

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 295/03

R.A/C.P No.

E.P/M.A No. 7/04

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SECTION OFFICER (Judl.)

Kalita
21.11.17

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No:- 295/03

Misc Petition No:

Contempt Petition No:

Review Application No:

Name of the Applicant(s): Dr. P.K. Deb

Name of the Respondant(s): Let 2 ors.

Advocate for the Applicant:- Mr S.C. Biswas
Mr M.K. Mazumdar,

Advocate for the Respondant:- Rly Counsel.

Notes of the Registry	date	Order of the Tribunal
<p>This application is in form but not in time</p> <p>Condonation Petition is filed / not C.F.</p> <p>for Rs. 50 deposited vide IPO/DO No. <u>94704220</u></p> <p>Dated <u>3/11/03</u></p> <p><i>1/12/03</i> <i>Registral</i></p> <p><i>Steps taken</i></p>	<p>30.12.03</p>	<p>Heard Mr.M.K.Mazumdar, learned counsel for the applicant.</p> <p>Issue notice on the respondents to show cause as to why this petition shall not be admitted, returnable by four weeks.</p> <p>List the case on 4.2.2004 for admission.</p> <p>In the meanwhile, respondents are directed ^{to} keep the applicant's transfer order passed by the D.R.M. (P) dated 16.12.2003 in abeyance till the end of the academic season ^{Session} of the School.</p> <p><i>1/12/03</i> <i>Member (A)</i></p>
	bb	

Notice & order dt. 30/12/03 16.2.2004

Sent to D/Section for
issuing to respondent-

Nos. 2 to 5. memo no.

8/1/04. 12 to 16 dtd 8-01-04.

In view of the order passed
in M.P.7/2004 the interim order
dated 30.12.2003 stands vacated.
Post the matter on 20.2.04

[Signature]
Member

bb

30.1.04

W/s filed by
the Respondent Nos. 1 to 6.

20.2.2004

The learned counsel for the
applicant prays for withdraw the
application. Prayer is allowed.
Accordingly, the O.A. is dismissed
on withdrawal.

[Signature]
Member (A)

25.2.04

Copy of the order
has been sent to
The D/Sec. for issuing
the fine to the L/Adm.
for the parties

mb

[Signature]
1/3/04

2415

LIST OF DATES.

Title of the case : O.A. No. 295/03.

Dr. Prabir Kr. Deb. - Applicant.

-versus-

Union of India & Ors. - Respondents.

<u>Sl.No.</u>	<u>Particulars.</u>	<u>Date.</u>	<u>Annexure.</u>
1.	the applicant is transferred from Alipuar to New Bongaigaon.	16.12.2003.	
2.	the impugned order of transfer issued by the D.R.M. (P) without following the normal transfer guideline.	16.12.2003.	I.
3.	the order was served with personal interest of the respondent No. 4 & 5. at the residence at night at 10.30 P.M.	16.12.03.	II.
4.	the applicant made representation to the authority i.e. C.M.D., Maligaon, Gauhati - II.	18.12.03	II.
5.	The authority have not taken any decision and hence this application.		

Filed by -

M. K. Majumdar
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

GUWAHATI.

(An application under section 19 of the
Administrative Tribunal Act, 1985).

Title of the case : O.A. No. /03.

Dr. P.K. Deb. : Applicant.

-versus-

Union of India & Ors. : Respondents.

I N D E X.

<u>Sl. No.</u>	<u>Annexure.</u>	<u>Particulars.</u>	<u>Page No.</u>
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Filed by -



Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the
Administrative Tribunal Act, 1985.)

O.A. No. 295 /2003.

- BETWEEN -

Dr. Shri Prabir Kumar ~~Deb~~ Deb,
S/O - Late Asit Baran Deb,
Senior D.M.O.

. . . Applicant.

- Versus -

1. The Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon, Guwahati - 11.
2. The General Manager,
N.F. Railway, Maligaon, Guwahati - 11.
3. The Chief Medical Director,
N.F. Railway, Maligaon, Guwahati - 11.
4. The Divisional Railway Manager (p),
N.F. Railway, Maligaon, Guwahati - 11.
5. Chief Medical Superintendent,
Alipurduar Junction.
6. Divisional Personal Officer,
Alipurduar Junction.

. . . Respondents.

Filed by the Applicant 6
Through - Mr. Majumdar
Advocate

24-12-03

Prabir Kumar Deb.

DETAILS OF THE APPLICATION.

1. Particulars of order(s) against which this application is made.

This application is made against the order No. 3/2003 (Medical) and endorsement No. E/283/III/130 Pt. XII(O) dated 16.2.2003 transferring the applicant from the post of senior divisional Medical Officer, Alipuduar Junction to New Bongaigaon in the said capacity.

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.

3. Limitation.

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

4. Facts of the case.

4.1. That the applicant states that he is a bona fide employee of the Railway since his appointment as Medical Officer (M.O.) and posted at Katihar on 7.7.1986.

Prabin Kumar Das.

4.2 That the applicant has been serving the organisation with utmost sincerity and devotion carrying out every order of the authority without any resistance.

4.3 That the applicant states that during his service tenure as Medical Officer he has served in different stations and maintained an unblemished record of service with utmost satisfaction of the authority.

4.4. That the applicant was transferred from Katihar to Hasimara after completion of 2 years i.e. in the year 1988. Thereafter, he was again transferred from Hasimara to Alipurdwar on completion of 3 years i.e. in the year 1991. During his posting at Alipurdwar he was selected for training on sonography and was sent on deputation to Australia in the year 1995. And on completion of 1 year training in the foreign training he was brought back to his place of posting at Alipurdwar in the year 1996.

4.5. That the applicant's wife being an anaesthetist she is engaged in the Govt. hospital, Tufanganj and living there in the Govt. quarter for the sake of her job.

4.6. That the applicant states that he has been awarded with responsible job as a senior divisional Medical Officer

by the.....

Chander Kumar Jais.

by the authority which he sincerely performs apart from maintaining his septuagenarian old widow mother who is suffering from senile degeneration who is totally dependent on him for her treatment.

4.7. That the applicant states that he has got school going child too, who is preparing for her annual examination commencing within 90 days. She is also dependent on the applicant.

4.8. That the applicant states that in the midst of such responsible activities towards the employer as well as the family, he was served with the impugned order of transfer on 16.12.2003 at about 10.30 P.M. in the night which has been served by Divisional Personal Officer along with Chief Medical Superintendent and Assistant Personal Officer.

A copy of the order is annexed as Annexure - I.

4.9. That the applicant states that on receipt of the order he became shocked and in particular the conduct and procedure adopted by the Respondent No. 4, which itself speaks about extraneous consideration for the order does not speak of any administrative exigency.

4.10.....

Prabir Kumar Del.

4.10. It is to mention here that, since his irregular transfer and relieving from Alipurduar no one has been posted in his place. Further, the applicant being a specialist in sonography i.e. sonologist being trained in abroad he deserves to be posted in such a place where his service can be utilised. At present place of posting there is no infrastructure in the Hospital at Bongaigaon and the action of the respondent in transferring him to such a place is otherwise degradation of his rank.

4.11. That from the plain reading of the order it appears that the decision of the administration regarding his transfer and relieving him with immediate effect which was served on him by the respondent No. 5 at night is not for any bona fide reason and smacks of foul play.

4.12. That in the transfer order the authority being empowered with super bargaining power did not left room for any sympathetic consideration in exercising the power vested in a public body. It was not used in the interest of public purpose.

4.13. That the applicant submits that by such action of the authority, the applicant is victimised and for achieving an alien purpose or on oblique motives, which is

definitely.....

Prabon Kumar Deb.

definitely not for any public interest and it resulted for challenging the validity in the cannon of law.

4.14. That the applicant submits that as mentioned in earlier paragraphs describing the nature of job he performs the burden or responsibility of family no person can, however, be struck down on the ground that, there is approval.

4.15. That the applicant states that since receipt of the order he made a ~~reference~~ representation on 18.12.03 describing the genuine difficulty in proceeding on transfer for modification or cancellation of the transfer order.

It is pertinent to mention here that, he being released by the said order at 10.30 and not in a position to join in new place of posting taking his age-old ailing mother and child in their final academic session, he prayed for leave waiting a favourable order of stay from the respondent authority. But unfortunately the respondent No. 2 has not passed any order.

5.16. That the applicant submits that the impugned order of transfer being irregular one, unscheduled and unreasonable have caused irreparable harm uprooting the family,.....

Prabir Kumar Das.

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family, disrupting the education of his child and number of other complications and finding no hope have approached this Hon'ble Tribunal for redressal of his grievance.

4.17. That the applicant states that the remedy sought for in this application, if granted, will be just, adequate and complete.

4.18. That this application is made bona fide for the cause of justice.

5. Grounds for relief with legal provisions.

5.1. For that the impugned order is bad in law and liable to be set aside.

5.2. For that the Respondents have acted in most arbitrary and unfair manner which has rendered the entire action against the applicant illegal and liable to be declared without jurisdiction.

5.3. For that the Respondents have given a complete go-bye to the established principle of service jurisprudence and in particular the transfer posting guideline and have mechanically passed the impugned order and thereby liable to be set aside and quashed.

5.4.....

Prabir Kumar Jai.

5.4. For that the manner of service of the transfer order by the respondent No. 5 and 6 at night at residence at about 10.30 P.M. is nothing but a total violation of office decorum and as such liable to be struck down.

5.5. For that the respondent while approving, as alleged in the order, of such irregular transfer order which has caused uprooting of his family disrupting the education of his daughter and number of other complications, ought to have considered the inconveniency of such responsible officer and as such for this sort of non-application of mind cannot be allowed to be sustained.

5.6. For that the entire exercise of the respondents against the applicant has been vitiated by adopting extraneous considerations for, the order does not speak of any administrative exigency and/or to serve any public interest.

5.7. For that in any view of the matter the impugned order is arbitrary, illegal and therefore liable to be set aside and quashed.

6. details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7.....

Prabir Kumar Das.

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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 before any court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for .

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the Respondents to show cause, as to why the relief(s) sought for in this application shall not be granted 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 relief(s) :

8.1. That the impugned order of transfer from alipurdwar to New Bongaigaon dated 16.12.2003 (Annexure - I) be set aside and quashed.

8.2.....

Robin Kumar Jais.

8.2. That the respondents be directed to allow him to serve in the present place of posting at Alipurduar.

8.3. Cost of the application.

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

9. Interim order prayed for.

The applicant prays for interim relief in the light of allowing him to serve in the place of posting prior to passing of the order dated 16.12.2003 and any other order which the Hon'ble Tribunal may deem fit and proper.

10.

This application is filed through Advocate.

11. Particulars of the I.P.O.

- i) I.P.No. : 24-704220
- ii) Date of Issue : 3-11-03
- iii) Issued from : Guwahati
- iv) Payable at :

12. List of Enclosures :

As given in Index.

VERIFICATION

Prabin Kumar Das.

VERIFICATION.

I, Dr. Prabir Kumar Das, do hereby verify that the contents of the application made in paragraphs 2, 3, 4.2-4.7, 4.17, 4.18 are true to my knowledge and those made in paragraphs 1, 4.1, 4.8 are matters of records and rests are my humble submission before the Hon'ble Tribunal, and I sign in this verification on 24th day of December, 2003.

Prabir Kumar Das

Signature of the Applicant.

- 12 -

Answer - 1.

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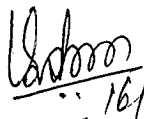
NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
DIVL. RAILWAY MANAGER(P)
ALIPURDUAR JUNCTION.

OFFICE ORDER

In terms of GM/P/MLG's Office Order No.31/2003(Medical) and endorsement No.E/283/III/130/Pt.XII(O) dated 16.12.2003, Dr.P.K.Deb, Sr.DMO/APDJ is hereby transferred in the same capacity and posted as Sr.DMO/NBQ against existing vacancy. He is relieved with immediate effect.

This has the approval of competent authority.


16/12/03
(S. Behera)


D.P.O/APDJ
For Divl.Railway Manager(P),
N.F.Railway, Alipurduar Jn.

No.E/283/43(Med)AP/Pt.II.

Dated: 16.12.2003.

Copy forwarded for information and necessary action to:-

- 1) CMD, FA & CAO/EGA & PF/MLG.
- 2) PS to GM/MLG & Assy. Secy. to AGM/MLG.
- 3) Dy. CPO/Gaz./MLG.
- 4) DFM/APDJ - Personal files/ S/sheets may be transferred immediately.
- 5) CMS/APDJ.
- 6) MS/IC/NBQ.
- 7) DRM/RNY.
- 8) DRM(P)/RNY
- 9) DFM/RNY
- 10) Doctor concerned.
- 11) OS to DRM for appraisal of DRM/ADRM/APDJ.


16/12/03
For Divl.Railway Manager(P),
N.F.Railway, Alipurduar Jn.

Received
at 10-30 PM
on 16/12/03

16/12/03

Attended
MR. Gajendra
Advocate

To
The Chief Medical Director,
N.F.Railway,
Maligaon

(Through : Proper Channel)

Respected Sir,

**Sub: An humble appeal against sudden and
unprecedented transfer.**

**Ref:GM(p)/Maligaon's Office Order No.31/2003
(Med)andendorsement No. E/283/III/130/Pt.
XII(O) dt. 16.12.2003.**

With profound respect, I crave your indulgence to submit the following few lines for your kind perusal and consideration as you deem fit.

Sir, I know that transfer is a done thing in the Railway and all Railway servants are subjected to transfer from one place to the other according to the prevailing norms and procedure. But I stand aghast to receive a transfer order delivered to me by DPO/APDJ himself calling me from my residence at night on 16.12.03 itself. Such transfer order is generally served in such manner having allegation against a particular Railway employee whose retention is not desirable by the Administration even for a moment. So far my services at APDJ Hospital are concerned, I can emphatically declare that not a single Rly.beneficiaries are discontented with my treatment/dealings and there is no allegation against me received from any corner nor I have ever been counseled/received any adverse report. Hence for obvious reason, this unforeseen and unethical transfer and uncereemonial process to relieve me on the very date of issue of transfer Order itself has pained me to a great extent and hurt my sentiment as I was not given any scope to offer my say before issue of such malicious transfer order and relieving me on that night itself which is my constitutional right.

Sir, now besides my above submission, I am having some family problems which stands as stumbling block to leave APDJ at this moment. With great deal of wavering, I am submitting the following for your kind perusal, appraisal and sympathetic consideration.

1. My wife is serving as a Doctor in the Sub-Divisional Hospital, Govt. of West Bengal, Tufanganj in the Distt. of Cooch Behar. She, being trained in Anaesthesia is also called upon at Rly.Hospital for inducing anaesthesia in case of surgery by the Gynaecologist or Surgeon.
2. My septuagenerian old widow mother is a patient of senile degeneration and cannot move independently without anybody's

3. My children are studying at APDJ and they are in the process of completion of the Course of Annual Examination.
4. For the sake of essential service, my wife is required to stay at Tufanganj itself and she can hardly come to APDJ. My ailing widow mother as stated in item No.2 and my children are to live under my care only. My absence will only jeopardize their existence and they will be thus left in the lurch.

Thus circumstanced under such painful necessity I beseech your merciful consideration to caste your sympathetic and compassionate view and review the Transfer Order retaining me at APDJ in view of my above submission. And for which act of your kindness, I shall pray to the ALMIGHTY for your long life and prosperity.

I sincerely believe that a stroke from your Mighty Pen will go a long way to help solve our catastrophies.

Thanking you in anticipation Sir,

Yours faithfully,

P. u. s. s. s.

Dated: 18.12.03

(Dr. P. K. Deb)
Sr.DMO/Radiology
Rly.Hospital/ APDJ.

Attn: Secy
Mr. P. K. Deb
Asst. Secy