

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No... 80/2002.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet. 07-80/2002..... Pg..... 1 to..... 3
2. Judgment/Order dtd. 30/08/02..... Pg..... 1 to..... 5 disposed
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 80/02..... Pg..... 1 to..... 33
5. E.P/M.P..... N.I.L..... Pg..... to.....
6. R.A/C.P..... N.I.L..... Pg..... to.....
7. W.S submitted by the Respondents Pg..... 1 to..... 4
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

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

ORDER SHEET

Orginal No. 80/2002
 Misc. Petition No. /
 Contempt Petition No. /
 Review Application No. /

Applicant(s) C. S. Azad Sarahi

Respondent(s) W. B. I. 9005

Advocate for Applicant(s) M. Chanda, Mrs. N. D. Boruah
A. N. Chakraborty

Advocate for Respondent(s) C. A. C.

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
This is application in form C. F. for Rs. 50/- deposited via IP / 76547763	13.3.02	Heard Mr. S. Dutta learned counsel for the applicant and Mr. A. Chakraborty learned counsel appearing on behalf of the Respondents. Issue notice of motion.
Dated 23.2.2002 By Registrar		Issue notice of motion. List on 20.3.02 for Admission.
State Received. Notice forwarded and sent to D/s for info the Respondent No. 1 to 6 by Regd A.D.		Issue notice on the Respondents to show cause as to why the interim prayer as prayed for should not be accepted. Till the next date the status quo shall be maintained.
Order dtd 15/3/02 D/A No 809 W 814 D/A 18/3/02		Heard Mr. M. Chanda learned counsel for the applicant. Mr. J. L. Sarkar for the Respondents. After hearing the learned counsel for the parties the application is admitted. Call for records. The direction was issued on 13.3.02 to maintain Status quo. However, it is vacated.
Receipt No 617 dtd 15/3/02.	1m 20.3.02	Heard Mr. M. Chanda learned counsel for the applicant. Mr. J. L. Sarkar for the Respondents. After hearing the learned counsel for the parties the application is admitted. Call for records. The direction was issued on 13.3.02 to maintain Status quo. However, it is vacated.
Order dtd 20/3/02 forwarded to the parties Counsel 22/3/02		contd/-

(2)

20.3.02 the impugned order dated 5/6-03-02 will be subject to the outcome of this application. List on 24.4.02 for orders.

I C U Shahn
Member

1m

24.4.2002 List the case on 22.5.2002 enabling the respondents to file written statement.

Interim order dated 13.3.2002 shall continue.

Vice-Chairman

No written statement bb

has been filed.

24.5.02

No written statement so far filed. List on 21.5.2002 to enable the Respondents to file written statement.

Interim order dated 13.3.2002 shall operate until further orders.

Order dtd. 24/3/02
Communicated to the
Parties Comt.

28/5

Vice-Chairman

bb

21.6.02

21.6. written statement
has been filed.

28/6/02

At the request of Mr. S. Sarma learned counsel for the respondents 4 weeks time is allowed for filing of written statement.

List on 7.8.02 for orders.

I C U Shahn
Member

1m

9.8.02

W/S submitted
by the Respondents.

28/8/02

Written statement has been filed. The case is ready for hearing. List the matter for hearing on 30.8.2002. In the meantime, the applicant may file rejoinder, if any.

I C U Shahn
Member

bb

3
M
O.A.No.80/2002

Notes of the Registry

Date

Order of the Tribunal

30.8.2002

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.

Vice-Chairman

nkm

Judgment dtd 30.8.2002
Communicated to
the parties concerned
and the applicant

DR

Notes of the Registry Date Order of the Tribunal

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. /XXXX No. 80 of 2002

DATE OF DECISION. 30.8.2002

Shri Chandra Shekhar Azad Snahi

APPLICANT(S)

Mr. M. Chanda, Mrs N.D. Goswami and

Mr. G.N. Chakraborty ADVOCATE FOR THE APPLICANT(S)

VERSUS

The Union of India and others

RESPONDENT(S)

Mr. J.L. Sarkar, Railway Counsel

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



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.80 of 2002

Date of decision: This the 30th day of August 2002

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

Shri Chandra Shekhar Azad Snahi,
Working as Chief Law Assistant,
Office of the Chief Claim Officer (Court),
N.F. Railways,
Maligaon, Guwahati.Applicant
By Advocates Mr M. Chanda, Mrs N.D. Goswami
and Mr G.N. Chakrabarty.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Railways,
New Delhi.
2. The General Manager (Personnel),
N.F. Railways,
Maligaon, Guwahati.
3. The Senior Deputy General Manager,
N.F. Railways,
Maligaon, Guwahati.
4. Shri J.S.P. Singh,
Chief Personnel Officer (Administration),
N.F. Railway,
Maligaon, Guwahati.
5. Shri L.P. Singh,
Assistant Personnel Officer (Traffic),
N.F. Railway,
Maligaon, Guwahati.
6. Shri Dinesh Singh,
Chief Law Assistant,
Working in the Office of the
General Manager (Law),
N.F. Railway,
Maligaon, Guwahati.Respondents

By Advocate Mr J.L. Sarkar, Railway Counsel.

.....

8

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The issue relates to transfer and posting. The applicant is serving under the respondents and presently working as Chief Law Assistant. He was initially appointed as Law Assistant in the year 1995 and posted as Law Assistant in the pay scale of Rs.1600-2600 under the General Manager (Law), N.F. Railway, Maligaon. The entire grievance of the applicant is for his posting at Katihar Division of N.F. Railway. It was pleaded, inter alia that the applicant belongs to the Scheduled Caste Community from Munger in Bihar and since Katihar is a nearer place from his hometown, he could look after his aged parents and the enjoy the family life is he is posted at Katihar Division. The applicant in support of his claim relied upon a number of Circulars issued by the Railway Board from time to time for posting of SC/ST employees to their native districts or adjoining districts. The applicant moved the authority for his posting and transfer at Katihar Division, but arbitrarily the respondents ignored his claim and transferred and posted persons of their own choice from Maligaon to Katihar with oblique motive. The applicant has impugned the order No.E/254/99/Pt.VI(T) dated 8.3.2001 transferring and posting the Chief Law Assistant under General Manager (Law), N.F. Railway, Maligaon to DRM(P), Katihar. The applicant contended that the respondents all throughout acted arbitrarily and discriminately in not posting him at Katihar in violation of their own norms.

2. The respondents contested the claim of the applicant and filed their written statement. In the written statement the respondents stated that at the time of promotion from Sr. Clerk to Law Assistant on the scheme of "Best amongst the failed SC candidates", there was no post available at Katihar and so the applicant was posted at Head Quarter, Maligaon. His posting was done based on the vacancy at Headquarter, Maligaon, because out of fortyone numbers of LA/CLA thirtyeight posts were operated at Headquarter, Maligaon. The respondents referring to the transfer of A.P. Srivastava, Law Assistant, stated that Shri Srivastava was transferred against the vacancy of Law Assistant at Katihar, whereas the applicant was a Chief Law Assistant and there was no vacancy of Chief Law Assistant at Katihar Division. The respondents denied any malafide on the part of respondent Nos.3 and 4. It was stated that the applicant being a Chief Law Assistant, his controlling officer was the Senior Deputy General Manager, Maligaon who was also teh Chief Vigilance Officer, Maligaon. The order was passed by the Chief Vigilance Officer, Maligaon for transfer of respondent No.6 and that was done after detailed study of all the cases lying for consideration for transer to Katihar Division. The respondents stated that for filling up the vacancy of Chief Law Assistant, Katihar, the authority considered the case of all the eligible persons. It was mentioned that there were four persons for transfer to Katihar against one vacancy of Chief Law Assistant. The authority assessed and on balancing the factors decided to transfer respondent No.6. the authority in the written statement stated that because of the strenuous nature of job, where

outstation.....

outstation duty was also of frequent nature, considering the fact that the applicant had undergone 'Open Heart Surgery' at Railway Hospital, Parambur, Chennai on 31.7.2001, the authority decided not to post the applicant at Katihar.

3. I have heard Mr M. Chanda, learned counsel for the applicant and also Mr J.L. Sarkar, learned Railway Counsel at length. Mr Chanda referred to numerous Railway Board Circulars granting facilities to the SC/ST persons, more particularly in the matter of transfer and posting. Mr Chanda in support of his contention brought to my attention to a decision rendered by the Allahabad Bench of the Central Administrative Tribunal in R.C. Chaudhary Vs. Union of India and others (O.A.No. 688 of 1994), reported in Swamy's Case Law Digest, 1996/1. In the aforesaid decision the Tribunal's concern was to the order of transfer of an SC employee. Admittedly, in the instant case the transfer order related to respondent No.6 who did not belong to SC community. At any rate, the said transfer order was not challenged by Dinesh Singh. The applicant, however, challenged that transfer order on the ground that instead of considering his case for transferring him the respondents transferred and posted respondent No.6 overlooking his case.

4. From the materials available it appears that there was only one post of Chief Law Assistant at Katihar. For filling up that post the authority had chosen respondent No.6. According to the respondents there were four aspirants for the post and out of the four persons, the authority had to select one. From amongst the four persons the authority selected one who ^{will} serve its purpose. It ^{is}.....

is difficult to hold that any illegality has been committed by the respondents. Mr Chanda submitted that the grounds given by the respondents for not posting the applicant at Katihar Division because of his 'Open Heart Surgery' is not a relevant consideration. The learned counsel for the applicant submitted that the applicant had undergone 'Open Heart Surgery' to improve his health conditions so that he can work like an normal person. Moreover, 'Open Heart Surgery' does not debar a person from doing his normal duties. At any rate, the aforesaid stand of the respondents was not based on any scientific consideration, contended Mr Chanda.

5. I have given my anxious consideration in the matter. The respondents had to man the post of Chief Law Assistant at Katihar and for that they considered the case of respondent No.6 to fit the bill, though they considered the case of the applicant also. The totality of facts did not indicate any impropriety or malafide in the order of transfer. The authority acted bonafide and posted the respondent No.6 in the post. The said transfer and posting of respondent No.6 on the facts and circumstances of the case cannot be said to be unlawful.

6. In view of the above I do not find any infirmity in the order of transfer and posting calling for interference by the Tribunal. It may, however, be made clear that rejection of this application should not preclude the respondents from considering the case of the applicant for his transfer and posting at Katihar or some other Division of his choice in near future. It is also made clear that the ground of his 'Open Heart Surgery' shall not be a ground for refusal for transferring the applicant out of N.F. Railway, Maligaon and posting him against any future

vacancy.....

vacancy.

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


(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

Title of the case : O.A. No. /2002

Sri Chandra Shekhar Azad Snahi : Applicant

- Versus -

Union of India & Others: Respondents.

INDEX

SL. No.	Annexure	Particulars	Page No.
01.	-----	Application	1-12
02.	-----	Verification	12.A
03.	1	Letter dated 27.9.1994	13
04.	1A Series	Transfer posting policy of SC/ST candidates	14-17
05.	2	Letter dated 22.4.1996	18
06.	3	Representation dated 17.10.1996	19
07.	4	Letter dated 16.01.1997	20
08.	5	Representation dated 15.03.99	21-22
09.	6	Representation dated 08.02.2001	23-24
10.	7	Order dated 8.3.2001	25
11.	8	Order dated 8.3.2001	26
12.	9	Representation dated 14.12.2001	27-28
13.	10	Representation dated 07.03.02	29-31
14.	11	Impugned order dated 5.3.02	32

Filed by

Date 11-3-2002

Manik Chandra,
Advocate

Chandra Shekhar Azad Snahi

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

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

80
 O.A. No. /2002

BETWEEN

Shri Chandra Shekhar Azad Snahi
 S/o Sri Shyam Sundar Ram
 Working as Chief Law Assistant
 Office of the Chief Claim Officer(Court)
 N.F.Railways, Maligaon,
 Guwahati-781011

...Applicant

-AND-

1. The Union of India,
 Represented by the Secretary to the
 Government of India,
 Ministry of Railways, New Delhi-1
 New Delhi.

2. The General Manager (Personnel)
 N.F. Railways, Maligaon,
 Guwahati-11.

3. The Senior Deputy General Manager
 N.F.Railways, Maligaon,
 Guwahati-11.

Filed by the applicant
 M. Chandra Shekhar Azad
 11.3.2002

Chandra Shekhar Azad Snahi

4. Sri J.S.P. Singh
 Chief Personnel Officer (Administration)
 N.F.Railways, Maligaon,
 Guwahati-11.

5. Shri L.B.Singh
 Assistant Personnel Officer (Traffic)
 N.F. Railways, Maligaon,
 Guwahati.

6. Shri Dinesh Singh
 Chief Law Assistant
 Working in the office of the General
 Manager (Law), N.F.Railways, Maligaon,
 Guwahati-11.

.. Respondents

DETAILS OF THE APPLICATION

1. Particulars of order against which this application is made.
 This application is made against the impugned order No. E/283/173/Pt.III(T) dated 05/06.03.02 issued by the respondent no. 5 whereby the prayer of the applicant for posting at Katihar has been turned down in an arbitrary and whimsical manner and the respondent no.6 has been transferred and accommodated in the existing vacancy at Katihar on extraneous consideration in violation of statutory rule deprivation of the applicant's right for consideration of his posting near Home Town in terms of railway Board Circular dated 6.7.1978.

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

Chandra Shekhar Azad Snah

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India as well as other laws of the land. He is at present working as Chief Law Assistant being posted under the Chief Claim Officer (Court), N.F. Railways, Maligaon, Guwahati.
- 4.2 That the applicant is a permanent resident of Shankarpur in the district of Munger (Bihar) and belongs to Scheduled Caste Community. After his initial appointment vide order dated 15.1.1990 as Junior Clerk (Estt.), the applicant was posted at Katihar under the disposal of Senior Divisional Personnel Officer. However, subsequently in the year 1992 he was promoted as Senior Clerk (Estt.) and posted in the same office.
- 4.3 That in the year 1995, the applicant appeared in the Departmental Selection Examination for the post of Law Assistant following a notification in that regard issued by the respondent no.2. The applicant fared well in the said examination and was declared successful. He was, therefore, appointed vide GM(P)/MLG's office order No.E/254/99/Pt.V(T) dated 15.12.1995 circulated under DRM(P) KIR office order no E/191/7/Q(LA) dated 03.01.1996 as Law Assistant in the pay scale of Rs. 1600-2600/- (RPS) with posting under the General Manager (Law), N.F.Railway, Maligaon. The applicant immediately accepted the offer and joined at Maligaon from

Katihar within the joining time of 10 (ten) days granted under the above mentioned order. Since then, the applicant has been working continuously at Maligaon with all sincerity and devotion and to the satisfaction of all concerned.

4.4 That the applicant states that there has been a constant demand of Law Assistants/Chief Law Assistants in the Katihar Division of N.F.Railway since the number of cases dealt with in that division are more. In this background, the Divisional Railway manager (Personnel) (for short DRM(P)) had been pressing the respondent authorities at Guwahati for sanction/creation of additional posts. The requirement of the DRM(P), Katihar was because of the increased number of cases to be dealt with in that division. In this connection, it may be stated that the DRM(P)/Katihar vide his letter, amongst others, under DRM/KIR's D.O. No. E/208/1/Misc/Court Case/93-94 dated 27.9.1994, requested the respondent no.3 to sanction/create post as narrated above. It was specifically mentioned in the said letter that one post of Law Assistant having working background in Establishment be sanctioned immediately. Be that as it may, the requirement of the DRM(P), Katihar has been for Law Assistants/Chief Law Assistants with the background/experience of working in Establishment.

The applicant, not being in possession of those various letters, prays that the respondents may be directed to produce those at the hearing of this application, if this Hon'ble Tribunal intends to peruse the same.

A copy of the above referred letter dated 27.9.94 is annexed herewith as **Annexure-1**.

4.5 That as stated above, the applicant is a person from Scheduled Caste Community and he joined at Maligaon as Law Assistant on his promotion from the post of Senior Clerk

Chandra Shekhar Azad Guah

(Estt.). It may be pertinent to mention here that as per the Railway Board's Rules, the SC/ST persons are required to be posted to their native districts or adjoining districts. The said Rule of the Railway Board is statutory in nature and therefore deserves strict compliance. The Rules governing appointment/transfer/posting of SC/ST candidates provide, *inter alia*, that subject to the exigencies of service, such an employee should be confined to their native districts and should be transferred very rarely and for very strong reasons only.

The relevant rules referred to above are annexed herewith as **Annexure 1 A series**.

4.6 That in the above situation, the applicant soon after his posting to Maligaon from Katihar - submitted a representation to the respondent no. 4 and sought transfer to Katihar which is much nearer to Munger, his home district. The applicant, in his said representation, also referred to the above mentioned Rules of the Railway Board as well as the long standing demand of the DRM(P), Katihar requiring Law Assistants with working experience in Establishment. Be stated that the applicant having been promoted from the post of Senior Clerk (Estt.), is well acquainted with the nature of work in Establishment Section and therefore deserved preferential consideration. However, the request of the applicant could not be considered by the respondent authorities at that point of time due to acute shortage of Law Assistants and the decision in that regard was communicated vide letter No. E/254/99 Pt. V (T) dated 22.04.1996.

A copy of the said letter dated 22.4.1996 is annexed herewith as **Annexure-2**.

4.7 That the applicant accepted the said letter dated 22.04.1996 with the expectation that his case would be considered against any future vacancy as and when occasion would be so arise. But, nothing happened fruitful and in such a situation the applicant penned another representation on 17.10.1996 to the respondent no.2 seeking his intervention in the matter and this time too, his prayer was turned down vide letter No. E/254/99 Pt. (T) dated 16.01.1997 on the plea of shortage of staff. However, the applicant did not loose his heart and continued to press the matter through representations.

Copies of the representation dated 17.10.1996, the letter dated 16.1.1997 and the representations dated 15.03.1999 and 08.02.2001 are annexed herewith as **Annexure 3,4,5 and 6** respectively.

4.8 That the applicant states that having waited long 6 (six) years for consideration of his request/choice transfer to Katihar Division, he expected legitimately that his turn would come with the availability of vacancy. But quite surprisingly, in spite of availability of clear vacancy at Katihar, the respondents did not consider his case and transferred one Sri A.P. Srivastava, Law Assistant to Katihar vide order dated 08.03.2001 on the letter's request. It may be stated herein that in the meantime the applicant had been promoted to the post of Chief Law Assistant.

Copies of the orders dated 08.03.2001 are annexed herewith as **Annexure- 7 & 8** respectively.

4.9 That the applicant states that even after filling up the post of Katihar as stated in the preceding paragraph, another vacancy of Chief Law Assistant was likely to occur with effect from 1.1.2002 due to retirement of the incumbent Sri P.Sinha, Chief Law Assistant with effect from 31.12.2001. The applicant, therefore, submitted a

representation on 14.12.2001 to the respondent No.3 praying for consideration of his case against the said resultant vacancy. But the said representation did not yield any response and as such the applicant again submitted a representation on 07.03.2002.

Copies of the said representations dated 14.12.2001 and 07.03.2002 are annexed herewith as **Annexure-9 and 10** respectively.

4.10 That the applicant states that most surprisingly on 05.03.2002, the respondent no.5 has issued an order and thereby transferred the respondent No.6 (an Unreserved candidate) to the vacant post of Chief Law Assistant, in violation of statutory rule/order contained in Railway Board Circular dated 6.7.1978 Katihar in deprivation of the applicant's right as well as in frustration of his claim over the said post. The applicant has reliably learnt that the said order has been issued on extraneous consideration and with mala fide intention and the respondent No.5 has influenced the respondent nos. 3 and 4 in getting their approval on the said order of transfer. The action of the respondents is *prima facie* arbitrary and suffers from colourable exercise of power. The same is, therefore, liable to be declared illegal and the impugned order is liable to be declared illegal and the impugned order is liable to be set aside.

A copy of the impugned order dated 05.03.2002 is annexed herewith as **Annexure-11**.

4.11 That it is stated that the respondent no.5 has not yet been relieved in terms of impugned order dated 5/6.3.2002. therefore Hon'ble Tribunal be pleased to stay the operation of the impugned order dated 5/6.3.2002 till disposal of this application, otherwise it will cause irreparable loss

and injury to the applicant and the same will cause future complicity in granting adequate relief to the applicant.

4.12 That the applicant states that there are altogether three aspirants including him seeking request transfer to Katihar and he is the only Scheduled Caste Candidate. Moreover, as desired by the DRM(P), Katihar, the applicant is the only person available who had working experience in Establishment Section. This apart, during his long service career he has always served efficiently and to the satisfaction of all concerned. Therefore, there cannot be any reasonable ground on the part of the respondents in issuing the impugned order without considering his case with due regard to the statutory rules governing transfer/posting etc. of a Scheduled Caste Candidate. The applicant has come to learn about the impugned order on 8.3.2002 and he has been discriminated by the impugned action of the respondents. The impugned order, therefore, cannot be sustained on any court and is liable to be set aside.

4.13 That this application is filed bonafide and in the interest of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that the impugned order is ex-facie illegal, arbitrary and therefore liable to be set aside.

5.2 For that the applicant being a Scheduled Caste candidate has got a right to be posted at or nearer to his native district in preference to senior Un reserved category candidate in terms of the statutory rules of the Railway Board Circular/letter dated 6.7.1978

5.3 For that the applicant has been discriminated against the respondent no.6 without any rational objective or

reasonable criteria and consequently has been deprived of his right to have his posting nearer to his native district.

- 5.4 For that the applicant being the only candidate having working background in establishment department and moreover being a Scheduled Caste candidate deserves to be considered fairly in making transfer/posting.
- 5.5 For that the respondents, particularly respondent nos. 4 and 5 have acted malafide and on extraneous consideration in issuing the impugned order to protect the interest of the respondent no.6 and thus has exercised jurisdiction not vested in law and therefore the impugned order is liable to be set aside.
- 5.6 For that the impugned order has been approved by the respondent nos. 2 and 3 with no application of mind and in total disregard to the existing statutory rules regarding transfer/posting of Scheduled Caste candidate.
- 5.7 For that the respondent no.6 belongs to Muzaffarpur, a place which is 400-450 Kms. away from Katihar whereas the home district of the applicant is in the vicinity of Katihar and in this view of the matter the respondents ought to have considered his case so as to accommodate him nearer to his home which not having been done has rendered the impugned order bad in law and liable to be set aside.
- 5.8 For that the respondents have violated the statutory rules in passing the impugned order and the same is therefore liable to be set aside.
- 5.9 For that, the applicant has a legitimate expectation and a right to have his case fairly considered by the

respondents in terms of the existing rules but the same have been violated and the impugned action is therefore liable to be declared illegal.

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

6. Details of remedies exhausted.

That the applicant states that he has no other alternative and other efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other court.

The 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. Reliefs sought for :

Under the facts and circumstances stated above, the applicant humbly prays that your Lordships be pleased to issue notice to the respondents to show cause as to why the reliefs sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

8.1 That the impugned order dated 05/06.03.02 (Annexure-11) be set aside and quashed.

32

8.2 That the applicant be declared entitled to have his posting at or nearer to his native district in terms of the existing rules/instructions of the Railway Board.

8.3 That the respondents be directed to consider the case of the applicant for his posting to Katihar in terms of the existing rules and in preference to the Un-reserved candidates as provided under the Rules in the existing vacancy.

8.4 Costs of the application.

8.5 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

Under the facts and circumstances of the case narrated above, the applicant humbly prays that he has a strong *prima facie* case and the balance of convenience is in his favour. Therefore, if this Hon'ble Tribunal do not pass appropriate interim orders prayed for in this application, he will suffer irreparable loss and injury. The Hon'ble Tribunal may, therefore, be pleased to grant the following interim relief(s) :-

9.1 That the operation/execution of the impugned order dated 05/06.03.2002 (Annexure-11) be stayed till disposal of this application.

9.2 That the respondents be restrained from filling up the vacant post of Chief Law assistant, Katihar Division (under disposal of DRM (P), Katihar) by any person other than the applicant.

9.3 Any other interim relief(s) to which the applicant may be entitled.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I.P.O. No. : 7G 547763.
- ii) Date of issue : 2. 3. 2002.
- iii) Issued from : G.P.O., Guwahati.
- iv) Payable at : G.P.O., Guwahati.

12.

List of enclosures.

As stated in the index.

VERIFICATION

I, Shri Chandra sekhar Azad Snahi S/o Shri Shyam Sundar Ram, aged about 36 years, working as Chief Law Assistant, office of the Chief Claim Officer (Court), N.F. Railways, Maligaon, applicant, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 11th day of March, 2002.

Chandra sekhar Azad Snahi

Signature

Sept. 27, 1994.

27

My dear Verma,

Sub:- Additional post of LA for
Katihar Division.

of late, the number of cases in various Courts have increased. The details of the pending cases is given below:

CAT/Patha	...	20
CAT/Caleutta	...	58
High Court/Caleutta	...	4
High Court/Patna	...	2
Supreme Court	...	10
Bhagalpur/Ranchi & Purnea		4

In addition to the above, there are 160 W.C. cases pending in W.C. Court/Jalpaiguri. At present, we have only one LA posted in Court Cell of P/Branch besides one post of PI(Court). To contest these cases properly which includes drafting reply, briefing of Railway Advocate, filing of reply in the Court, attending the hearing along with RA and interpretation and implementation of judgement, it is essential to post one LA immediately in KIR Division. You will appreciate that the cases are pending in various places like Patna, Caleutta, Delhi, Bhagalpur, Dhanbad, Ranchi and Purnea and it is impossible for two persons to manage all the law works involved in contesting those cases spread over different areas. It is also a fact that the number of Court cases are likely to increase day by day. For this, it is essential to have a Legal Cell manned by adequate number of LA.

In view of the above you are requested to kindly post one LA having Estt. back-ground immediately by variating one post or by creating the same, if necessary.

With best wishes,

Yours sincerely,

(A. SEN)

Shri M.K. Dev Verma,
SDGM/N.F. Rly./Maligaon.

Attmt
M
A.S.

CHAPTER XIII

CONCESSIONS AND FACILITIES ADMISSIBLE TO SCHEDULED CASTES AND SCHEDULED TRIBES DURING TRAINING IN DIRECT RECRUITMENT AND PROMOTIONS

13.1. Security Deposits.—Security deposits from Scheduled Tribe candidates for employment on Indian Railways is 50 per cent of the normal security for training. It can be deposited in a lump sum or in instalments after the training actually started.

(Letter No. F(X)I-57-SC4/1 dated 15th November 1957)

13.2. Appointments/Transfers.—(i). At the time of initial appointment, the Scheduled Caste/Scheduled Tribe candidates should as far as practicable, be posted near to their home town or at a place where the administration can provide them with quarters, subject to their eligibility. These instructions would equally apply to cases of transfer on promotion provided the post is available.

(Letter No. 78E(SCT)15/25 dated 6th July 1978)

(ii) Subject to the exigencies of service, transfer of Scheduled Castes and Scheduled Tribes employees should be confined to their native districts or adjoining districts or the places where the Administration can provide quarters. They should be transferred very rarely and for very strong reasons only.

(Letter Nos. (i) E(SCT)70CM15/15/3 dated 19th November 1970 and

(ii) E(SCT)74CM15/58 dated 14th January 1975)

13.3. Pre-Examination Training Courses at the University of Allahabad—Grant of leave to Scheduled Caste/Scheduled Tribe employees.—Scheduled Caste/Scheduled Tribe employees desirous of joining classes at the above-mentioned Training Centre may take leave (earned leave, etc.) as due to them under normal rules including extraordinary leave.

In cases where the leave due and extraordinary leave is not sufficient to cover the period of training, the General Managers may at their discretion grant extraordinary leave in excess of 90 days in relaxation of Rule 732-R. I.

(Letter Nos. (i) E(SCT)62CM15/14 dated 15th February 1962 and

(ii) E(SCT)62CM9/57 dated 20th February 1963)

13.4. Complaint Register.—So far as complaints and grievances of Scheduled Caste/Scheduled Tribe employees are concerned, separate Complaint Register should be maintained at various levels. All representations received from reserved community employees containing their grievances and complaints should be entered in this register and necessary action taken judiciously and

27th July 1972 referred to, will, however, continue to be applied except that the percentage of reservation of vacancies will now be 10 per cent instead of 5 per cent as hitherto.

3. A point has been raised as to whether the rate of special allotment to be given to employees from these two communities is 10 percent of the vacancies occurring from time-to-time or whether a higher rate should be adopted so that the total number of Type II quarters occupied by the employees belonging to the reserved communities in non-essential categories is brought upto the target of 10 per cent. In connection, it is clarified that as every 10th vacancy is taken as reserved for the above mentioned employees, the question of shortfall does not arise. The *ad hoc* allotments made to the Scheduled Caste/Scheduled Tribe employees or allotments made to them in their turn are not to be adjusted against the reserved quota, i.e., these are in addition to the reserved quota fixed for them.

Railway Board's letter No. E(SCT)74CM15/58 dated 14th January 1975.

Sub : Hardships caused to Scheduled Castes/Scheduled Tribes who are transferred.

Attention is invited to Board's letter No. E(SCT)70CM15/15/3 dated 19th November, 1970 wherein it was desired that the transfer of Scheduled Castes and Scheduled Tribes employees should be confined to their native districts or adjoining districts or places where the administration can provide quarters and that these instructions should be followed to the maximum extent possible, subject of course to the exigencies of service.

2. It has been represented that the Scheduled Castes and Scheduled Tribes are being transferred from one place to other quite frequently. The Board have, therefore, decided that the employees belonging to Scheduled Castes and Scheduled Tribes should be transferred very rarely and for very strong reasons only.

Railway Board's letter No. 78-E(SCT)/15/25 dated 6th July 1978.

Sub : Posting of Scheduled Castes/Scheduled Tribes near their home town on initial appointment.

Ref : Board's letter No. 74E(SCT)/15/58 dated 14th January 1975.

The extant instructions provide that the transfer of Scheduled Castes/Scheduled Tribes should, as far as practicable, be confined to their native districts.

A doubt has been raised whether the above decision would also apply to postings of Scheduled Castes/Scheduled Tribes at the time of initial recruitment. The Ministry of Railways therefore desire to clarify that even at the time of initial appointment, the Scheduled Caste/Scheduled Tribe candidates should as far as practicable, be posted nearer to their home town or at a place where the administration can provide them with quarters, subject to their eligibility. These instructions would equally apply to cases of transfer or promotion provided the post is available.

Railway Board's letter No. 78E(SCT)/13/2(B) dated 21st July 1978.

Sub : Employment of women as Reservation/Booking Clerks and Supervisors in the major Booking Offices at Metropolitan cities.

Reference is invited to Board's letter No. E(NG)III-78RRI/13 dated 28th April 1978. While posting woman candidates, both from the serving staff and by direct recruitment at the Reservation Counters/in the Booking Offices, eligible Scheduled Caste/Scheduled Tribe woman candidates, wherever available, should also be considered for such postings.

Railway Board's letter No. 82-E(SCT)40/3 dated 4th August 1982.

Sub : Representation submitted by the Scheduled Caste/Scheduled Tribe staff to the Commissioner for Scheduled Castes/Scheduled Tribes and the Zonal Directors for Scheduled Castes and Scheduled Tribes—Decision regarding.

A copy of the Ministry of Home Affairs' Office Memorandum No. 17016/1/76-SCT, I dated 8th April 1976 on the subject noted above, is enclosed for your guidance and necessary action.

Ministry of Home Affairs O. M. No. 17016/1/76-SCT. I dated 8th April 1976 to all Ministries etc.

Sub : Question whether the Commissioner for Scheduled Castes and Scheduled Tribes can call for original records and files in specific cases where complaints have been made to him and whether Scheduled Caste and Scheduled Tribe servants can write to him direct.

The undersigned is directed to refer to this Ministry's Office Memorandum No. 8/2/59-SCT. I, dated 1st October 1974 on the above subject addressed to all Ministries/Departments of the

N.F.Railway.

Office of the
Chief Personnel Officer,
Maligaon, Guwahati-11.

Dated 26-12-90

No.E/227/Resv/O/Pt.III

To
M/KIR, APDJ, LMG, TSK : Sr.DPO/KIR, DPO/APDJ, LMG, TSK
SE/MLL(D)/SGI, S/NGC, FA&CAO, Chief Cashier, CSC, DY.CE/Br, Lin
DPO/PS, SPO/HC, SPO/T&Med, SPO/E&C, APO/E-I, APO/E-II, APO/C,
SC/ST Admin, General Secy, NFRMU/PNO and General Secy, NFE/PNO.

Re: Transfer, posting of staff belonging
to SC and ST communities.

At the time of transfer and posting of staff belonging to SC/ST communities, attention is invited to Board's letter No. E (SCT) 74CHL5/58 dated 14.1.75 at page 333 of Broucher, 1985 and Board's letter No. 85-E (SCT) 1-43/1 dated 24.12.85 circulated vide CPO's letter No.E/227/Resv/O/Pt.III dated 10.2.86.

Apart from this GM has passed order in the informal meeting on 31.1.1989 with SC/ST Association as under :-

"Before an SC/ST is transferred DRM's personal approval is necessary. DRM should record these as speak order. SC/ST candidates should be given a house at the new station out of term."

This is circulated vide CPO's letter No.E/231/Resv/Inf. Meeting dated 3/4/9-1990.

In this connection CPO/Admin has passed an orders as under :-

"Board's instructions are very clear that SC/ST can be transferred only if it is not possible to accomodate them at the station which by implication means that they have to be retained in preference to senior IR candidate."

26/12/90

for Chief Personnel Officer/MLG.

ANNEXURE - 2

H. F. Railway

Office of the
General Manager (P)
Maligaon, Guwahati-11

No. E/254/99 Pt. V(T)

Dated: 22-04-96

To
Sh. Chandra Sekhar Azad Snaki,
Law Asstt. under
GM's Office/Maligaon.

Sub: Posting of Law Asstt.

Ref: Your representation dated 27-12-95.

Due to acute shortage of Law Asstt., your request for posting under DRM/KIR can not be considered for the present.

(APO/C)
for General Manager (P)

22/4/96

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

Through Proper Channel

Respected Sir,

Sub:- Request for Transfer from GM(Law)/Maligaon to Katihar Division as Law Asstt.

Most humbly and respectfully I beg to lay before you the following few lines for kind and sympathetic consideration please.

That Sir, I am working as Law Asstt. under kind control of Law Officers in terms of GM(P)/MLG's Office Order No. E/254/93/Pt.V(T) dated 15/12/95 dt 1-10-96 and have been performing my duties with entire satisfaction of my superior.

That Sir, prior to my present assignment I was posted under Sr.DPO/KIR as Sr.Clerk. My wife and very old parents are living at Katihar and in absence of myself they have been facing many troubles.

That Sir, I am a Hindi knowing man and have face many difficulties here in course of duty.

That Sir, at present I have maintained two establishment due to my posting at Maligaon and I have been facing very much trouble to maintain them due to high market price.

That Sir, I am Scheduled Caste belonging to reserved Community and my native place is nearer to Katihar Railway Station.

That Sir, it is Railway Board's Order for SC/ST Railway Employee regarding their posting that SC/ST Rly Employee should be posted at the nearest to his home station/home town.

That Sir, DRM/KIR has already been demanded one post of Law Asstt. for KIR Division at KIR for disposal of Court Cases due to a large No. of cases are pending under KIR Division under his P.O. L/No. E/208/I/Misc/Court Case/93-94 dt. 27/9/94 (Copy enclosed).

That Sir, In this connection previously I have already applied for my Transfer at KIR as Law Asstt.

In view of the above I am requesting you again to kindly consider my application sympathetically and arrange my posting at KIR in transfer from Maligaon to Katihar under Katihar Division giving one post of Law Asstt. in the light of Railway Board's Circular/Instructions and DRM(P)/KIR's requisition please.

Thanking you,

Yours faithfully,

Chandra Shekhar Ad Snahil
Ad Snahil
P.D.V.

Dated :- 17-10-96

(Chandra Shekhar Ad Snahil)
Law Assistant (SC)
under GM(Law)/Maligaon/R.P. Rly

N. F. Railway

Office of the
General Manager (P)
Maligaon, G. waliati-11

No. E/254/99 Pt. V(T)

Dated: 16.01.97

To
The Secretary/Fatt.,
Railway Board,
New Delhi.

Subs: Transfer of Sh. Chandreshkumar Azad Sneh, Law Assistant, Maligaon to Natinar Division.

Ref: Railway Board's D.O. No. 96/E(SCT)II/5/56
dated 27-11-96.

Railway Board's attention is invited to this Railway's letter of even number dated 12-12-96 wherein the detailed position of the Legal Coll of this Railway was narrated in the case of Sh. Syed Jhangir, Law Asstt. under CPO/MIG who submitted his representation for his transfer in the Legal Coll under EMM/KIR (copy enclosed).

Sh. Chandreshkumar Azad Sneh was selected as LA as best amongst the failed SC candidates and was placed under training with L.O/MIG as per extant procedure and on successful completion of his training period he was posted as regular LA in scale Rs. 1600-2660/- under Law Officer/N.F. Railway/IG W.C.F. 29-02-96. As detailed in this Railway's letter mentioned above, the position of Man power in the legal cadre of this Railway is very acute. Further there is no sanctioned post of LA in scale Rs. 1600-2660/- available under EMM/KIR.

In view of the above Railway Board may kindly appreciate that at this juncture the transfer of any LA from one Legal cadre of HQ to Division may not be feasible.

This is issued with the approval of the SDOM, N.F.Railway.

By order
(A.K. Brelie)
Dy. CPO/IR
for General Manager (P)

W.D.
W.D.
W.D.

To
The General Manager(P),
N.F.Railway, Maligaon,
Guwahati-781011.

(Through Proper channel)

Respected Sir,

Sub : Request for transfer from Hd.Qrs Office
Maligaon to Katihar Division as Chief Law
Asstt.

Most humbly and respectfully I beg to lay before
you the following few lines for kind sympathetic considera-
tion please.

That sir, I am working as Chief Law Assistant
under kind control of Law Officer/MLG since 29.2.96 and
have been performing my duties with entire satisfaction
to my superiors.

That sir, prior to my present assignment I was
posted at Katihar of KIR Divn. since my appointment. I have
been transferred from KIR to MLG on promotion to the pos
of Law Asstt. in terms of GM(P)/MLG's L/No.E/254/99/Pt.V T
dtd. 15.12.95. My wife with minor children and old & sick
parents are living at Katihar and in absence of myself, they
are facing many troubles.

That sir, at present I have two establishment and
for which I am facing monetary as well as mental disturbance.

That sir, I am a scheduled caste Rly. employee
of reserve community and my native place is nearer to Katihar.

That sir, It is Rly.Bd's circular/order for SC/ ST
employees regarding their transfer and posting that
SC/ST Rly. employees should be posted at the nearest to his
home station/home town.

That sir, in this context, CPO/MLG has already
been passed an order on 26.10.90 that Board's instruction
are very clear that SC/ ST can be transferred only if it is
not possible to accomodate them at the station which by
implication means that they have to be retained in preference
to Senior UR candidate which is circulated under their L/lo.
E/227/Rcsy/O/Pt.III dated 26.12.90 (copy enclosed).

That sir, I have already applied/requested for my
transfer from Hd.Qrs office/MLG to DRM/KIR on 27.12.95 and
1.10.97. On reply GM(P)/MLG intimated that due to acute
shortage of Law Asstt. your request for posting under DRM/KIR
cannot be considered for the present vide L/No.E/254/99/
Pt.V(T) dated 22.4.96.

A H A U D A
S C O R E A D V

- 2 :-

That sir, DRM/KIR vide his D.O. I/No.E/208/1/Misc/Court case/93-94 dated 27.9.94 and DRM(P)/KIR vide his I/No.E/208/1/Misc/97 dated 22.9.97 have already been demanded additional one post of CIA/IA for Katihar Division.

That sir, in addition to above mentioned facts it is worthwhile to mention here that I have not been provided the Rly. accommodation.

In view of the above circumstances I am requesting you to kindly consider my case sympathetically and arrange to transfer and posting me at Katihar Divn. and for this act I shall ever be grateful to you.

Enclo.: As above.

Dated: 15/3/99 (F.N)

Yours faithfully,

Chandrashekhar Azad 'Snehal'

(CHANDRA SHEKHAR AZAD 'SNEHAL')
Chief Law Assistant
General Manager (Law) Office
N.F. Railway, Maligaon.

Attested
Snehal
P.W.

To,

The General Manager (P)
N.F. Railway, Maligaon,
Guwahati-781011.

(Through Proper Channel)

Respected Sir,

Sub :- Request for transfer from Rd.Qrs. Office/
Maligaon to Katihar Division, at Katihar
as Chief Law Asstt. in Scale Rs. 7450-11.00/-.

Most humbly and respectfully I beg to lay before
you the following few lines for kind sympathetic considera-
tion please.

That Sir, I am working as Chief Law Assistant under
kind control of Chief Claims Officer in Court Section and have
been performing my duties with entire satisfaction to my
superiors.

That Sir, prior to my present assignment I was posted
at Katihar in Personnel Branch of Katihar Division since my
appointment. I have been transferred from Katihar to Maligaon
on promotion to the post of Law Assistant in terms of G.I.(P)/
MLG's L/No. E/254/99/pt. V(T) dtd. 15.12.95 and posted under
Law Officer/Maligaon and entrusted to deal with court cases
of CA, Hig. High Court and Lower Court.

That Sir, at present I have two establishment and
for which I am facing monetary as well as mental disturbance,
as my old and sicky parent are living at my native place.

That Sir, I am a scheduled caste Rly. employee of
reserve community and my native place is nearer to Katihar.

That Sir, It is Rly. Bd's circular/order for SC/ST
Rly. employees regarding their transfer and posting that
SC/ST Rly. employees should be posted at the nearest to his
home station/home town.

That Sir, in this context, CDO/MLG has already been
passed an order on 26.10.90 that Board's instructions are very
clear that SC/ST can be transferred only if it is not possible
to accomodate them at the station which by implication means
that they have to be retained in preference to Senior C
candidate which is circulated under their L/No. E/227/Rly/0/
Pt. III dated 26.12.90.

That Sir, I have already applied/requested for my
transfer from Rd.Qrs Office/MLG to DRD/KIR of Katihar on
21.12.95 and 1.10.97 also. On reply CDO(P)/MLG intimated that
"due to acute shortage of Law Asstt. your request for posting
under DRD/KIR cannot be considered for the present vide
L/No. E/254/99/pt. V(T) dated 22.4.96.

- 2 -

That Sir, it is learnt from reliable sources that one post of Law Asstt./Chief Law Assistant is to be transferred from Hd. Qrs. Office/Maligaon to KIR Division at Katihar and one LA/CLA is to be transferred from Hd. Qrs Office/Maligaon to KIR Division at Katihar.

That Sir, in addition to above mentioned facts it is worthwhile to mention here that I have not been provided the Ry. accomodation till date.

In view of the above circumstances I am requesting you to kindly consider my case sympathetically and arrange to transfer and posting me at Katihar Division at Katihar and for this act I shall ever been grateful to you.

Dated : 8/2/2001

Yours faithfully,

Chandrabhushan Azad Saha

(CHANDRA SHEKHAR AZAD 'SNAHI'
Community - SC
Chief Law Assistant,
CCO/Court Section/Maligaon
N.F.Railway.

Copy to :-

Sr. DGM, N.F.Rly, Maligaon for kind information please.

(CHANDRA SHEKHAR AZAD 'SNAHI')
Chief Law Assistant.

*Attached
Chandrabhushan
Azad*

N. E. RAILWAY.

OFFICIAL ORDER

Sri ... Srinivasay, I/1 in scale Rs. 6500/- to
10,500/- under SPO/IC/MLG is hereby transferred in his
existing post and scale and posted under DRM(P)/KIR's
office against the vacancy created, vide GM(P)/MLG's
order on even number dated 8.3.2001.

Since the above transferred into his own
account such I/1 is not entitled to get transfer
rent/ joining time/transfer pass etc. as per extant
rule.

This issue's with the approval of SDGM/MLG.

Has been

SPO(R)
For GM(P)/MALLGAON.

E/251/OS/VI(2)

Dated: 8.3.2001.

Copy forwarded for information and necessary
action to :-

1. FA & CIO/MLG
2. SDGM/MLG.
3. DRM(P)/KIR
4. DIO/KIR
5. SPO/BILL/MLG
6. APO/IC/MLG
7. APO(N)/MLG
8. CHIEF OS/FO/ICG
9. E/BILL/MLG
10. Staff concerned through his controlling
officer.

GM(P)/MLG

Attn
Ran
M

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER(P)
MALIGAON

No.E/170/Legal Cell/4/39

Date: 08.03.2001

To

Shri A. P. Srivastav,
Law Assistant,
CPO/LC/Maligaon.

Sub : Sparing on transfer to DRM(P)/KIR.

Ref : GM(P)/Maligaon's Office order No.E/254/99/Pl.VI(T) dt
08.03.2001.

In terms of General Manager(P)/Maligaon's Office order number quoted above, you are hereby spared on 08.03.2001 on transfer and directed to report to DRM(P)/KIR for further duty.

(B. Sarma)

Asst. Personnel Officer(LC),
for GENERAL MANAGER(P)/MALIGAON

Copy forwarded for information & necessary action to :-

1. FA & CAO
2. SDGM/MLG
3. DRM(P)/KIR
4. DAO/KIR
5. SPO/BII/MLG
6. SPO/R/MLG
7. COS/EQ
8. OS/EQ/G
9. OS/Pass
10. Spare copy for P/Case

Shri A. P. Srivastav has availed one day CL & one day RH during the year 2001

He is requested to issue LPC of Shri A. P. Srivastav.

He is requested to arrange in sending the P/case & S/R of Shri A. P. Srivastav, LA to DRM(P)/KIR

for GENERAL MANAGER(P)/MALIGAON

R

AI
08.3.01

AI
08.3.01
Attd
Chd
R/W
%

Annexure-9

To

Sr. D.I.G.M.
N.F.Railway, Maligaon
Guwahti 781011

R/Sir.

(Through Proper Channel)

Sub : Application for transfer/retention to KIR under Sr. DPO/KIR from COO/Court Office Hd qrs./MLG as Chief Law Assistant in the scale of Rs. 7450-11500.

Most humbly and respectfully I beg to lay before you the following few lines for kind sympathetic consideration please.

That Sir, I am working under kind control of Chief Claims Officer in the Court Section for the post of Chief Law Asstt. in the scale Rs. 7450-11500/- and have been performing my duties with entire satisfaction to my superiors.

That Sir, prior to my present assignment, I was posted under Sr. DPO/KIR since appointment as KIR is the nearest to my home in the N.F.Rly. I have been transferred from KIR to MLG on promotion to the post of Law Assistant in terms of GM(P)/MLG's L/No. E/254/99/Pt.V(T) dated 15.12.1995, as there was no vacancy of LA/CLA at that time at KIR, and posted under kind control of Law office/MLG, and entrusted to deal with the service matter of court cases of CAT, High Court & Lower Court.

That Sir, I am a Rly employee belongs to Scheduled Caste of reserve community and my native/home place is nearer to KIR.

That Sir, I have two establishment since my transfer at MLG for which I am facing monetary and physically problems as my old parents are living at my native place/home.

That Sir, I am a heart patient and operated my heart problem at Perambur in the month of July, 2001 i.e. after my transfer at MLG and climate at this place i.e. MLG is not suitable for my health.

That Sir, I have already been applied/request for my retention/transfer from Hd qrs./MLG to KIR in several times i.e. on 21.12.95, 1.10.95, 15.3.1999 & 8.2.2001 and

*He/ed
R/Sir
P.W.M.*

Chandru Shekhar Azad Sanki

sorry to say that I have not transferred to KIR but one Mr. A.P. Srivastava (UR) has been transferred to KIR by giving one additional post of LA and my transfer neglected that time. (Copy enclosed).

That Sir, it is mention that regarding transfer & posting of SC/ST employees Railway Board's instruction/Circular is very clear that SC/ST employees should be posted at the nearest to his home station/home town and in this context CPO/MLG has also passed an order that SC/ST can be transferred only if it is not possible to accommodate them at the station which by implication means that they (SC/ST) had to be retained in preference to UR candidate (Copy enclosed).

That Sir, one vacancy of CLA in the scale of Rs. 7450-11500/- will be arise at KIR on 1.1.2002 due to retirement of P.Sinha, CLA/ KIR on 31.12.2001.

In the above circumstances I am requesting to you to kindly consider my application sympathetically and pass an order please to arrange my transfer and posting at KIR under Sr. D.P.O./KIR vice Sri P.Sinha, CLA who will retire from Railway Service on 31.12.2001 and set my life and SC/ST employees facilities. For this act I shall ever been grateful to you.

Dated : 14.12.2001

Enclo :

1. Xerox copy of application.
2. Xerox copy of Circular
3. Xerox copy of Medical Certificate

Yours faithfully,
Sd/-
Chandra Shekhar Azad Snahi
Designation : CLA
Scale - Rs. 7450-11500
Under CCO/Court/MLG
Category-SC

*With
Adv*
Chandra Shekhar Azad Snahi

87 Chandra Shekhar Azad Snahi

To
The GENERAL MANAGER
N. F. Railway
Maligaon, Guwahati - 11
(For Kind Personal Attention Please)

Annexure - 10

Respected Sir,

Sub: - An appeal for justice to SC/ST Employee of Reserve Community.

Most humbly and respectfully I beg to lay before you the following facts for your kind sympathetic consideration please.

That Sir, I am a railway employee belongs to reserve community of S.C. category and working in the post of Chief Law Asstt. In scale Rs. 7450 - 11500/- under kind control of Chief Claims Officer N. F. Rly, MLG and have been performing my duties with entire satisfaction to my superiors.

That Sir, initially, I was recruited in NTPC category through RRB/Patna and appointed to the post of Clerk (E) and posted under Sr DPO/KIR at KIR as Katihar is nearer to my home town in terms of RB's L/No - 78 E (ScT) / 13 / 2 (B) dt 21.07.1978 (Annexure - 1).

That Sir, during my working period under Sr DPO / KIR (Jan / 90 to Feb / 96 i.e. 6 yrs), I was entrusted with establishment cadre and performed all type of establishment matter like appointment, transfer, seniority, promotion etc successfully. If I am transferred to KIR. I shall do all type of establishment cases successfully.

That Sir, I was promoted to the post of Law Asstt through departmental selection and posted at MLG under Law Officer/N. F. Rly in terms of GM (P) MLG's L/No - E/254/99pt v (T) dt 15/12/95 as vacancy of Law Asstt was not available in KIR at that time. During my posting under Law Officer. I entrusted with the work of establishment matter pending before HC/GHY & PNBE, CAT/GHY & Patna, and Lower court/GHY and I dealt all establishment cases independently from Feb/96 to March/99 i.e. 3 yrs.

*A. Hered
O. Chakraborty
Adv*

That Sir, I had requested to GM (P)/MLG for my posting at KIR at the time of my transfer from KIR to MLG in 1995, in the light of DRM / KIR'S DO No. - E/208/1/MISC/court case/93 - 94 dt. 27/09/1994 in which DRM / KIR demanded one LA having Estt. Back ground. (Annexure - 2)

That Sir, due to posting at MLG my old aged parent has been facing many difficulties at home as there is none ^{to} look after them in my absence.

That Sir, upon my parent's appeal for my posting at KIR, MR's desired my posting at KIR vide RB's DO NO - 96/E (S & T) II 15/58 dt 21/11/1996 but sorry to say that nothing has yet been done in this regard by the administration. (Annexure - 3)

That Sir, after that I had submitted several representation ^{24.12.2001} dt. 27/12/95, 17.10.96, 05/10/99, 08/02/2001 etc time-to-time for my transfer and posting at Katihar but nothing has been done in this regard. (Annexure - 4).

That Sir, last year one additional post of Law Asstt has been transferred to KIR under Sr DPO/KIR vide GM (P)/MLG'S Memo No - E/254/99 Pt. VI (T) dt 08/03/2001 and another Law Asstt A.P. Srivastava (UR), who is very much junior to me, had been ordered for transfer to KIR vide GM (P)/MLG's OO No - E/254/99 Pt VI (T) dt 08/03/2001. (Copy enclosed) by neglecting my candidature being SC candidate and also disregard of Rly's rule for posting of SC/ST Rly employee to their home district or adjoining district provided under Rly Bd's L/No - (i) 78 - E (SCT)/15/25 dt 06/07/1978 (ii) 74 - E (SCT)/15/58 dt 14/01/1975 (iii) 78 E (SCT)/13/2/(B) dt. 21/07/1978 (Annexure - 5.)

That Sir, in this connection, on 31/01/1989 an order passed by Hon'ble GM / N. F. Rly for transfer and posting of SC/ST Employees as under- 'Rly. Board's instruction are very clear that SC/ST can be transferred only if it is not possible to accommodate them at the station which by implication means that they have to be retained in preference to senior UR candidate'. And sorry to say that administration neglected these guide lines/instructions at the time of transfer of Law Asstt on 08/03/2001 in which I was the candidate. Vide CPO/MLG's letter No. E/227/RESV/0/Pl.III dt. 26/12/1990 (Annexure - 6)

That Sir, I had gone to open-heart surgery for my ASD Seccundum problem at S. Rly Central Hospital, Perambur, Chennai last year and returned after successful surgery. After operation I feel better than previous and can do my normal duties as advised by doctor. In NE region, due to its difficult types climate. I have been facing indigestion and gastric problem after my surgery and it may give more problems here if I have to live in NE region continuously. As such, I want to my transfer at KIR in my own climate for saving my valuable life and also to work smoothly (Annexure -7)

That Sir, one resultant vacancy of CLA in scale Rs. 7450 - 11500/- has aroused at KIR due to retirement of P.Sinha, CLA on 31/12/2001 for which I submitted my application also in addition to my earlier application which is pending before P/branch for my transfer and posting at KIR under Sr DPO/KIR since Dec/2001. If, I am transferred and posted at KIR then I sure that I shall be able to discharge duties more efficiently & smoothly at KIR than MLG due to nature of job in the climate condition of my home district when at MLG I have to do various works to different place all over of India almost frequently and it is very difficult to me at MLG.

In the above circumstance, I am praying you to kindly pay your direct attention in the matter and consider my request sympathetically to do justice to me as SC/ST employee, and transfer me to KIR as CLA against the above resultant vacancy.

I shall be grateful for your kindness.

Your's faithfully

Dated: 07/03/2002.

CHANDRA SHEKHER AZAD SNAHI (SC)

Chief Law Asstt

Under CCO / Court / MLG.

Copy to: General Secretary, All India SC/ST Rly Employees Association, and MLG for information and taking necessary steps for justice to SC/ST employees please.

CHANDRA SHEKHER AZAD SNAHI (SC)

N. F. Railway

Office of the
General Manager(P)
Maligaon, Guwahati-11

OFFICE ORDER

The following transfer and posting order is issued to take immediate effect :

1) Shri Dinesh Singh, CLA under GM/Law/Maligaon is hereby transferred and posted under DRM(P)/KIR on his same Pay & Scale vice existing vacancy on his own request.

No Transfer Pass, Joining time, Transfer grant, etc. is admissible as the transfer order is issued on his own request.

This is issued with the approval of competent authority.

L. B. Singh
(L. B. Singh)

APO/T

for General Manager(P)/Maligaon

22/4/96

No. E/283/173/Pt.III(T)

Dt. 05.03.2002

Copy forwarded to for information :-

1. Shri Dinesh Singh, CLA/GM/Law/Maligaon.
2. FA&CAO/Maligaon.
3. SDGM/Maligaon.
4. Dy.GM(G)/Maligaon.
5. GM/Law/Maligaon.
6. DRM(P)/KIR.
7. DAO/KIR.
8. APO/Bill/MLG & APO/LC/MLG.
9. OS/ET & OS/EQ with spare copy for P/Case.

L. B. Singh
(L. B. Singh)

05.3.02

APO/T

for General Manager(P)/Maligaon

A. H. Singh
A. H. Singh
A. H. Singh

JUL 2002

Guwahati Bench

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

D.A. NO. 80/2002

Sri C. S. Azad Snahi.

- Vs. -

Union Of India & Ors.

In the matter of :

Written Statement on behalf of
the respondents.

The respondents in the above case most
respectfully beg to state as under :

1. That the respondents have gone through the original application and have understood the contents thereof.
2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That in reply to the statements in paragraphs 4,5 it is stated that the post of Law Assistant and Chief Law Assistant are HQ controlled posts. As per Book of Sanction there are twelve Law Assistant and twenty-nine Chief Law Assistant which are distributed in division and in HQ as under :

Sl.No.	Name of Office	CLA	LA	SC/ST Available	
				CLA	LA
1.	DRM(P)/KIR	01	01		
2.	DRM(P)/APDJ	01	Nil		
3.	GM/Law/MLG	10	2		
4.	CCO/Court/MLG	17	9		
Total		29	12 07		Nil

4x
Sri
Chief Personnel Officer
C. P. RIV. / Malignor
Guwahati-3

File No. 2
P. Chakraborty
3/7/2002

At the time of promotion from senior clerk (E) to Law Assistant on the scheme of "Best amongst the failed SC candidates" the applicant was posted at Head Quarter (for short HQ), Maligaon as there was no post available at Katihar. His posting at Maligaon was done based on the vacancy at HQ, Maligaon as because out of 41 numbers of LA/CLA 38 posts are being operated at HQ Maligaon. So the chances of arising vacancy at HQ is much more evident than that of divisions where posts are very minimal. Moreover, the availability of Rly accomodation at Maligaon is easier than that of divisions i.e. at Katihar.

So, according to Rly Rules as quoted by the applicant in Annexure-1A there is no violation of any rules at the time of promotion to the post of Law Assistant nor also this time as his prayer for transfer from Maligaon to Katihar could not be accepted by the competent authority on exigencies of service.

4. That in reply to the statements in para 4.7 it is stated that there was no vacancy of Law Assistant at Katihar at that point of time and hence his prayer for transfer could not be considered.

5. That in reply to the statements in para 4.8 it is stated that the transfer of Sri A.P. Srivastava, law assistant was done vice vacancy of Law Assistant at Katihar whereas the applicant is a Chief Law Assistant, and there was no vacancy of Chief Law Assistant at Katihar at that point of time.

6. That in reply to the statements in para 4.10 it is stated that the allegations as brought against the

48
Officer Personnel
Rly / Maligaon
Gyaneshwar

49
Smt. Rakesh Chandra
S. P. G.W.F. Maligaon
Guwahati, Assam

respondent No.5 of influencing Respondent No. 3 and 4 are baseless and fabricated. The applicant being CLA is well aware of the fact that his controlling officer is SDGM/MLG (Sr. Deputy General Manager) who is also CVO/MLG (Chief Vigilance Officer). The order passed by CVO/MLG for transfer of Sri Dinesh Singh, CLA from Maligaon to Katihar was decided only after detailed study of all the cases lying for consideration for transfer to Katihar division. There were four applicants for transfer to Katihar division vice one vacancy of CLA. The CLA post of Katihar requires very hard work from the incumbent for which divisional authority had written to HQ detailing all facts and features regarding strenuous job pressure for a CLA to deal and requested to post someone who can bear with rigorous job requirement as well as able to go on long outstation stay for personal attendance in courts all over India.

That, the applicant had gone 'Open Heart Surgery' at Railway Hospital, Perambur, Chennai on 31.7.2001. His health condition may not permit strenuous job requirement of Katihar division where outstation duty of a Chief Law Assistant is very frequent and unavoidable as because the Court cases are pertaining to different courts all over India which require effective contest. So respondent No.6 who is capable to perform arduous job both at HQ and outstation, and is conversant with service matters was transferred to Katihar considering exigencies of service and the his request for posting at Katihar on the ground of his wife is a Government employee of the State of Bihar.

7. That in reply to the statements in para 4.11 it is stated that the respondent No.6 was spared on 11.03.2002 to carry out the transfer order from Maligaon to Katihar. He was spared prior to the receipt of the Hon'ble Tribunal's interim order of Status Quo dated 13.03.2002.

8. That the respondents deny the allegation of discrimination brought into by the applicant in para 4.12.

9. : That in the circumstances stated above the application deserves to be dismissed with cost.

Verification

I, A.K. NIGAM, working
as Chief Personnel Officer/Admn, N.F.Rly, Maligaon, do
hereby verify that, the statements made in the paragraphs 1
to 9 are true to my knowledge.

Guwahati

26/7 /2002

Signature

Chief Personnel Officer (A)
S. F. Riy, / Mallaqa
- Guwahati-11