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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. 62/02

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SECTION OFFICER (Judl.)

Kalib
22/11/07

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.
GUWAHATI.

ORDER SHEET

Original No. 64/2002
Misc. Petition No.
Contempt Petition No.
Review Application No.

Applicant(s) Tapangshu Debroy

Respondent(s) H.O.T. Ram

Advocate for Applicant(s) Mr. R. Dutta, Mr. G. Dutta

Advocate for Respondent(s) Railway Counsel.

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
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This is application in form
C. F. for Rs. 50/- deposited
vide IP / 7.6.547518
Dated 21 ... 2 ... 2002

27.2.2002

After hearing Mr.R.Dutta, learned coun-
sel for the applicant and Mr.S.Sengupta, lear-
ned counsel for the respondents, the applica-
tion is admitted.

Issue show cause notice as to why inte-
rim order as prayed for should not be allowed.
The pendency of the application shall not be
a bar for the respondents to consider the
representation filed by the applicant on 7.1.
2002.

List the case on 5.4.2002 for order.

K. C. Sharma
Member

bb

It has been stated by Mrs.G.Dutta Paul
that the impugned order is stand modified.
Accordingly Mr.S.Sengupta learned Railway
Standing counsel also placed before us the
Office Order 32/02 cancelling the transfer
contd/-

steps taken

PD

Notice prepared and sent
to B/S for filing the
respondent No 1 to 3
by Regd. A/D.

DINo 822W 824

Dtd 19/3/02

5.4.02

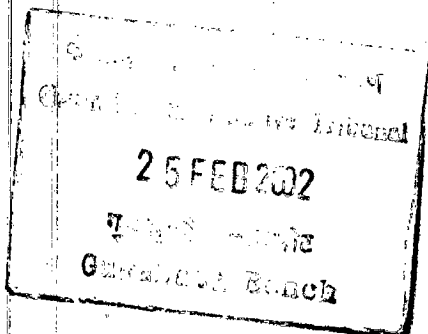
5.4.02 order. Copy of the order is placed on records. Accordingly, application is stands dismissed as infructuous.

9.4.2002

Copy of the order has been sent to the Office. for requisite time to the L/Adm. on the parties.

Vice-Chairman

lm



File No. 64
25/2/2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

O.A. No. 64 of 2002

Tapangshu Debroy ... Applicant

VERSUS

Union of India and Others ... Respondents.

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Tapangshu Debroy
24/02/02
Signature of the applicant

.....

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File by
25/12/2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.
(An application u/s 19 of the A.T.Act, 1985)

O.A. No. 64 of 2002

Shri Tapangshu Deb Roy, son of
late Hamendra ch. Debroy, C/O
K. Ansari, Rly Qrs No. 300/B
Central Gotanagar, Maligaon ... Applicant

VERSUS

1. Union of India, represented by
the General Manager, N.F. Railway,
Maligaon, Pin- 781011.
2. The General Manager, ~~N.F. Railway~~
Construction, N.F. Railway,
Maligaon, Pin-781011.
3. The Deputy Chief Engineer,
Construction, N.F. Railway,
Maligaon, Pin- 781011. ... Respondents.

1. Particulars of the orders against which
this application is made.

The General Manager, Construction, N.F. Railway's
orders issued under No. E/283/C/Tech/MLG dated
12.11.01 transferring the applicant to Malda
Town in West Bengal from Maligaon (Annexure A/1) .

2. Jurisdiction of the Tribunal:

The applicant submits that the Hon'ble

Contd .. P/2.

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24/02/02

(Hon'ble) Tribunal has jurisdiction over the case.

3. Limitation :

That the applicant submits that the application is being filed within the prescribed period of limitation.

4. Facts of the case :

4.1 That, the applicant is a citizen of India and is entitled to the rights and privileges guaranteed under the Constitution of India.

4.2 That, the applicant is a group-C employee of N.F. Railway and at present working as Junior Engineer/Drg/II and posted under Deputy Chief Engineer/Con, N.F. Railway, Maligaon in the construction organisation of the General Manager/Con, N.F. Railway, Maligaon.

4.3 That, the applicant is not the seniormost nor the junior most among the Junior Engineer/Drg/II in the construction organisation and there are Junior Engineer/Drg/II who are junior to the applicant at Maligaon in the construction organisation.

4.4 That, the General Manager/Con, N.F. Railway, Maligaon (Respondent No. 2) transferred the applicant and another Junior Engineer/Drg/II named Ranubala Dev to Malda Town (in short MLDT) in West Bengal and posted under Deputy Chief Engineer/Con/MLDT vide letter No. E/283/C/Tech/MLG dated 12.11.2001. Subsequently the transfer order in respect of Miss Ranubala Dev was modified and she has been posted in the office of the General Manager/Con, N.F.

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24/02/02

Railway, Maligaon (Respondent No.2)

A copy of the transfer ^{order} No. E/283/C/
Tech/ MLG dated 12.11.2001 ^{no.} is annexed
as Annexure-A/1.

4.5 That, there are vacancies of Junior Engineer/
Drg in the office of the General Manager/Con, N.F.
Railway, Maligaon (Respondent No.2) and also in the
N.F. Railway.

4.6 That, the applicant's wife Smt. M. Debroy
is working as Head Draftsman in the construction
organisation of the General Manager/Con, N.F. Railway
and is now posted in the office of the Deputy Chief
Engineer/Con, N.F. Railway, Maligaon (Respondent No.3).
She belongs to Scheduled ~~caste~~ ^{caste} community and is requi-
red to look after her aged and ailing parents as she
has no brother and her younger sister is physically
handicapped person. Under the instructions issued
by the Government of India and circulated by the Rail-
way Board ~~is to be posted in their home districts~~ in scheduled caste employees
are to be posted in their home districts. The home
district of my wife is Kamrup and as such she is to be
posted in the district of kamrup, Assam. ^{RA}

4.7 That, the Fifth Central Pay Commission reco-
mmended that instructions regarding the need to pos-
ting of husband and wife at the same station needs
not only to be reiterated but the scope of these ~~in~~
instructions should also be widened to include the
provisions that where posts at appropriate level exist
in the organisation, the husband and wife may invari-
ably be posted together in order to enable them to

Contd ...P/4.

24/02/0

lead a normal life and look after the welfare of the children specially till the children are 10 years of age. This recommendation of the Fifth Central Pay Commission ^{was circulated by} ~~and~~ the Railway Board under circular No. E(NG)1-97/TR/28, dated 5.12.97 and directed that Railway Administrations etc should strictly adhered to the existing instructions referred to above while deciding on the request for posting of husband and wife at the same station and should ensure that such posting is invariably done specially till the children are 10 years of age, if posts at appropriate level exist in the organisation at the same station.

A copy of the said circular dated 5.11.97 is annexed as Annexure A/2.

4.8 That the applicant and his wife has a child of 1 year 2 months old.

4.9 That, the applicant took 13 days leave and went to vellore for treatment of his brother and on return from vellore ^{on} 23.11.2001 preferred a representation for his retention at Maligaon and posting against an existing vacancy vide his representation dated 23.11.2001 to the General Manager/Con, N.F.R Railway, Maligaon. Applicant's wife also represented to the General Manager/Con, N.F. Railway, Maligaon (Respondent No.2) for posting of the applicant at Maligaon. No reply to these representations have been given nor the transfer order was modified by posting of the applicant in any of the existing vacancies at Maligaon under the General Manager/Con N.F. Railway, Maligaon (Respondent No.2).

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24/02/02

Copies of the applicant's representation dated 23.11.2001 and that of the applicant's wife's representation dated 7.1.2002 are annexed as Annexures A/3 & A/4 respectively.

4.10 That the applicant fell ill on and from 27.11.2002 and was under the treatment of the railway doctor for a month and finding no improvement is now under the treatment of another doctor till now.

5. Grounds for relief:

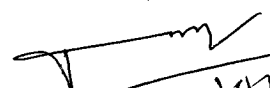
5.1 That the applicant is not the juniormost and as such cannot be transferred even if the post against which he was working does not have further sanction.

5.2 That ~~the~~ the applicant's juniors are working at Maligaon.

5.3 That there are vacant post of Junior Engineer/Drg available under the General Manager/Con, N.F. Railway, Maligaon (Respondent No.2).

5.4 That, under Government of India's policy decision as circulated by the Railway Board vide annexure A/2 husband and wife should invariably be posted at same station till the children are of 10 years age. As the applicant's wife is posted at Maligaon and they have a child of 1 year 2 months old and vacant post of Junior Engineer/Drg is there at Maligaon under the General Manager/Con, N.F. Railway, Maligaon the applicant is to be posted at Maligaon to lead a normal life.

Contd ...P/6.


24/02/02

6. Details of the remedies exhausted:

There is no statutory remedy provided against transfer orders. However the applicant has represented to the General Manager/Con, N.F. Railway, Maligaon for his posting at Maligaon without any result.


7. Particulars of previous application etc if any;

The applicant further declares that he had not filed any application, writ petition or suit regarding the subject matter of the application nor any such application, writ petition or suit is pending before any tribunal or court or any other authority or any bench of the tribunal.

8. Relief sought:

Under the circumstances the applicant humbly prays to the Hon'ble Tribunal to be pleased to call for the records and after hearing the parties to be kind to set aside the transfer order No. E/283/C/Tech/MLG dated 12.11.2001 (Annexure A/1), issued by the General Manager/Con, N.F. Railway, Maligaon transferring the applicant to Malda Town, and to direct the respondents to post the applicant in any of the vacancies of Junior Engineer/Drg available at Maligaon so that the applicant lead a normal life in terms of the policy decision of the Government of India communicated by the Railway Board under No. E(NG) 1-97/TR/28 dated 5.12.97 (Annexure A/2) And for this act of kindness the applicant as duty bound shall always pray.

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24/02/02

9. Interim relief:

That, as the applicant is likely to be released to carry out the transfer as soon as he joins his duties to carry out the transfer thereby frustrating the purpose of the applicant's prayer to the Hon'ble Tribunal the applicant humbly prays for an interim order staying the operation of the transfer order, issued by the General Manager/Con, N.F. Railway, Maligaon under No. E/283/C/Tech/MLG dated 12.11.2001 (Annexure A/1), till the final disposal of the application by the Hon'ble Tribunal.

10. Particulars of the application fees:

Postal order No. 7G 547515 dated 21.2.2002 for a sum of Rs. 50/- (fifty) is enclosed.

11. Enclosures

As in index

VERIFICATION.

I shri Tapangshu Debroy, son of late Hemendra Ch. Debroy, aged about years, C/O shri K. Ansari, Rly Qrs No. 300/B, Central Getanagar do hereby solemnly verify that the contents of paragraph no 4.1 to 4.3, 4.6, 4.8, 4.9, 4.10, 6 and 7 are true to my knowledge and those in paragraph 4.4, 4.5, 4.7 are true to my information which I believe to be true and the rest are my submissions before the Hon'ble Tribunal and I have not suppressed any material fact.

Date 24.2.2002

Place- Maligaon, Guwahati.

Tapangshu Deb Roy
24/02/02
Signature of the applicant.

.....

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N.P. RAILWAY

Annexure A/1

Office of the
General Manager (Con)
Maligaon

OFFICE ORDER NO: 155/2001

The following transfer and posting orders are issued to take immediate effect:

1. Shri T. DebRoy, JE/Drg/II in scale Rs. 5000-8000/- under DY.CE/C/MLG is hereby transferred to MLDT and posted under DY.CE/C/I/MLDT in his same capacity, pay and scale.
2. Miss Ramabala Dev, JE/Drg/II in scale Rs. 5000-8000/- under DY.CE/C/MLG is hereby transferred to MLDT and posted under DY.CE/C/II/MLDT in her same capacity, pay and scale.

This has the approval of the Competent Authority.

(S.K. BOSE)
APO (CON)

For General Manager (CON)

NO: E/283/C/Tech/MLG

Dated 12/11/01

Copy forwarded for information and necessary action to:

1. PAE CAO/CON/MLG
2. CE/C/III, V, IV
3. DY.CE/C/MLG, XEN/C/G-J/MLG
4. DY.CE/C/I/MLDT, MLDT/I
5. SAO/C/NWP
6. Staff concerned

(S.K. BOSE)
APO (CON)

For General Manager (Con)

E. Datta. (Advocate)
Maligaon, Guwahati-781011

R.B.E. No. 147/97
(Supplementary Circular No. 6 to Master Circular No. 24)

Subject: Posting of husband and wife at the same place-Instructions in respect of Groups 'C' and 'D' Railway employees.

[No. E(NG)I-97/TR/28, dated 5.11.97]

The extant instructions regarding posting of husband and wife at the same station are contained in the Ministry of Railways letter No. E(NG)II/71/TR/14, dated 1.10.71 as reiterated in their letter No. E(NG) I-86/TR/14 dated 6.1.88 (Bahri's RBO 1998 Vol. I, P-18). These instructions have also been included in the consolidated instructions regarding inter-railway and intra-railway transfers of Group 'C' and 'D' employees issued to Railways etc. vide Board's letter No. E(NG)I-96/TR/28, dated 6.12.96 (Bahri's RBO 1996 P-107).

2. The Fifth Central Pay Commission has recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated but the scope of these instructions should also be widened to include the provision that where posts at appropriate level exist in the organisation at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children specially till the children are 10 years of age.

3. Pursuant to acceptance, by the Govt. of the recommendations of the Fifth Central Pay Commission on the subject it is reiterated that the Railway Administrations etc. should strictly adhere to the existing instructions referred to above while deciding on the request

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R.D. 28/10

R. Datta. (Adm. Secy)
Mumbai, 28.10.1997

for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till the children are 10 years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to arise as a consequence.

4. It is further clarified that in cases where only the wife is a railway servant, the concession indicated in para 3 above would be admissible to the Railway servant.

5. Board have also decided to lay down the following guidelines to enable the Cadre Controlling Authorities to consider the requests from the spouses for posting at the same station having regard to the considerations as indicated above :

(i) Where both the spouses are railway employees and belong to the same seniority unit

Both the railway servants may be posted at the same station/place ensuring that one of them does not work as subordinate to the other.

(ii) Where both the spouses are railway servants but belong to different seniority units

Efforts may be made to post both the Railway servants at the station where posts at appropriate level exist in the respective seniority units failing which requests for change of the category may be considered sympathetically.

(iii) Where one of the spouses is a railway servant and the other belongs to All India Service or a Central Service

The Railway servant should be posted at station/place in the Railway/ Division/PU in whose territorial jurisdiction the place/state of posting of his/her spouse falls or as close to it as possible if there is no Railway Organisation/Post at the place state of posting of the spouse.

(iv) Where one of the spouses is a Railway servant and the other belongs to a state service

The Railway servant should be posted at the station/place in the Railway/ Division/PU in whose territorial jurisdiction the place/state of posting of his/her spouse falls. If it is not possible, if a request from the railway servant to the controlling Authority of the spouse for his/her posting at the place of posting of the railway servant is received the same may be forwarded to the concerned authority for sympathetic consideration.

(v) Where one of the spouses is a railway servant and the other is working in a Central/State/Public Sector Undertaking/Autonomous Body/Private Sector :

The railway servant may apply to the Controlling Authority for a posting at the place of posting of his/her spouse which may be considered favourably by the competent authority. If no post is available for posting of the railway servant at the place of posting of the spouse he/she may be posted to a place closer to the place of posting of the spouse. If this also is not possible an application from the railway servant for posting of the spouse who is working in the Central/State/Public Sector Undertaking may be forwarded to the

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controlling authority of the spouse for his/her posting at or near the place of posting of the Railway servant.

5.1. The guidelines given above are only illustrative and not exhaustive. The Ministry of Railways desire that in all other cases the controlling authority of the railway servants should consider requests from non-gazetted railway servants for transfer to the place of posting of their spouses with utmost sympathy.

6. While all efforts as stated in the foregoing paragraphs may be made to post the husband and wife at the same station, instructions issued by the Board from time to time in regard to request transfer/change of category should be followed in all such cases. A separate register may be maintained at each Divisional and Zonal Headquarters of the Railways for registering requests for transfers from railway servants for posting at the place of posting of their spouses, which may be reviewed from time to time.

Handwritten signature: A. K. Datta

A. Datta. (Advocate)
B-1/2, Gurgaon, Gurgaon-751011

To,
The General Manager(CON),
N.F. Railway, Maligaon,
Guwahati-11.

(Through proper channel)

Sub : Prayer for posting at GM/Con's office
or CE/MLG's office.

R/Sir,

With due respect I beg to state the following few lines for your kind consideration and favourable order please.

That Sir, after availing of 13 days LAD w.e.f. 10.11.01 to 22.11.01, I have joined my duty on 23.11.2001 as I have gone for my brother's treatment at Vellore. I have learnt that my transfer order is issued at MLDT.

That Sir, I have been working as Draftsman under DY.CE/CON/G-J/MLG, Guwahati- Joghigopa Project is almost completed and is likely to be closed.

That Sir, my mother-in-law has no son and is wholly dependant on my wife who is also working at Maligaon, N.F. Railway. My mother-in-law is very old and remains bed ridden as she is suffering from paralysis since last two years and other old aged diseases. Moreover, my wife is also suffering from some women disease and under treatment at Central Hospital, Maligaon. Besides I have a baby aged one year only at this state it is not possible in my part to leave Maligaon as because there is no male member in my family to look after them except me.

That Sir, it is understood that a few posts of Draftsman are lying vacant in GM/CON's office or CE/MLG's office.

Under the circumstances stated above I fervantly request you to transfer me GM/CON/Maligaon's office or CE/MLG's office where my lien has already been fixed, so that I can continue my job peacefully and look after my family without any distrust and for this act of your kindness I shall remain ever grateful to you.

Thanking you,

Dated, Maligaon
The 23rd Nov'2001.

Yours faithfully,

Tapangshu Deb Roy.

(Tapangshu Deb Roy)
JE-II/DRG/CON/MLG
under DY.CE/CON/G-J/MALIGAON.

After this
[Signature]

07 January 2002

To,
The General Manager/P/Con.
N.F. Railway,
Maligaon.

(Through Proper Channel)

Sub: Appeal for review of transfer order of my husband Mr. T. Deb Roy, JE-II(Drg) under Dy.CE/C/MLG.

Sir,

With due respect I beg to state the following few lines for your kind consideration and favourable order please.

That Sir, I belong to Scheduled Caste and now working under Dy.CE/C/MLG as JE-I(Drg). My husband Mr. T. Deb Roy is also working in the same office as JE-II(Drg) who has been ordered for transfer to Malda. My husband has prayed for review of his transfer order and posting at Maligaon area, but till date his appeal has not been considered. It will be very troublesome for me to stay here alone, as there is no male member in my family except my husband.

That Sir, as per Railway Board's Circular No. 78-E(SCT)/15/25 dated 6.7.78 the husband of a Scheduled Caste employee should be posted within the Home District. In the present case my husband Mr. T. Deb Roy should also be posted at Maligaon area as we are permanent residents of Kamrup district. Further it is learnt that husband & wife who are Central Govt. employee are to be posted at same working place.

In view of above I fervently request you to post my husband at Maligaon area in terms of Railway Board's circular referred above so that my married life is not disturbed by transferring my husband to a distant place and for that act of your kindness I shall ever pray.

Yours faithfully

Mousumi Deb Roy
(Mrs. Mousumi Deb Roy)
JE-I(Drg)
Under Dy.CE/CON/MLG

Atte to
RTD

D. Deb Roy, JE-I(Drg)
Maligaon, N.F. Railway