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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

S. Nahar
10/11/07

FORM NO. 4
(SECTION 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
JALANAHARI BENCH.

ORDER SHEET

Crg.App/ Misc. Petn/Cnt. Petn/ Rev. Appl.

167/04

In O.A.

Name of the Applicant(S) Manoranjan Singh

Name of the Respondent(S) U.O.T. Goms

Advocate for the Applicant K.K. Biswas

Counsel for the Railway/ C.C.S.C.

OFFICE NOTE | DATE | ORDER OF THE TRIBUNAL

The application is informed
is filed/C.P. Regd. as 10/
dep. via R.P. SD
No. 206112269

Dated 26.7.04

Par
1/CDR. Registrar
Par

02.08.2004

Heard Mr. K.K. Biswas, learned
counsel for the applicant and also
Ms. U. Das, learned counsel for the
Respondents.

Issue notice to show cause as
to why the application shall not be
admitted.

List on 22.8.2004 for admissi-
on.

Steps taken with
envelops.

ICV Dashed
Member (A)

mb

Par

30.8.2004

Heard Mr. K.K. Biswas, learned
counsel for the applicant and also
Mr. S. Sengupta, learned counsel for
the Railways.

The application is admitted. Iss-
ue notice to the parties. Returnable
by four weeks. List on 4.10.2004
for orders.

Notice & order
st. 21/8/04, sent
to D/Section Gen-
erating to resp.
Nos. 1 to 5, by regd.
A/D post.

Par
5/8/04

mb

ICV Dashed
Member (A)

6.10.2004 Present : The Hon'ble Mr. Justice
R.K. Batta, Vice-Chairman

Order has been
fixed by R.C. Counsel.

21/10/04
30/10/04

On the request of Mr. S. Sengupta,
learned Advocate for the respondents
the matter is adjourned for six weeks.
for filing written statement. Stand over
to 17.11.2004.

4.10.04

1) A/D Case received
from Rep't. No. 1 and 4.

R
Vice-Chairman

~~2) Service of Process~~ mb

3) Service report awaited
in respect of Rep't. No. 2, 3 & 5.

3) W/s has been
submitted.

3.11.04 Learned counsel for the parties
state that since the R.A. has been
fixed on 10.11.04 this matter may
also be fixed on 10.11.04 instead
of 17.11.04.

List on 10.11.04.

R
Vice-Chairman

9-11-04

pg

W/S has been submitted
by the respondents.

10.11.2004 Mr. G.K. Bhattacharyya, learned
counsel for the applicant and Mr. S.
Sengupta, learned Railway Counsel are
present. The Review Application has
been allowed and directions have been
issued that the applicant shall not be
relieved till the next date. Written
statement has already been filed in
this application. The applicant may,
if so desires, file rejoinder and the
matter be listed for final hearing on
15.12.04.

R
Vice-Chairman

nkm

15.12.04

Heard counsel for the parties.

Hearing concluded. Judgment delivered
in open Court, kept in separate sheets.The application is dismissed in
terms of the order, ~~N~~ with costs.10.1.05

Copy of the
Draft has been
sent to the DPC
for issuing the
same to the applicant
as well as to the
Adv. Standing Counsel
for the Respcr.

pg

Vice-Chairman

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5
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. NO. 167 of 2004

DATE OF DECISION 15-12-2004

Sri Narayan Singh APPLICANT(S)

Sri G.K.Bhattacharyya ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors. RESPONDENT(S)

Sri S.Sengupta, Railway Standing Counsel ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE R.K.BATTA, VICE CHAIRMAN

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the judgment ? *Ys*
2. To be referred to the Reporter or not ? *Ys*
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

Q *Ys* *No.*

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATTI BENCH.

Original Application No. 167 of 2004.

Date of Order : This the 15th Day of December, 2004.

THE HON'BLE SHRI JUSTICE R. K. BATTA, VICE CHAIRMAN.

Sri Narayan Singh,
S/o late Bhola Singh,
HCC(Goods), New Guwahati Goods Office,
N.F.Railway, Quarter No.DS-329F at Bamunimaidam,
Guwahati-21. ... Applicant
By Sr.Advocate Shri G.K.Bhattacharyya.
- Versus -

1. Union of India,
represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. Chief Commercial Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. The Chief Personnel Officer,
N.F.Railway, Maligaon,
Guwahati-11.
4. The Divisional Railway Manager,
N.F.Railway, Lumding Division,
Lumding.
5. The Divisional Commercial Manager,
N.F.Railway, Maligaon,
Guwahati-11.

... Respondents

By Shri S.Sengupta, Railway standing counsel.

O R D E R (ORAL)

R.K.BATTA, J.(V.C)

The applicant challenged his transfer order dated 16.1.2004. The case of the applicant is that he has been stationed at N.F.Railway, Godown Goods Office at New Guwahati for two decades as a reward for sincere and dedication and he is presently holding the post of Head Commercial Clerk (Goods). He was transferred from New Guwahati Goods office to Karimganj vide impugned order dated 16.1.04. According to the applicant he is due to retire on 30.6.2005 and as per circular of periodical transfer of ~~stock~~ ^{Staff} he has to be excluded from the purview of periodical transfer. He also alleged that while making transfer seniority rules are not followed and despite there being juniors in the grade he has been transferred.

2. The respondents in their reply have denied the contention of the applicant regarding sincere and dedicated ~~serving~~ ^{ce} being the reasons for keeping him at Guwahati for two decades. The

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respondents have further stated that the conduct of the applicant is under investigation and a vigilance case is against him as also four other staff members, one of whom namely Sankar Kanti Biswas has already been retired from 30.4.2004. The transfer application is opposed by the respondents.

3. Heard Sri G.K.Bhattacharyya, learned Advocate for the applicant and Sri S.Sengupta, learned Railway standing counsel for the respondents. Learned Advocate for the applicant submitted that the enquiry has already been completed and in view of the fact that the applicant is due to retire on 30.6.05 he should not have been transferred in view of the guidelines on periodical transfer. Learned counsel for the respondents has submitted before me that even though the applicant was transferred about 11 months ago yet he has not joined the station of transfer. It may be pointed out that for some time there has been an order of this Tribunal in Review Application No.15/2004 dated 10.11.04 that the applicant shall not be relieved till the next date.

4. The Apex Court in State of U.P. and Ors. vs. Gobardhan Lal, 2004(3) SLJ 244 has laid down ;

"It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. The transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interferred with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infaction of any career prospects such as seniority, scale of

(R)

pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interferred with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Court or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

5. In the case before me no mala fides as such have been alleged by the applicant. Admittedly the applicant is stationed at N.F.Railway Goods Office at New Guwahati for two decades. The record shows that during surprise check conducted at Goods office/NGC by Vigilance some serious irregularities were detected and some of the staff members including the applicant were transferred and enquiry was started against the applicant and it is in view of this set of facts that the applicant was transferred from New Guwahati to another station since it was found by the respondents that it was not conducive to keep the applicant at the same station in view of the vigilance proceedings.

6. The main contention of learned counsel for the applicant is that the applicant is due to retire on 30.6.05 and in view of circular on periodical transfer he should not have been transferred within two years of the date of retirement and that only six months are now left. First of all, I must say that it is not a case of periodical transfer and as such the said circular ^{does} ~~may~~ not apply to the applicant. Even if the circular applies, it provides that the employee due to retire within a period of 2 years should normally be excluded

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from periodical transfer. Thus, though this is the normal rule, yet it does not totally bar transfers on other justifiable reasons. The continuation of the applicant at the station was not found to be conducive by the respondents, ⁱⁿ as much as certain serious irregularities were detected in respect of which an enquiry was conducted which is said to be ^{according to learned Adv to applicant, but} complete, which fact is disputed by learned counsel for the respondents. Be that as it may, there is neither any mala fide in the transfer nor any violation of statutory rules. In the circumstances, the order of transfer of the applicant by the respondents cannot be faulted with and the decision taken by the respondents in the facts and circumstances cannot be substituted by this Tribunal.

In view of the above, I do not find any merit in this application and the application is hereby dismissed with costs.


(R.K.BATTA)
VICE CHAIRMAN

30 JUL 2004

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
GUWAHATI

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

O. A. No.167..... of 2004.

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Filed by :

Place : Guwahati.

Date : 30-07-2004.

K. K. Biswas
(K. K. BISWAS)
Advocate

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL : GUWAHATI BENCH :
GUWAHATI

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

O. A. No.167..... of 2004

Sri Narayan Singh,
S/o, Bhola Singh
HCC (Goods), New Guwahati Goods Office,
N.F.Railway, Rly. Qr. ^{DS - 329 F} at Bamunimaidan,
Guwahati-21.

—Applicant.

Vs.

- 1) Union of India – Representing by the General Manager, N.F.Railway, Maligaon, Guwahati-781 011.
- 2) Chief Commercial Manager, N.F.Railway, Maligaon, Guwahati-781 011.
- 3) The Chief Personnel Officer, N.F.Railway, Maligaon, Guwahati-781 011.
- 4) The Divisional Railway Manager, N.F.Railway, Lumding.
- 5) The Divisional Commercial Manager, N.F.Railway, Guwahati-11.

—Respondents.

1. **DETAILS OF APPLICATION :**

Particulars of the Orders against which the application is made :

The impugned Order of the Divisional Railway Manager (P), N.F.Railway, Lumding vide Office Order No. E/39-20(C)(T) Pt-II Dt. 16-01-2004 transferring the Applicant.

Copy of the Order is submitted as Annexure – A.

2. **JURISDICTION :**

The Applicant declares that the subject matter of the Application is within the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

Contd.....P/2 – Limitation.

*Filed by
Nehru
20-7-2004
Advocate*

*Narayan Singh
Hcc/G/Nac*

3. **LIMITATION :**

The Applicant submits that the Application has been filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. **FACTS OF THE CASE :**

4.1 That the Applicant is the citizen of India and is, therefore, entitled to the rights and privileges guaranteed to the citizens of India under the Constitution.

4.2 That the Applicant has been serving the N.F.Railway Administration with most sincerity and dedication all through his service-life and as a reward of which he has been stationed at N.F.Railway's Goods Office at New Guwahati for about 2 (two) decades and currently holding the post of Head ^{Commercial} ~~Coaching~~ Clerk (Goods) in Scale Rs. 5000-8000/- in the same office.

4.3 That abruptly the Applicant was served with an order of transfer from the said New Guwahati Goods Office to Karimganj by the Divisional Railway Manager (P), N.F.Railway, Lumding vide his Office Order No. E/39-20(C)(T) Pt-II dated 16-01-2004.

Copy of the above order is submitted as ANNEXURE - A.

4.4 That the impugned order of transfer was issued to the Applicant when he was counting the days of his retirement which falls on 30-06-2005.

4.5 That immediately on receipt of the said transfer order the Applicant submitted a representation to the DRM/Lumding, the concerned competent authority for issuance and cancellation of such orders, requesting him to cancel the said order of transfer so as to arrest the plethora of problems to be faced by the Applicant for such transfer just at the fag end of his service-life.

The copies of the representations dt. 2-2-2004 and 16-5-2004 are annexed as ANNEXURES - B & F.

4.6 That while submitting the aforesaid representation the Applicant categorically highlighted the instructions communicated by the Railway Board vide their Circular No. E(NG) 61/TR2/16 dt. 21-8-61 that "An employee due to retire within a period of 2 years should be normally excluded from the preview of orders regarding periodical transfers."

Copy of the Rly. Board's above Circular is annexed as ANNEXURE - C.

Contd.....P/3 – That, as.....

✓
N. K. Baruah
30-7-2004
Advocate

Narayan Singh

4.7 That, as ill-luck would have it, my above representation was not at all put up to the DRM and turned down by DCM as reflected in the letter issued by the office of the Divisional Railway Manager (P)/Lumding vide their No. ES/136/N(T) Dt. 19-4-2004.

Copy of the above letter is annexed as ANNEXURE – D.

4.8 That against the decision of DCM (Divisional Commercial Manager) as communicated in the letter mentioned at Para 4.7 above the Applicant made an appeal to the DRM, (Divisional Railway Manager), N.F.Railway, Lumding, dated 29-04-2004 detailing the all aspects for cancellation of transfer order of the Applicant.

Copy of the said Appeal is annexed as ANNEXURE – E.

4.9 That the office of the Divisional Railway Manager, N.F.Railway, Lumding, vide their letter No. ES/136-N(T) Dt. 02.7.2004 informed that ADRM/LMG, though the Appeal was made to DRM, regretted the cancellation of transfer order to KXJ (Karimganj).

Copy of the above order is annexed as ANNEXURE – G.

4.10 That moreover, while making the transfer order mentioned above, the seniority rules were not followed. It would appear from the relative seniority list that despite having juniors in the grade this humble employee has been victimised when only 12 months of service is left for him. Moreover, Sri Shankar Kanti Biswas, CS (Goods)/NGC in Scale Rs. 6500-10500/- is withdrawn from NGC (Goods) and being utilised by DCM/GHY on “administrative ground”. Your good conscience would invariably agree, My Lord, that a Senior Supervisor within the ambit of highest scale cannot be “withdrawn” from a highly sensitive and commercially earning place of Rly’s New Guwahati Goods area and “utilised by DCM/GHY” on “administrative ground” like a ‘Minister without a portfolio’. This action of the Administration invites “DISCRIMINATION ” and thereby hits the Arts. 14, 16(1) and 21 of the Constitution of India for the safeguards of the citizens in respect of their “Right to employment”.

Copy of the Seniority list is annexed as ANNEXURE – H.

4.11 That Sri Bakul Kr. Dey, who is junior to the Applicant and under order of transfer to BPB, i.e., Badarpur by the same impugned order of transfer, is now posted as Cash Witness under FA & CAO’s Cash Office at Maligaon, Guwahati-11.

Deb Dey
35/7/2004
Advocate

Narayan Singh

4.12 That the Applicant has been posted to a section at New Guwahati Goods Shed where Handling of Money Value Books has been stopped from 1-4-2003 and he is to perform the duties having no relation with the commuters of Railway.

4.13 That incidentally it is mentioned that the sanctity and the force of the impugned order of transfer has not been maintained and effected at all, save the pressure upon the Petitioner/ Applicant for its operation, by the issuing authority, as Sri Sankar Kanti Biswas in the Senior Supervisory grade in Scale Rs. 6500-10500/- in the capacity of Chief Supervisor (Goods) as reflected under Sl. No. 1 of the Office Order No. E/39-20(C)(T) Pt-II Dt. 16-01-2004 is being utilised by DCM (Divisional Commercial Manager) Guwahati for his personal assignments in the name of "administrative work". Other Sri Bakul Kr. Dey, Senior Goods Clerk, as reflected under Sl. No. 4 of the said Office Order has been posted as "Cash Witness" in the FA & Chief Accounts Officer's Cash Office at Maligaon.

How the misuse of Public money is ! The above two works are done in other offices by persons of Junior Clerk's grade. These actions and examples of the Respondents are but arbitrary, whimsical and discriminating.

4.14 That in the aforementioned office order the Applicant's transfer has been shown as on, "Administrative ground" and "vice existing vacancy", but it has not been reflected in the said Office order as to what was the administrative ground and from which date the vacancy at KXJ has been lying and how it had caused now the "administrative ground."

4.15 That it fails to understand that when the transfer order was issued with the approval of ADRM (Additional Divisional Railway Manager), then how the appeal for cancellation/ modification/consideration could be reviewed and orders issued by the DCM/LMG (Divisional Commercial Manager, Lumding) upholding the earlier stand. This is a sheer indication of brazen decision, wanton attitude and vindictive policy to cause stringent hardships to a sincere employee for no fault of his own. Moreover, the DCM/LMG has arbitrarily exercised his excess use of and abuse of powers for reviewing a matter when the appeal is made to DRM (Divisional Railway Manager).

4.16 That this humble memorialist most humbly and with suave submission state that even on the face of prevailing system of all statutory Rules that an employee should not be disturbed of transfer on the fag-end of his service-life, i.e., when only two years is left to retire on Superannuation and in such circumstances should an order of transfer is made far from his settled working place and/or home town, it would be a colourable exercise of transfer on "administrative ground" and shall be used as cloak for punishment on "Bias"

Neelam Singh
Advocate
30-7-2004

and "malafide" and when this Malafide is proved "where power is exercised for extraneous or irrelevant considerations and or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated", as opined by the Hon'ble Apex Court.

4.17 That I have no malice against anybody's benefit. I have only grievance for the discrimination and differential treatment of administrative thought and action which causes unfair play and miscarriage of justice.

4.18 That the contents of the impugned orders are indicator of a clear 'motive to disentitle an employee from his lawful rights" for no fault of his own.

4.19 That the aegis for the Applicant's submission is covered not only by the Fundamental rights of the service matter but also by the Railway's own set of rules and, hence, it attracts unfair, unjust, irregular, bias and malafide actions of the administration to put the Applicant to both mental and pecuniary hardships when only 11 (eleven) months are left for his service.

4.20 That these humble Petitioner/Applicant most fervently prays that till finalisation of the Original Application placed before this Hon'ble Tribunal your Lordships may be kind enough to issue orders/directives to the N.F.Railway authorities to stay operation of the proposed Transfer Order mentioned above so as not to victimize the Petitioner/Applicant by this unfair, unjust, illegal and arbitrary issuance of transfer order.

4.21 That this humble Petitioner/Applicant most humbly and placidly submits that this petition may kindly be liberally and gracefully considered. Otherwise, this humble Petitioner/Applicant will suffer irreparable loss, stringent pecuniary hardships and mental agony to maintain two separate establishments with his meager income at the most end and crucial period of his service-life.

5. **GROUND FOR RELIEF :**

5.1 That the transfer is punitive simply because of the whims and caprices of those who are in the higher echelons of power.

5.2 That the colourable exercise of power in the name of "on administrative ground" vitiates the correct decision and causes miscarriage of justice.

Advocate
Narayan Singh
New Delhi
20/7/92

Narayan Singh

5.3 Fairness of the Administrative Justice was not observed and the Railways own set of Rules flouted.

5.4 The impugned order has invited the infringement of Constitutional safeguards for the "Right to Equality" and "Right to Employment" and thereby hits the Articles of 14, 16(1), 21, & 309 of the Indian Constitution.

5.5 Discrimination is candidly expressed in the case of the Applicant. That there cannot be any discrimination of employment in regard to any policy and/or administrative ^{decision} and justice.

5.6 ~~Fairness of the Administrative justice was not observed and thereby hits the Articles of 14, 16(1), 21, & 309 of the Indian Constitution.~~
Transfer is made as an outcome of malafide exercise of powers and violative of Rly. Board's circular.

5.7 While regretting the Appeal of the Applicant, firstly it was not put up to the competent authority, and secondly when put up, no "Speaking orders" was reflected, Hence it postulates to be of "non application of mind" and ~~thereby~~ "miscarriage of justice."

5.8 Principles of Natural Justice have been totally evaded and thereby invited both "Bias" and "Malafide".

6. DETAILS OF REMEDY EXHAUSTED :

The Applicant declares that he has availed all the remedies available to him under relevant service rules mentioned under the above Annexures to the best of his capabilities and without getting the proper relief to his grievances he has come to this Hon'ble Tribunal for having Justice.

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

The Applicant most humbly submits that he did not previously file 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 Tribunal or Court in respect of the subject matter of this application.

*Advocate
Narayan Singh
3077604*

Narayan Singh

8. RELIEF SOUGHT :

In the circumstances stated above the Applicant humbly prays that the Lordships of this Hon'ble Tribunal may be pleased to set aside and quash the impugned order and direct the Respondents to maintain the status quo and thereby allow the Petitioner/Applicant to continue and complete his remaining service in his same place and position where he is stationed for about last two decades.

9. INTERIM RELIEF :

The Applicant most humbly prays that the Lordships may be pleased to issue an interim order for stay of the impugned order of transfer and direct the Respondents to maintain the status quo till finalisation of this Petition.

10. PARTICULARS OF APPLICATION FEE :

Indian Postal Order No. 20G112269 dated 26-07-2004 amounting to Rs. 50.00 (Fifty only) to be drawn in the Head Post Office, Guwahati is enclosed herewith.

11. DETAILS OF INDEX :

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

12. LIST OF ANNEXURES :

A, B, C, D, E, F, G, H.

In the premises aforesaid your Petitioner/Applicant prays fervently that your Lordships may be pleased to admit this Petition/Application and be pleased to pass stay order and/or further order/orders as your Lordships may deem fit and proper.

Advocate
Narayan Singh
2577104

VERIFICATION

I, Sri Narayan Singh, S/o. Late Bhola Singh aged about 59 years, HCC (Goods), New Guwahati Goods Office, N.F.Railway, Rly. Qr. DS-329F at Bamunimaidan, Guwahati-21, do hereby solemnly affirm and verify that the contents of paragraphs 4.1 to 4.13 are the facts of the case and true to my knowledge, information and belief and that I have not suppressed any material facts and the paras 4.14 to 4.21 are my humble and respectful submission before this Hon'ble Tribunal.

AND I sign this VERIFICATION on this 30.07. day of July, 2004.

Place : Guwahati.

Date : 30.07.2004

Narayan Singh

SIGNATURE OF THE APPLICANT

To,
The Deputy Registrar,
Central Administrative Tribunal
Guwahati.

OFFICE ORDER.

Office of the
Div'l. Rly. Manager (P),
Lundin, etc. 16/1/2 1913.

The following transfer postings are ordered for rigid implementation, with immediate effect.

1. Shri. Sankur Kanti Biswas (UR) CS(Goods)/NCC in scale Rs. 6500-10500/- is hereby withdrawn from NCC(Goods). Shri. Biswas is to be utilised temporarily by DCW/GHY.

2. Shri. Manoj Kr. Barman (UR), HCC(Goods)/NCC in scale Rs. 5000-8000/- is hereby transferred and posted at DMR vice existing vacancy in this same pay and scale on Administrative ground.

3. Shri. Narayan Singh (UR), HCC(Goods)/NCC in scale Rs. 5000-8000/- is hereby transferred and posted at KXJ vice existing vacancy in his same pay and scale on administrative ground.

4. Shri. Babul Kr. Dev (UR), Sr. CC(Goods)/NCC in scale Rs. 4000-6000/- is hereby transferred and posted at DPE Relg list vice existing vacancy in his same pay and scale on administrative ground.

SLNO. 1 is not entitled to get T/pass, joining time, CTG, etc. as per extant rule. SLNO. 2, 3, and 4 are eligible to get T/Pass, joining time, CTG etc as per extant rule.

This has the approval of ADRM/LMG.

(N. Mukherjee, APO/I/LMG)
For. Div. I. Rly. Manager (P.)
N. F. Railway: Lundering.

No. E 39-20 (C) (T) Pt. II dated 16/01/2004.
Copy forwarded for information and necessary action.

1. Staff concerned through proper channel
2. ARM/GHY (3) DCM/GHY LMG (4) APO/GHY
5. CS(Goods)/NGC He is advised to spare the above named
staff to carryout their transfer and
posting order immediately under intimation
to this office.
6. SS/DMR, SS/KKJ (8) RAC/BPB (9) AM/BPB (10) OS/ET/Bill
10J OS/Comm/LMG (12) DFM/LMG (13) GM(P)/MLG (14) CCN/PLW/MLG

16/01/04
For Div'l. Rly. Manager (P)
N.F. Railway: Wmding.

AKRAAO/-

10 ANNEXURE - B

To

DRM | NFRly | Lumding
(Through Proper channel)
Ref:- E 39-20(GC)(T) Pt.II dt. 16.01.2004.
Sub:- Request for cancellation of Transfer order.

Sir,

In the reference cited above, I beg to state that I have been ordered to be transferred from NGC to KXJ. In this connection I beg to state that I am due to retire from service in the month of June 2005. This transfer order is a big blow to me at the sag end of my service when I am left with less than one and half years to attain my superannuation. I shall be greatly disturbed at this juncture if I carry out this transfer order. Moreover, there is provision in the Railway Board vide circular No. D:E(G) 61 TRD/6 dt. 21.8.61 that an employee due to retire within a period of two years should be excluded from the purview of transfer order.

I, therefore, request you to arrange cancellation of my transfer order to save me from the purview of uncalled for harassment. Sir, it is for your information and satisfaction that I am not attached with any public work for the last one year.

Yours faithfully,

Narayan Singh
02/2/04
(Narayan Singh)
HD .CC/G/NGC

Advance copy with reverence to :

2/2/04 (1) DRM | NFR | LMG (by post)
2/2/04 (2) GM(P) | NFR | Maligaon
2/2/04 (3) Branch Secretary | NFR | EU | NGC Branch.
2/2/04 (4) Branch Secretary | NFR | MU | NGC Branch.

Received - 2 copies of appeal

2/2/04
Narayan Singh
02/2/04
Advocate

2/2/04
CS/G/NGC

(Copy collected from E.C. Secy)

ANNEXURE-C

23

RAILWAY BOARD

Now Delhi, dt. 21-3-61

D.R.C. 61 TR/16

The General Managers,
All Indian Railways.

Sub: Periodical transfer of staff.

Board had issued orders from time to time about the periodical transfer of Station Masters, Commercial Marks etc. who come in frequent contact with the public. The Board have considered the matter further and have decided as follows:-

- (1) The chain of transfer orders should not be long; transfers should be ordered in such a way that the chain does not involve more than three or four persons as far as possible in order that delays in carrying out the orders by one person will not affect the transfer of a number of persons.
- (2) An employee who is transferred from one station to another should be given weightage for priority in the matter of allotment of quarters at the new station to the extent of the period of his stay at the previous station provided his name had been on the waiting list at that station.
- (3) An employee due to retire within a period of 2 years should be normally excluded from the purview of orders regarding periodical transfers.
- (4) Merely (technical transfer) to a new headquarters whereby the concerned employee continues to serve on the same Section should be avoided as such transfers will result in the employee continuing to have contact with the same public.

Sd/-
(N. V. Jayaraman)
Asstt. Director, Estates
Railway Board.

Certified to be true copy

Attest
N. V. Jayaraman
29.7.04
Advocate

ANEXURE-3

IN 136-N(T).

Copy to
S. C. S.
12/4/04

12.

Office of the Directorial
Railway Manager (P) / LMB.

Dated 19.4.2004.

Shri Narayan Singh, HOD (Goods) / N.G.C.

Through :- CS (Goods) / N.G.C.

Sub :- Your appeal dt 02.2.04, for cancellation
of transfer order to KXJ.

Since your transfer to KXJ has been
ordered on administrative ground, the same doco
will come under the purview of Periodical transfer.

Your appeal as above for cancellation of
your transfer order to KXJ has been registered
and as such you are hereby advised to
carry out your transfer and posting order
to KXJ immediately under intimation to this
office.

This is as per orders of DCM/2m6.

Revised 28/4/04
(N. Mukherjee, APO/1 / LMB)
Y. Directorial Railway
Manager (P) / LMB.

Copy forwarded for information and necessary
action to :-

- (1) CS (Goods) / N.G.C. He is advised to serve Shri
Narayan Singh, HOD (Goods) / N.G.C. with copy of
this transfer and posting order to KXJ
immediately under intimation to this office.
- (2) DCM / G.H.Y.

Directorial Railway
Manager (P) / LMB

Attest
N. Mukherjee
29.7.04
Advocate

ANNEXURE - E

18

3
2

DRM/N.F Railway.

Lumbering

Proper channel.

Sub:prayer for modification of transfer order.

Ref. 1. Railway Board's L/No.D/E(G)61TRD /6 dated 21-8-61

2.DRM (P)/LMG's O.ONO.E/39-20(GC) (T)PT-2 Dt.16-1-04 and
ES/136-NCT dated 19-4-2004.

Respectfully I beg to submit that since April '03 I have been working in the statement section in Good's Shed/NGC where there is no public dealings and I am in the 5th end of my service life, leaving only 13 months to attend retirement.

The office order issued at the end of the DRM(P)/LMG dt. -16-01-04 transferred me to KXJ at no fault of me (at least not informed), is quite incompatible with the standing statutory policy instruction issued under Railway Board's Letter (Ref.1) Dt.21-8-61, not to disturb if 2 years service is left (copy enclosed).

Be that as it may, I am preparing for my permanent settlement and at this stage it is quite impossible for me to shift to other station leaving Guwahati.

In this context, most respectfully I beg to crave before your kind honour to be pleased to modify the order to accommodate me elsewhere within greater Guwahati and oblige.

Dt. 29-04-04

Your's faithfully

Narayan Singh

SD/ Narayan Singh

HD/CC/G/NGC

29/4/04

Forwarded

29/4/04

Chief Clerk Assistant (C.C.A)

Chief Clerk Superintendent (C.C.S)

2nd Clerk & 3rd Clerk

Asst. Manager/ Head Clerk

attested
Narayan Singh
29.4.04
Advocate

14
ANNEXURE - F

To
The D.R.M./R.F.Railway,
Lumding.

Thro: Proper channel

Sir,

Sub: Appeal for cancellation of transfer of Sri Narayan Singh, HCC(Goods)/NGC.

Ref: D.R.M.(P)/LMG's Office Order communicated under NO: E 39-20 (T) Pt.II dated 16-01-2004 followed by letter NO: EG/136-N(T) dated 19-4-2004.

At the outset I may be excused for intruding upon your valuable time for submitting this appeal for favour of your kind perusal and sympathetic consideration for cancellation of the orders under reference for transferring me to KXJ just on the eve of my retirement on superannuation :

- 1) That right since my employment I have been carrying out my duties entrusted to me by my superiors with all my diligence, sincerity and devotion to duty and there had been no adverse ACRs communicated to me throughout my career.
- 2) That as per prevailing system all employees are relieved of their public dealings where monetary transactions are involved and as corollary I have been put to the Statement section of the HCC office shed since April, 2003, where there are no public dealings.
- ✓ 3) That in the aforementioned Office Order my transfer has been shown as on " administrative ground " and " vice existing vacancy"; but it has not been reflected in the said Office Order as to what was the administrative ground and from

Forwarded to DCM/60
for necessary action please.

contd...which...

18
16/11/04
R.D.
H.D. [initials]

allied
MP
21/7/04
Advocate

which date the vacancy at KXJ has been lying and how it had caused now the "administrative ground."

- 4) That the ground of " administrative", as is understood from the very nature of the transfer order itself, postulates to be colourable issuance of orders for deliberately harassing this dutiful, dedicated and sincere employee, and that too, when his only 13 months of service is left to finally retire,
- 5) That against such rudimentary, ruptural, arbitrary and unfair order of transfer mentioned above I preferred an appeal to your good conscience for favour of sympathetic consideration & equitable justice please vide my application dated 02-02-04 ; but from the DRM(P)'s letter dated 19-4-2004, which was signed by one APO- Mr Mukherjee, it appears that my aforementioned appeal for consideration has not been reached to your benign hand for reviewing the matter and disseminating justice to this humble employee who is now reckoning for his final settlement of shelter and family affairs' performances as rightful duty of the head of the family. The said letter of 19-4-04 indicates that it was issued " as per orders of DCM/LMG ".
- 6) That it fails to understand that when the transfer order was issued with the approval of ADRM, then how the appeal for cancellation/modification/consideration could be reviewed and orders issued by the DCM/LMG upholding the earlier stand. This is a sheer indication of brazen decision, wanton attitude and vindictive policy to cause stringent hardships to a sincere employee for no fault of his own. Moreover, the DCM/LMG has arbitrarily exercised his excess use of and abuse of powers for reviewing a matter when the appeal is made to DRM.
- 7) That this humble memorialist most humbly and with suave

allied
Mukherjee
29.7.04
Advocate contd...3...submission..

submision state that even on the face of prevailing system of all statutory Rules that an employee should not be disturbed of transfer on the fag-end of his service-life, i.e., when only two years is left to retire on superannuation; ^{and in such circumstances} should an order of transfer is made far from his settled working place and/or home-town, it would be a colourable exercise of transfer on "administrative ground" and shall be used as cloak for punishment on "Bias" and "malafide" and when this Malafide is proved "where power is exercised for extraneous or irrelevant considerations and or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated", as opined by the Hon'ble Apex Court.

✓ 8) That moreover, while making the transfer order mentioned above, the seniority rules were not followed. It would appear from the relative seniority list that despite having juniors in the grade this humble emlpoyee has been victimised when only 12 months of service is left for him. Moreover, Sri Shankar Kanti Biswas,CS (Goods)/NGC in Scale Rs 6500 - 10500/- is withdrawn from NOC(Goods) and being utilised by DCM/GHY on " administrative ground ". Your good conscience would invariably agree, Sir, that a senior supervisor within the ambit of highest scale cannot be " withdrawn " from a highly sensitive and commercially earning place of Rly'n NGC Goods area and " utilised by DCM/GHY " on " administrative ground " like a 'Minister without a portfolio'. This action of the Administration invites " D I S C R I M I N A T I O N " and thereby hits the Arts. 14, 16(1) and 21 of the Constitution of India for the safeguards of the citizens in respect of their " Right to employment ".

✓ 9) That I have no malice against anybody's benefit. I have only grievance for the discrimination and differential treatment.

contd...4.. of..

Alleged
Nelio
29.7.04
Advocate

of Administrative thought and action which causes unfair play and miscarriage of justice.

10. That, sir, this much consideration and favour I can claim from my employer that they should take a lenient view of all aspects and shall not disturb me from this present place of posting just on the verge of my retirement considering my whole hearted service culminated at the cause of the Administration.

In the premises above, I would, therefore, fervently pray that your magnanimity be gracious enough to look into my appeal profoundly and review the transfer order under reference most sympathetically considering my present condition and the mental agony of me and my family members just on the eve of my retirement and accord your benign orders for cancelling the said transfer order and/or modifying the orders for my stay at greater Guwahati-complex according to my pay, post, scale & capacity and thereby oblige.

The photo copies of my above transfer order, the letter of DPM(P) and my representations are enclosed for ^{your} _{ready} reference and kind perusal.

I shall remain ever grateful to you for your kind consideration and susceptible orders please.

With all humility and regards,

DA: As above.

Yours faithfully,

Narayan Singh
(NARAYAN SINGH)

Dated, the _____ May/04.

16/5/04

HD/CC/G/NGC under Chief Comr
Supdt: (B.G.), N.F.Rly., NGC.

*Attested
Mentioned
- 24.7.04
Advocate*

ANNEXURE - 5

Office of the Divisional
Railway Manager (P) / LmG.
Dt. 02.7.2004.

18

To

Shri Narayan Singh, Hc(Goods)/N.G.C.
Through :- C.S(Goods)/N.G.C.

Sub :- Your appeal dt 29.04.04, 16.5.04 for
Cancellation of transfer order to KXJ.

It is to inform you that your transfer to KXJ has been ordered on Administrative ground and as such your appeal as above for Cancellation of transfer order to KXJ has been regretted by the Competent Authority (ADRM/Pmg).

So, you are hereby advised to carry out your transferred posting order to KXJ without any further delay under intimation to this office.

Yours/ff/oy
(Mr. Mukundee, A.P.O./LmG)
✓ Divisional Railway
Manager (P) / LmG

Copy forwarded for information and necessary action to :-

- (1) C.S(Goods)/N.G.C. He is advised to spare Shri Narayan Singh, Hc(Goods)/N.G.C to carry out his transfer and posting order to KXJ immediately under information to this office.
- (2) DCM/ G.H.Y.
- (3) Branch Secretary, N.F.R.E.U./N.G.C for information/Please. This is in reference to his letter No. N.F.R.E.U./N.G.C/7-F/2004 dt 29.04.04.
- (4) Union cell at office in reference to his letter No. E/301/E.U/P.T.V/ dt 12.05.04.
- (5) C.L.W.I./LmG.

✓ Divisional Railway
Manager (P) / LmG

alleged
Mukundee
Advocate
29.7.04

ANNEXURE - H

N. F. Railway.

Provisional seniority list as on 1st April, 2002.

Office of the
Divl. Rly. Manager(P)/
Lumding.

Category :- HCC(Goods). Scale :- Rs.5000-8000/-
Dept :- Traffic, Unit :- Lumding Divn., Classification :- Divl. Controlled.
Criterion :- Length of non-furtitious service in the grade duly maintaining Inter-se-seniority.

Sanction - 45
Actual - 41

SN	Name of the employee.	Community	Date of birth.	Date of Appnt.	Date of promo.	Confd. /Offg.	Remarks
	S/Shrl.						
1	Md. Sahabuddin Ahmed, HCC(G)/KXJ.	UR	1.9.46	1.6.66	16.2.89	Confd.	
2	M. Banerjee, HCC(G)/DMV.	UR	17.1.45	2.6.66	22.5.87	"	
3	K.K. Chowdhury, HCC(G)/NGC.	UR	28.1.45	2.6.66	29.7.88	"	
4	Dilip Sengupta, HCC(G)/SCL.	UR	1.3.46	2.6.66	15.5.88	"	
5	Suresh Prasad Sinha, HCC(G)/NGC.	UR	5.11.44	26.7.66	14.5.88	"	
6	Rabisankar Daimary, HCC(G)/NGCM.	ST	19.4.53	29.9.78	8.3.90	"	
7	Bedanand Lebh, HCC/G/NGC.	UR	16.10.46	21.8.66	3.4.90	"	
8	Haripada Debnath, HCC/G/BHRB.	UR	31.10.45	21.6.66	1.3.90	"	
9	Sita Ram Singh, HCC/G/KXJ.	UR	1.5.45	2.7.66	8.3.90	"	
10	Badri Nath Thakur, HCC/G/JID.	UR	20.4.44	12.7.66	20.4.90	"	
11	Narayan Singh, HCC/G/NGC.	UR	18.8.45	12.7.66	13.5.91	"	
12	Matilal Malakar, HCC/G/CBZ.	SC	1.10.54	11.11.75	17.12.90	"	
13	Balznan Ram, HCC/G/DMV.	SC	1.12.44	18.8.71 27.4.82	2.8.90	"	
14	Bishnu Ram Boro, HCC/G/NGC.	ST	1.6.54	16.2.79	8.3.90	"	
15	Rameswar Prasad Das, HCC/G/NGC.	UR	1.11.44	26.7.66	13.5.91	"	
16	Samiran Sinha, HCC/G/DMV.	UR	28.7.44	16.7.66	9.5.91	"	
17	Hemiram Das, (Hemiram HCC/G/NGC.)	SC	18.6.43	1.5.82 26.1.68	6.8.91	"	
18	Bilas Nandy, HCC/G/LMG.	SC	21.1.59	11.9.82	8.5.91	"	
19	Ranjit Kr. Das, HCC/G/NGC.	UR	13.12.45	24.3.65 27.3.71	1.3.93	"	
20	Makhanlal Deb, HCC/G/DMR.	UR	23.2.43	17.6.66 7.2.72	1.3.93	"	

Contd...

*Attest
R. D. S.
29.7.04
Advocate*

			P/No.				
21	Siba Ram Bordoloi, HCC/G/HBN.	ST	1.7.48	10.9.79	1.3.93	"	Due to punishment.
22	Kula Ch.Singha, HCC/G/HPC. / P/N/GM	UR	25.4.50	29.1.75	1.4.94	"	Due to punishment.
23	Biren Ch.Kellita, HCC/G/NGC.	UR	1.4.48	29.1.75	1.3.93	"	
24	Monoj Kr.Berman, HCC/G/NGC.	UR	1.11.51	29.1.75	1.3.93	"	
25	Dayamoy Das, HCC/G/NGC.	UR	1.10.55	20.2.77	1.3.93	"	
26	Subhash Sarkar, HCC/G/LMG.	UR	23.1.49	27.6.78	10.9.96	"	
27	Benudhar Das, HCC/G/NGC.	ST	1.1.55	12.11.82	23.9.96	"	
28	Harl Kellita, HCC/G/NGC.	UR	1.1.53	9.4.76 10.8.78	19.9.96	"	
29	Ram Milan Singh, HCC/G/KXJ. at LMS.	UR	4.6.46	16.11.87	10.9.96	"	Restored as HCC(G) w.e.f. 31.3.02.
30	A.C.Dhar, HCC/G/DMR.	UR	1.1.45	19.9.81	5.9.96	"	
31	Kellya Ch.Basumatary, HCC/G/NGC.	ST	30.8.56	13.9.82	23.9.96	"	
32	Chakreswar Borthakur, HCC/G/NGC.	UR	1.9.59	7.10.82	14.10.96	"	
33	Uttam Ch.Medhi, HCC/G/NGC.	SC	1.1.59	16.4.87	28.5.97	"	
34	Pranoswar Das, HCC/G/NGC.	SC	1.2.58	2.7.87	20.2.97	"	
35	Subhash Ch.Sen, HCC/G/KUGT.	UR	5.7.56	3.7.78	15.5.2000	Offg.	
36	Anup Kr.Dey-I. HCC/G/NGC.	UR	18.2.57	13.10.82	24.11.01	Offg.	
37	Ramani Das, HCC/G/NGC.	SC	30.1.59	11.9.82	24.11.01	Offg.	
38	Indrajit Das, Rg.HCC/G/NGC.	SC	1.1.60	10.12.82	24.12.01	Offg.	
39	Sankar Acharjee, Rg.HCC(G)/NGC.	UR	1.4.54	12.11.82	27.11.01	Offg.	
40	Bhola Prasad Sarma, HCC/G/LFG.	UR	15.6.46	19.11.89	28.2.02	Offg.	
41	Braja Kr.Sinha, HCC/G/RMR/SCL	UR	1.3.55	19.2.83(GC) 4.2.83	7.02.02	Offg.	

N.B. :- Representation if any against the seniority position should be submitted within one month from the date of publication of seniority list. No representation will be entertained if it is not submitted in the stipulated period.

for Divt.Railway Manager(P)
N.F.Railway,Lumding.

Attest
Verbal
21.7.04
Advocate
Conld...

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37

P/No.

No.E/39-20(SNY)

Lumding,Dated 8/10/2002.

Copy forwarded for Information and necessary action to :-

- 1 Staff concerned through proper channel.
- 2 GM(P)/MLG,
- 3 CS/Goods/NGC,
- 4 SS/KXJ,DMV,SCL,BHRB,JID,CBZ,NNGE,LMG,DMR,HBN,PNGM,KUGT,LFG,
- 4 ATM/BPB.
- 5 APO/GHY,
- 6 Genl.Secy.,NFREU & NFRMU/MLG with 3 spare copies.
- 7 Div.Secy.,NFREU & NFRMU/LMG with 3 spare copies.
- 8 Div.President,SC/ST Association/LMG with 2 spare copies.
- 9 Spare copy for P/Case.

for Div.Railway Manager(P)
N.F.Railway,Lumding.

Attested
R.K. Deka
29.7.04
Advocate

Compared
R.K. Deka

केन्द्रीय प्रशासनिक अदायकःस्थि
Central Administrative Tribunal

54-3 NOV 2004

गुवाहाटी दराख़ा दंड
Guwahati Bench

32
DPO/NFR/LMG
Jh

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWALIATI BENCH, GUWALIATI.

IN THE MATTER OF :

O.A. No. 167 of 2004

Narayan Singh ... Applicant.

V.S.

1. Union of India.
2. Chief Commercial Manager, N.F.Railway, Maligaon.
3. The Chief Personnel Officer, N.F.Railway, Maligaon.
4. The Divisional Commercial Manager, N.F.Railway, Guwahati. ... Respondents.

- A H D -

IN THE MATTER OF :

Written Statement for and on behalf of the respondents.

The answering respondents most respectfully state as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.

Filed by :
Sukomal Sanjapee
Railway Advocate
Guwahati
3.11.2004

-: 2 :-

2. That, the application suffers for want of valid cause of action. The applicant agitated about the transfer matter, which is one of the incidence of his service in the Railways. The applicant Head Commercial Clerk (Goods) in scale Rs. 5000 - 8000/- at New Guwahati of Lumbding Division of N.F. Railway has been transferred and posted in same Lumbding Division of N.F. Railway against existing vacancy at Karinganj Station in same pay and scale on administrative ground in January '04 under DRM(P)/N.F. Railway, Lumbding Office Order No. E/39-20(G.C.)(T) Pt.I dated 16.01.2004, copy of which has been annexed as Annexure-A to the application.

3. That, the applicant has got no right for filing the case as none of his existing right etc. has been infringed and by his transfer his pay scale of pay and post etc. were not affected.

4.(a) That, the applicants representation against his transfer were already disposed of by the competent authority much earlier. As will appear from the Annexures D and G to the application his appeals/representations dated 2.2.04, 29.4.04 and 16.5.04 were duly considered by proper the competent authority and were disposed of with speaking orders after due application of mind with remarks inter-alia that his transfer does not come within the purview of periodical transfer and same was done on administrative ground and that he should comply with/carry out the transfer and posting Order to Karinganj immediately without delay and that his appeals for cancellation of transfer order were not acceded to.

-: 3 :-

4.(b) That in view of above, the present case filed by the applicant on 2.8.2004 or so without complying with the Administration's Order is nothing but an attempt to delay the transfer matter and an attempt to frustrate the Administration's Order validly passed in the case, more so, when the applicant was clearly intimated by the competent authorities in response to his appeals that his request for cancellation of the transfer Order cannot be acceded to and he should carry out the transfer order.

5. That, the application is not maintainable in its present form and is fit one to be dismissed in limine.

6. That, for the sake of brevity the meticulous denial of each and every statements/allegations of the applicant as made in the application has been avoided, without admitting the correctness of those statements which are not specifically admitted hereunder.

Further, the respondents do not admit any of the allegations/statements of the applicant except those which are either borne on records^{or} are not specifically admitted by the respondents.

The respondents have been advised to confine their replies only on those points which are relevant in the case for the purpose of Judicial decision in the case.

7. That, the case is quite vexatious one without any substance and is the outcome of the afterthought of the applicant.

-: 4 :-

8. That, with regard to averments at paragraphs 4.1, 4.2 and 4.3 of the application it is submitted that the applicant who was posted at New Guwahati Railway Station as Head Commercial Clerk (Goods) has been transferred to Karimganj Railway Station in same post and pay scale and pay on administrative ground.

His assertions that he had been continuously continuing in same station i.e. New Guwahati for about 2 decades as a ~~recd~~ on consideration of his sincere and dedicated service, is not admitted as correct since posting/continuity of a staff ^{at a} particular station is dependant on administrative necessity and ^{for} better utilisation/distribution of staff on work necessity etc.

9. That, with regard to averments at paragraphs 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9 of the application it is submitted that the applicant is due to retire on 30.6.2005 on superannuation as his date of birth is 18.6.1945 and this retirement date cannot be a valid ground for frustrating the order of transfer when such order has been passed on Administrative ground and same is not a periodical transfer and Railway Board's circulars etc. as quoted by the applicant is not applicable to his case. His retention at New Guwahati Railway Station or near about is not conducive to the Railway's interest and not desirable etc. which may deter Vigilance departments ^{etc} proceedings against him and some 3 others (who have also been ordered for transfer to other stations). Moreover as per his statement he is already serving at this particular station (at New Guwahati Station) for the last 20 years.

- 5 -

Further, his appeals dated ~~22.4.04~~ 2.2.04, 29.4.04 and 16.5.04 were duly considered by competent authority i.e. ADRM/Lumding and same was communicated to him vide Divisional Railway Manager (P)/Lumding's letter dated 2.7.2004 (Copy of which annexed as Annexure 'G' to the application).

10. That, with regard to statements/allegations at paragraphs 4.10., 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17 and 4.18 of the application it submitted that the contention of the applicant that New Guwahati Goods Office is highly sensitive and commercially earning place of the Railway is admitted. The transfer order against the 4 staff including the applicant had to be issued in greater administrative interest and especially when his conduct was under investigation and vigilance case was there. Out of 4 staff, one Sankar Kanti Biswas, C.S. (Goods)/New Guwahati who was also transferred and withdrawn from New Guwahati Railway Station on administrative ground has already retired from Railway service on 30.4.2004. It is also submitted that the Divisional Commercial Manager, Lumding never reviewed the transfer order which was approved by the ADRM/Lumding. The Order of the Divisional Commercial Manager/Lumding was issued ~~after~~ ~~in~~ the approval of the ADRM/Lumding. It is denied that there has been any discrimination in the case as alleged or there has been any violation of Article 14, 16(1) and 21 of the Constitution of India and that the applicant has any 'Right to employment' as per his Sweet Will or the seniority list Annexed as Annexure II to the application has got ~~any~~ any relevance in the case or that the sanctity and the force of the impugned order of transfer has not been maintained and effected. It is emphatically denied that there has been any mis-use of public money as alleged by the applicant or that actions of the Respondents are arbitrary, whimsical and discriminatory. It is too much for the applicant (vide para 4.14 of the application) to assert that the administration should

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have intimated to him ^{or let him} know as to from which date the vacancy at Karinganj Railway Station (where he has been transferred) is lying vacant and how it can be termed as the administrative ground etc. It is denied that there has been any brazen decision, wanton attitude and vindictive policy to cause stringent hardship on the applicant, as alleged.

It is also denied that there has been any colourable exercise of power or malafide or that the transfer order was issued to disentitle him from his lawful right as alleged or that the transfer aspect has been used as cloak of punishment and on 'Bias' or extraneous or irrelevant considerations and/or reasons or as a fraud on power etc. as alleged. It is submitted that the applicant has gone out of the way as he failed to mention that the Apex Court's opinion as contended by him was passed in exactly similar cases or not and in what case. Such irrelevant assertions are quite inadmissible and uncalled for.

It is also reiterated that the instant transfer order is not covered by the Railway Board's Circular for periodical transfer or/and that the transfer order had to be issued under special circumstances for the administrative interest and there is no illegality in issuing same. Further, transfer is an incidence of service and does not fall within the purview of punishments detailed in the Railway Servants Discipline & Appeal Rules 1968, and that the transfer order was passed and ^{reasoned order} his representations were disposed of with ^{after} due application of mind and due consideration of the case.

11. That, with regard to averments at paragraph 4.19 of the application it is submitted that all the allegations of the applicant as made in this paragraph are incorrect and hence denied. It is submitted that there has not been any

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violation of Fundamental right in service matter as alleged, or, there is any violation of Railway's own set of rules which might attract unfair, unjust, irregular, bias and malafide actions of Administration or that for any hardship as alleged by the applicant, the Railway administration is liable, or, that the applicant will suffer irreparable loss by such transfer etc. as alleged.

12. That, in view of what have been submitted in above paragraphs of this written statement none of the grounds for relief as mentioned in paragraphs 5 of the application and the relief as sought for under paragraphs 8 and 9 of the application are sustainable under law and fact of the case and thus the prayers of the applicant are liable to be rejected.

13. That, it is submitted that all the actions taken in the case by the respondents are quite legal, valid and proper and in consonance to the provisions of extant rules on the subject and have been taken after due application of mind and concept of natural Justice as well and that the present case of the applicant is based on wrong premises and suffers from mis-conception and mis-interpretation of rules and laws on the subject besides being a surmise only and is the result of after-thought action in order to frustrate the government action or cause delay in the implementation of the legally valid order.

14. That, the answering respondents crave leave of the Hon'ble Tribunal to file additional written statement, if found necessary on receipt any further information etc. about the case, for ends of Justice.

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15. That, under the facts and circumstances of the case, as stated in foregoing paragraphs of the written statement, the instant application is not maintainable under law and fact of the case and is fit one to be dismissed.

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

I, Ashoke Sengupta son of Late B. N. Sengupta aged about 51 years by occupation Railway Service, working as DPO/NF Rly/Lumding of N. F. Railway, _____ do hereby solemnly affirm and state that the statements made in paragraphs 1 and 6 are true to my knowledge and those made at paragraphs 4(a), 8 and 10 are based on information as gathered from records of the case which I believe to be true and the rest are my submissions before the Hon'ble Tribunal and I sign this verification on 3rd November 2004.

Ashoke Sengupta

NORTHEAST FRONTIER RAILWAY
FOR AND ON BEHALF OF
UNION OF INDIA.