8000/- is hereby transferred and posted under Sr. DSTE/APDJ in the same pay and scale vide GM(P)/MLG's Office Order No. E/254/26(N)Pt. VIII dated 21-12-2001.
- 6). Sri Ashim Kr. Dev, Helper/II in scale Rs. 2550-3200/- is hereby transferred and posted as safaiwala under MD/CH/MLG in the same pay and scale vide GM(P)/MLG's letter No. E/283/156(N)Pt. I dated 14-12-2001.

Transfer grant is admissible as per rule.

Divl. Signal & Telecomm: Engg (MW)
N.F. Railway/Maligaon
Guwahati-11
for Dy. CSTE/MW/Maligaon

No. E/283/1/1 (MW) Pt. VIII

Dt. 1-01-2002

- Copy to:-
- 1). CSTE/MLG for information please.
 - 2). GM(S&T)/P/MLG for information please.
 - 3). MD/CH/MLG for information please.
 - 4). FA & CAO/ENGA/MLG for information please.
 - 5). ASTE/MW/MLG, LMG & SGUJ for information please.
 - 6). SSE/R/MW/NJP for information and to issue LPC to Sr. DSTE/APDJ.
 - 6). SSE/F/MW/MLG for information and to issue LPC to MD/CH/MLG of Sri Ashim Kr. Dev, Helper-II.
 - 7). SSE/R/MW/LMG to spare Sri A.K. Dev to report to MD/CH/MLG.
 - 8). Staff concerned.
 - 9). Spare copy for P/case.

Divl. Signal & Telecomm: Engg (MW)
N.F. Railway/Maligaon
Guwahati-11
for Dy. CSTE/MW/Maligaon

Arrested by
Bikram Choudhury
Accessed

99 (A)
JYM

21

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

IN THE MATTER OF :

O. A. No. 11 of 2002

Sri Asin Kumar Deb ... Applicant

Vs.

Union of India & Ors. ... Respondents.

- AND -

IN THE MATTER OF :

Written Statement for and on behalf of
the respondents.

Filed by:
Sectional Secy
Guwahati
Railway, Assam
Guwahati
21.6.2002

The answering respondents most respectfully beg to
submit as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That, save and except these statements of the applicant which are either borne on records or are specifically admitted hereunder, all other averments/allegations of the applicant are denied herewith and the applicant is put to strictest proof of such averments/allegations.
3. That, for the sake of brevity, the meticulous denial of each and every statements/allegations of the applicant as made in the application have been avoided and the respondents

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✓
MBA
UNIVERSITY OF
(A)

have been advised to confine their replies only to those averments/allegations which have got direct bearing on the decision/merit of the case, without admitting the correctness of all other statements.

4. That, the application suffers for want of valid cause of action.

5. That, the applicant has got no right to file the application.

6. That, the application is pre-mature.

7. That, the application is not maintainable in its present form either on law/rules or on fact of the case.

8. That, the fact of the case, in brief, is as under :

Sri Ashin Kumar Deb was initially appointed as Safaiwala under Medical Director, Central Hospital, N. F. Railway, Maligaon and after serving for about 3 years 14 days in the parent organisation (i.e. Medical Department) he applied for inter-departmental transfer as Khalasi to another department under Deputy CSTE/Micro-Wave/Maligaon, N. F. Railway and his application was forwarded by the Medical Director/Central Hospital/N.F. Railway, Maligaon vide No.E/283/2(Consvy)Pt.IV dated 21.8.2001. His application for such inter-departmental transfer was however escaped proper scrutiny in office and his transfer request was wrongly processed though the Railway Board Orders on the subject ~~stipulated~~ clearly stipulated

41 (A)
General Manager (P)
Maligaon
Signal Department
14.12.01

that request for change of category from Safaiwala is not to be entertained for five years from the date of their appointment. In the meantime transfer order was issued and the applicant joined in the Signal Department in the new category post i.e. Khalasi under Signal Department. On detection of the above mistake, order was issued by General Manager(P), Maligaon on 28.11.01 cancelling the previous order of change of category and this inter-departmental transfer, and, DSIE/MW/Maligaon also issued order dated 14.12.01^{for} repatriating the applicant to his former post of Safaiwala in his parent department and original place of posting i.e. Maligaon in same scale of pay. It is also to mention herein that the seniority of the staff in Medical department and his pay scale and post remains unaffected and in addition he will get the transfer allowance etc. payable consequent on such transfer from Lundig to Maligaon in his parent cadre/department.

9.(a) That, with regard to averments at paragraphs 1, 2, 3, 4, 5 and 6 of the application it is submitted that nothing are accepted as correct except those which are borne on records or are admitted hereunder as correct.

It is to submit herein that the applicant was appointed as Safaiwala on 23.6.98 under Medical Director, Central Hospital, N.F. Railway, Maligaon and he worked in the category of Safaiwala for 3 years 14 days upto 17.7.01 and he submitted application for his inter-departmental transfer to Micro-Wave Organisation on the ground that there is no scope for his advancement in Medical Department. Since there is no cadre for Safaiwala in the Micro-wave/Signal department such of his request involved

42
✓
Jey
Senior Personnel Officer (A)
G. P. O. Maligaon
Maligaon

change of category from Safaiwala to Khalasi, which bore same scale of pay as Safaiwala. Erroneously, his application for such transfer was processed at the departmental level, as according to Railway Board's guidelines such request for transfer could be considered only after applicants completed atleast 5 years service as Safaiwala from the date of their appointment. It is also correct, that his application for such inter-departmental transfer which also involved change of category, was processed and his application was forwarded by the Medical Director, Central Hospital, Maligaon vide No.E/283/2(Cenvy) Pt.IV dated 21.8.01 to the General Manager(P), Maligaon, N.F. Railway and after receipt of such application the Office Order No.E/283/156 (N)Pt.I dated 31.8.01 was also issued by Senior Personnel Officer(Est.) for General Manager(P), Maligaon for transfer of the applicant from Medical department to the Signal and Tele-Communication department and posting him as Khalasi in scale Rs.2550 - 3200/- under Dy.CSTE/Maligaon. An Office Order No.E/283/1/2 MW Pt.III-629 dated 7.9.2001 was also issued by Dy.CSTE/MW/Maligaon posting the applicant as Khalasi in same pay and scale at Lunding under SSE/MW/Lab/MLG.

After receipt of the transfer and posting order dated 31.8.01 and 7.9.01 as stated above, the Medical Director also issued Office Order dated 17.10.2001 under No.E/283/2(Cenvy) Pt.IV dated 17.10.2001 and the applicant was spared from Medical Department on 19.10.2001 under H & ML/IC/PNO's letter No.H/EST/1-2001 dated 19.10.2001 for reporting for duty as Khalasi under Dy.CSTE/MW/MLG in scale Rs.2250 - 3200/- and the applicant submitted joining report as Khalasi in MW/LMI (Micro-Wave/Lunding) office on 29.10.2001.

43
Chief Personnel Officer (A)
Railway Board
New Delhi
10.11.2001

It is also to mention herein that as the irregularity ~~xxx~~ in issuing the order for change of category and inter-departmental transfer of the applicant came to light after the above transfer order dated 31.8.2001 was issued, immediate action was taken from General Manager(P), Maligaon's office for re-calling back the staff, irregularly transferred, and General Manager(P), Maligaon under letter No.E/283/156(N)/Pt.I dated 28.11.2001 advised the Medical Director, Central Hospital, Maligaon not to release the applicant and also advised the Dy.CSTE/MW/MEG to release the applicant, if he has joined the Micro-Wave (Tele-Communication) department already.

copy

Thus, since the order for change of category and also *the transfer to another* department (vide General Manager(P), Maligaon's Office Order No.E/283/156(N)Pt.I dated 31.8.2001) was issued in violation of Railway Board's Order No.E(NG)I-97/TR/39 dated 29.8.97 (Circulated under Chief Personnel Officer, Maligaon vide No.E/227/144 Pt.X(C) B dated 14.10.97), the previous Order for change of Category and inter-departmental transfer had to be cancelled to rectify the mistake in this public appointment.

A Copy of the order of the Railway Board dated 29.8.97 is annexed hereto as Annexure A Series

It is also relevant to mention herein that several similar requests from the staff who are senior in service/appointment to that of the applicant in the Medical as well as other departments, are also lying pending and have not been processed keeping in view the aforesaid instructions of the Railway Board and for the sake of similar treatment and equal treatment of all like cases, the present case of the applicant also warranted the cancellation and rectification of this mistake/lapse in issuing such order dated 31.8.2001 and that nothing wrong has been done/committed in rectification of the mistake/irregularity and such rectification of mistake have been properly notified to all concerned/department/authorities

44
Chief Personnel Officer (A)
G. J. A. V. M. S. S. S.
G. J. A. V. M. S. S. S.

immediately the same could be detected.

9(b). Further, it is submitted, ^{that} as the transfer order was issued wrongly due to inadvertence and as the same has already been rectified, the staff/applicant cannot claim for accrual of any right in his favour and for retention in Signal/Micro-Wave department in contravention to the extant rules laid down on the subject. The above re-transfer will not entail curtailment of any of his rights, seniority and pay scale and post in his former category as Safaiwala in the Medical Department and necessary transfer allowances etc. also guaranteed to him.

It is also to submit herein that it was in the knowledge of all the staff in the Medical Department that unless they render a specified number of years of service in their parent department as Safaiwala they are not eligible to apply for such transfer of "Category" and also "Department" and that knowing the extant rules, the applicant (who did not fulfil the required qualification/requirements as prescribed under rules) submitted the application and as such he is debarred from taking advantage of the erroneous actions/emissions/lapses on the part of some officials/government functionaries.

It is also submitted that the applicant is obliged under rules and fact of the case, to carry out the order issued for retransfer of him to his former Department and post.

10. That, with regard to avements of the applicant at paragraph 7 of the application it is submitted, that the contentions of the applicant are not accepted as correct and hence

45
J. O. Ry. / Manager
G. O. Ry. / Manager
G. O. Ry. / Manager

denied herewith. All such contentions are his own assertions and the respondents have no knowledge about all these.

It is emphatically denied that the impugned transfer order is arbitrary and passed without Jurisdiction as alleged, or that by such transfer the applicant will suffer irreparable loss and injury. Rather, it is submitted, that if the applicant is allowed to continue in the Micro-Wave Department with change of category, it will create discontentment amongst the staff who are already senior to him and whose applications are already kept in waiting list besides causing infringe^{ment} of rules prescribed by Railway Board and violation of Article 14 etc. of the Constitution of India.

11. That, with regard to the grounds cited and the relief sought for and the legal pleas taken at paragraphs 5 and 8 of the application it is submitted that in view of what have been stated/submitted in the foregoing paragraphs of this Written Statement, none of the grounds put forward by the applicant are sustainable under law and rules in vogue and in view of the nature and fact of the case and hence these are emphatically denied herewith.

Further, none of the relief claimed by the applicant at paragraph 8 of the application are admissible under rules, law and merit of the case and hence these are liable to be rejected.

It is also emphatically denied that :

- i) the impugned orders were passed in a most arbitrary manner without proper application of mind and as such these order are bad in law and are liable to be set aside.

46
Chief Personnel Officer (A)
A. P. R. V. / M. S. R. V.
G. S. R. V. / M. S. R. V.

ii) mere drawing salary in the new department or joining in such department cannot give the applicant any right to remain in the new department with change of category etc.

iii) that the re-transfer order was passed without any justifiable reason or without jurisdiction and that the said inter-departmental transfer order (which was passed erroneously and on wrong premises) cannot now be cancelled or that the impugned orders are bad in law and liable to be set aside.

12. That, it is submitted that all actions taken in the case by the respondents are quite legal, valid and proper and after the application of mind by the Competent Authorities and the present case of the applicant is based on wrong premises and suffers from mis-interpretation of rules and laws on the subject.

13. That, no estoppel runs against extent rules and the applicant is debarred from taking advantage of any omission or commissions on the part of the respondents when he himself put up claim which is against the provisions of rules.

14. That, the answering respondents crave leave of the Hon'ble Tribunal to permit them to file additional Written Statement in future, if found necessary for ends of Justice.

15. That, under the facts and circumstances of the case, as stated in the foregoing paragraphs of the Written Statement, the instant application is not maintainable and is liable to be dismissed.

V E R I F I C A T I O N

I, Jai Shankar Prasad Singh son of Shri Raghubansh Narain Singh aged about 46 years by occupation Railway Service, now working as Chief Personnel Officer/Admn, N. F. Railway Administration, Maligaon, Guwahati do hereby solemnly affirm and state that the statements made at paragraphs (and 3 are true to my knowledge and those made at paragraphs 8 and 9(a) are based on informations and records of the case which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal and I sign this verification on this 19th day of June, 2002.

✓
usj
NORTHEAST FRONTIER RAILWAY
MALIGAON :: GUWAHATI-11
FOR AND ON BEHALF OF
UNION OF INDIA.

Chief Personnel Office (A)
N. F. Rly. / Maligaon
Guwahati-11

Copy of the Railway Board's letter No.E(NG)I-97/TR/39 dated 29-08-97.

Sub :- Change of Category of Safaiwalas ✓

The above matter was discussed during the M.R's meeting with Chairman, Railway Recruitment Board's (R.R.B's) and non-official members of interview committees of R.R.B's held on 12-02-97. The matter was subsequently discussed in the CPO's conference held in Railway Board's office on 1-2/08/97.

2. The matter has been carefully considered by the Board and it has accordingly being decided that request for change of category from Safaiwalas will not be entertained for five years from the date of their appointment. However, these restriction should not be construed to stop movement of Safaiwalas to other categories as per the specific provision of IREM-1989 vide para-179, (XV)(A) thereof or the AVCs as may be laid down by the Railways for their advancement.

Copy to
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Vaant
Chairman 2 Dept
Chairman 2 C.A.
APM: Cable
to Wastc 824

para 179 (XV) A
as on 29.8.97
E
31.8.97

DT on his line change
of Cate govt. board

Office of the
General Manager(P)
Maligaon: Gauhati-11.

No. RECT- 930
E/227/144 Ft. XI (C).

Dated: 30 -4-2002.

To
GM/Maligaon, GM(CON)/Maligaon, AGM/Maligaon
All PHODs, All DRMs, ADRMs, Sr. DFOs, DAOs,
CWM/NBQS, DEWS, WAO/NBQS, DEWS
All Area Manager, All Sr. DME(D) All AENs
OSD/RNY, DEN/DBRT, Dy. CE/Br. Line/MLG
Dy. CSTE(MW)/MLG, Dy. CAO/Cash & Pay/MLG.
All Non-divisionalised Units, All SPOs & APOs P.Branch/MLG,
The GS/NFREU, NFRMU, AISCITRA & NFROBCEA/MLG.

Sub:- Modification of the existing provision
regarding transfer of Gangmen to other
Departments.

A copy of Railway Board's letter No. E(NG)1-99/CFP/23
dated 8.4.2002 (RBE No. 42/2002) on the above mentioned subject is
forwarded for information and necessary action please. In this
connection a copy of advance correction slip No. 132 of IREM Vol-I
1989 is also enclosed herewith for information.

Signature
29/04/02
(P. G. Johnson)
A.P.O. (R)
for General Manager(P)MLG.

(Copy of Railway Bd's letter No. E(NG)1-99/CFP/23 dt. 8.4.2002.)

Sub: Modification of the existing provision regarding transfer of
Gangmen to other Departments.

As the Railways are aware, Gangmen in regular employment are
eligible for transfer to Works Branch/Workshops/Traffic & Commercial
Departments against 10% of the vacancies with 50% seniority. Similarly,
Stores Khalasis and Safaiwalas of all Departments are also eligible for transfer
to Workshops against 10% quota with 50% seniority. Such employees should
possess physical standards prescribed for recruitment to these Departments, be
less than 35 years of age and have aptitude for work to which they are to be
transferred.

1. Further, 40% of Group 'D' vacancies in the Workshops are required to
be filled from amongst Group 'D' staff of other Departments on bottom
seniority upto the upper age limit of 33 years.

2. For some time the Railways have been experiencing difficulty in
sparing Gangmen for lateral transfer to other Departments. Railway Safety
Review Committee-1998 (Khanna Committee) in Part II of its Report has also
observed that the policy of lateral induction of Gangmen to other Departments
has demoted the Gangs of able bodied younger lot of Gangmen. The committee
has, therefore, recommended that the orders regarding lateral induction of
Gangmen upto 35 years of age into other Departments should be withdrawn.

3. The matter has been considered carefully by the Board. The views of
the two Federations, viz., AIRF and NFIR were also obtained. After

5/12
considering all aspects of the matter it has been decided that the existing provision regarding transfer of Gangmen to other Departments against 10% quota may be modified to the extent that the lower age limit for such transfer should be fixed at 45 years instead of existing upper age limit of 35 years.

3.1 For Gangmen volunteering to go to Mechanical Workshops on bottom seniority against 40% quota also, the existing upper age limit of 33 years should be modified to provide for lower age limit of 45 years.

4. It has also been decided that in view of surpluses being generated in Workshops, the existing provision for lateral transfer of other staff to Workshops may also be temporarily withdrawn for two years from the date of issue of this letter.

5. The Indian Railway Establishment Manual may also be amended accordingly as in Advance Correction Slip No. 132 enclosed.

Please acknowledge receipt.

(J.S. Gusain)
Joint Director Estt. (N)
Railway Board

DA ACS No. 132

INDIAN RAILWAY ESTABLISHMENT MANUAL, VOLUME-I
(1989 EDITION)

ADVANCE CORRECTION SLIP NO. 132

Chapter-I, Section 'B', sub-section III-Recruitment and Training.

Substitute the following for the existing Para 179(xv) :-

(xv) Recruitment by Transfer :-

(A) Gangmen in regular employment may be transferred to the Mechanical Engineering and Transportation (Power) Deptt., Traffic & Commercial Deptt. and to the Works side of Engineering Deptt. Such transfers should not, however, exceed 10% of the annual intake of Gangmen nor 10% of annual intake in the relevant recruitment categories of each of these Departments to which Gangmen are transferred. Khalasis of the Stores Department and Safaiwalas of all Departments may likewise be transferred to the Mechanical Workshops, but will be reckoned against the same 10% annual quota of vacancies in the Workshops as is open for absorption of Gangmen. The Railway servants concerned should be suitable in all respects, i.e.:-

- (a) be literate where necessary,
- (b) possess physical standards prescribed for recruitment to that Department/ Workshop;
- (c) have the aptitude for work to which they are to be transferred;
- (d) be at least 45 years of age in the case of Gangmen and 35 years of age in the case of Stores Khalasis and Safaiwalas of all Deptts.

(B) Regular Gangmen who are transferred to Works Branch/Workshops/Traffic and Commercial Deptt. will count half the length of continuous service for seniority in the new cadre in which they are absorbed. Similarly Stores Khalasis and Safaiwalas of all Departments who are absorbed in the Workshops against the 10% quota will count seniority to the extent of half the length of continuous service. However, Gangmen above the age of 45 years and Store Khalasis and Safaiwalas upto the age of 33 years who are transferred over and above the quota of 10% will not be eligible to count any portion of their earlier service for the purpose of seniority.

(Authority: Ministry's of Railway's letter No.E(NG)56/PM1/27 dated 27.9.56; No.E.58-CFP/13 dated 19.2.59, E(NG)174/CFP/51Pt. Dated 10.2.75, ACS No.48 issued vide Board's letter No.E(NG)1-97/CFP/10 dated 18.6.98 and No.E(NG)1-97/CFP/23 dated 8.4.2002)