

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

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 210/2006

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SECTION OFFICER (Judl.)

Kahta
25/10/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 210/06
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) S. Mandal

Respondent(S) C. O. I. Toms

Advocate for the Applicant(S) S. Nath, S. K. Tamuli

Advocate for the Respondent(S) Railway Counsel, J.L. Sarkar

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------|------|-----------------------|
|-----------------------|------|-----------------------|

18.8.2006 Present: The Hon'ble Shri K.V. Sachidanandan Vice-Chairman.

1. Application is in form of O.A. No. 2663259/06
Dated 14.8.06

Meetoo
By. Registrar

The present O.A. has been filed by the applicant against the orders at Annexures 1&6 transferring him from New Bongaigaon to North Lakhimpur. Applicant's pleading in the application is that as per Railway Board circular dated 7.1.1971 SC/ST employees should be posted near their home station as far as possible. The applicant, being a SC employee, should be given the concession as provided by the aforesaid circular. Applicant made representation, which is not attended to, and the respondents without modifying/canceling the earlier transfer order (Annexure-I) have issued another transfer order at Annexure-6 transferring the applicant to North Lakhimpur. Aggrieved by the said action the applicant has filed this O.A.

Heard Mr.S.Nath, learned counsel for the applicant. Dr.J.L.Sarkar learned Standing counsel appeared for the respondents. At para 4.8 of the O.A. the applicant claimed that there are

Pl. rule no. 1 of Standing
Court's order dated 18.8.06.

NS
21.8.06

Contd.

18.8.2006 vacancies at Bongaigaon and also under Rangia Division in which the applicant can be accommodated. Therefore, Dr. Sarkar is directed to take specific instruction as to whether these vacancies as claimed by the applicant or any other vacancy are available, and if so, to report within four weeks.

Jan-2006
Advocate
for Applicant
Reviewed
For Dr. J.L. Sarkar

Post on 20.9.2006. By way of interim order this Tribunal directs the respondents to keep the transfer orders at Annexures-1 & 6 at abeyance till such time.

Vice-Chairman

bb

20.9.2006 Dr. J.L. Sarkar, learned Standing counsel for the Railways seeks six weeks time to file reply statement. Let it be done.

Post on 30.10.2006. Interim order to continue till the next date.

order dt. 20/9/06
issuing to learned
advocate's for both
the parties.

26/9/06:

bb

27.10.06

1. No order to issue notice.
2. No steps taken.
3. No reply filed.

br.

30.10.06.

The issue involved in this case is transfer matter which is challenged by the applicant on the ground of Railway Board vide their letter No. E(SCT)70/OM 15/3 dated 22.06.70 circulated vide GPO/MLC's letter No. Misc/483 dated 07.01.71 which

JMK

30.10.06.

The issue involved in this case is transferred which is challenged by the applicant on the ground of violation of the Railway Board Circular dated 22.6.76 and the circular of D.O.P.T dated 20.6.06 and claimed protection of S.C. & S.T. candidates.

Considering the issue involved the O.A. can be admitted. Admit: Issue notice on the Respondents. Six weeks time is granted to file written statement. Interim

Post the matter on 15.12.06.

14.12.06

No steps to issue notice.

by

lm

10.1.07

No W.L.S. filed.

by

11.1.07.

Six weeks further time is granted to file written statement. Post the matter on 26.2.07. Interim order shall continue.

Vice-Chairman

23.2.2007

lm

No W.L.S. filed so far.

by

order of 26/2/07
issuing to both
the parties.

27/2/07

26.2.07. Learned counsel for the respondents prays for six weeks time to file written statement. Let it be done. Post the matter on 9.4.07. Interim order shall continue.

Vice-Chairman

No W.L.S. has been
filed.

23.4.2007

Present: The Hon'ble Mr. G. Shanthappa
Member (J)

The Hon'ble Mr. G. Ray, Member (A)

No W.L.S. has been
filed.

29.4.07

Case called. Mr. S. Nath, learned counsel represented the Applicant. Neither the Respondents nor the learned counsel for the Respondents is present. We grant four weeks more time to the Respondents to file reply statement.

Post on 24.05.2007. Interim order

04.210/2005

-4+

23.4.2007

Present: The Hon'ble Mr. G. Shanthappa
Member (J)

order dt. 23/4/07
issuing to learned
advocate's for both
the parties.

24/4/07

W/o. w/o has been
billed.

23.5.07

24.5.07

order dt. 24/5/07
issuing to learned
advocate's for both
the parties.

25/5/07

w/o not billed. 1m

29.7.07

20.7.2007

Counsel for the respondents wanted
time to file written statement. Let it be
done. Post the matter on 20.6.07. Interim
order shall continue.

V
Vice-Chairman

Let the case be posted after four
weeks. Respondents are at liberty to file
reply statement by that time.

Post the matter on 27.8.2007. Interim
order shall continue till such time.

20.7.07

1. contd

order dt. 20/7/07 issuing
to learned advocate's
for both the parties.

27/7/07 w/o not billed.

24.8.07

/bb/

V
Vice-Chairman

27.8.07. Counsel for the respondents wanted time to file written statement. Let it be done. Post the matter on 27.9.07 Interim order shall continue.

Vice-Chairman

lm

27.8.07.

Pl. Compl.

30/8/07

order dt-27/8/07
issuing to death
the parties.

30/8/07

Wts not billeed.

26.9.07

26.9.07
Wts filed by the
Respondents. Copy
Served.

27.9.07

Pl. Compl.

27.9.07

order dt-27/9/07
issuing to death
the parties.

28.9.07

Rejoinder submitted
by the Applicant.

2.10.07

27.10.07

27.9.2007

Mr.S.Nath, learned counsel for the Applicant, who is in receipt of a copy of the reply, undertakes to file rejoinder by 12.10.2007.

Call this matter on 05.11.2007. Interim order shall continue till such time.

Khushiram
Member (A)

M.R.Mohanty
Vice-Chairman

/bb/

05.11.2007

Mr.S.Nath, learned counsel for the Applicant and Dr.J.L.Sarkar, learned Railway Standing counsel both prays posting of this matter for hearing after four weeks.

Call this matter on 11.12.2007 for hearing. Interim order shall continue to remain till such time.

Member (A)

/bb/

11.12.2007

On the prayer of Dr.J.L.Sarkar, learned Standing counsel for the Railways, the matter is adjourned to be taken up on 16.01.2008 awaiting reply of the Respondents on the rejoinder of the Applicant.

Gautam Ray
Member (A)

M.R.Mohanty
Vice-Chairman

/bb/

Ready to hear

10.

5
OA 210/06

St. S. 11/07

PL Compl.

16.01.2008

None appears for either of the parties. In this case written statement and rejoinder have already been filed.

order dt. 5/11/07
issuing to learned
advocate/s for both
the parties.

8/11/07.

/bb/

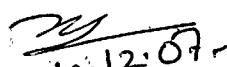
Wts and rejoinder
filed by the parties.

21.01.08

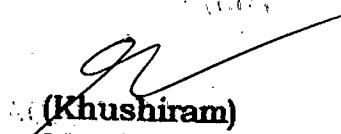

(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Call this matter, pertaining to transfer, on Friday, 21.01.2008 for hearing/final disposal.

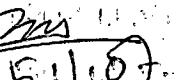

10.12.07
The case is
Ready

Call this matter on 30.1.2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

Lm

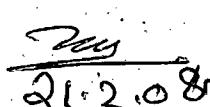

15.1.08
The case is ready
for hearing.

On the prayer of Dr.J.L.Sarkar,
learned Standing counsel appearing for
the Railways, call this matter on
22.02.2008 for hearing.


(Khushiram)
Member (A)

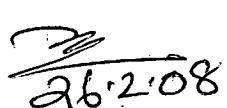

(M.R. Mohanty)
Vice-Chairman

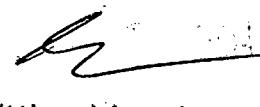
Lm


21.2.08

Call this matter on 26.02.2008.

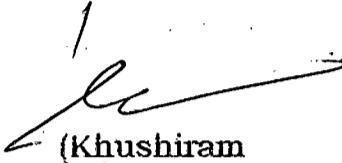
Lm


26.2.08
The case is ready
for hearing.


(Khushiram)
Member (A)

26.02.2008 Judgment pronounced in open Court. Kept
in separate sheets. Application is disposed of at
the admission stage..

AB
Advocate
29/2/08


(Khushiram
Member (A))

Lm

29.2.08
Copy of the
Draft send to
the office for
issuing the notice
to the respondents
as well as to
the L/A/Adv. for the
Railway.



17.3.08

sent via
D/No. 1240 to
1247 dated 3.3.08



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No 210 of 2006

DATE OF DECISION: 26.02.2008

Sadhan Mandal

.....Applicant/

Mr.S.Nath

.....Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

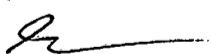
Dr.J.L.Sarkar.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR.KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No


Vice-Chairman/Member

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.210 of 2006

Date of Order This the 26th Day of February, 2008

HON'BLE MR.KHUSHIRAM, ADMINISTRATIVE MEMBER,

Shri Sadhan Mandal,
S/O Late Dhirendra Chandra Mandal,
Mechanical Signal Maintainer (MSM-1)
Working under Senior Section Engineer(Signal)
Goalpara, N.F.Railway
New Bongaigaon, Assam.

.... Applicant

By Advocate Mr.S.Nath,

-Versus-

1. The Union of India, General
Represented by the Manager,
N.F.Railway,
Maligaon,Guwahati-781011
2. Divisional Railway Manager(P)
N.F.Railway, Rangia
Rangia
Assam-781356
3. Senior Divisional Signal &
Telecom Engineer
N.F.Railway,Rangia
4. Senior Section Engineer (Signal)
Goalpara, N.F.Railway,
New Bongaigaon, Assam. Respondents.

By Dr.J.L.Sarkar, Railway Counsel

ORDER (ORAL)

KHUSHIRAM, MEMBER(A)

Heard Mr. S. Nath, learned counsel appearing for the
Applicant and Dr.J.L.Sarkar, learned Railway counsel appearing for
the Respondents.

2. The Applicant has been transferred from Bongaigaon to
North Lakhimpur. The Applicant has filed this O.A. in protest, he

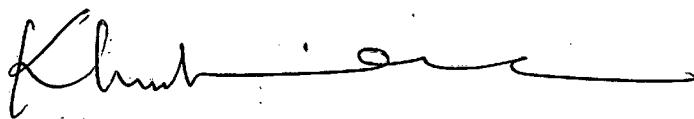


being a Scheduled Caste Candidate, claim to be posted within the Home district or nearby district as per Government instructions.

3. The Respondents have filed their written statement stating that there is no vacancy for all the SC candidates in their home district. Counsel for the Applicant has stated that the applicant wants to prosecute the matter by filing representation before the Respondents. If such representation is filed by the Applicant against the transfer order, within one month the Respondents may consider the same within a limitation of feasibility. Counsel for the Respondents has no objection if such direction is given.

The O.A. is disposed of, accordingly.

lm


(KHUSHIRAM)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 210 /2006

Shri Sadhan Mandal
-Vs-
Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant was initially appointed to the post of Khalasi in NF Railway on 05.07.1989 under compassionate ground, thereafter he was promoted to the post of Helper and promoted to the post of MSM III in the year 1998. He was further promoted to the post of MSM II in the year 2000 and thereafter he was promoted to the post of MSM I in the year 2003 and at present applicant is serving to the post of Mechanical Signal Maintainer Gr. I (for short MSM- I) and posted under the Senior Section Engineer (Signal), Goalpara at NF Railway, New Bongaigaon. He belongs to SC community.

31.03.2006- Divisional Railway Manger (P) Rangiya, issued impugned letter dated 31.03.2006, whereby applicant along with others is sought to be transferred on administrative ground. In the said impugned letter applicant has been placed at Sl. No. 2 and he is sought to be transferred from New Bongaigaon (for short NBQ) to North Lakhimpur (for short NLP). (Annexure- 1)

01.05.2006- Applicant submitted a representation on 01.05.2006 addressed to the respondent No. 3, praying inter alia for his posting at Barpeta Road (for short BPRD) as MSM Gr-I but to no result. (Annexure- 2)

29.05.2006- DRM (P) Rangiya, most surprisingly vide his office order dated 29.05.2006 modified the transfer and posting of Shri Paritosh Kr. Shome MSM Gr. I to Barpeta Road, who was initially transferred to Goalpara and placed at Sl. No. 5 of the impugned order dated 31.03.06 when the representation dated 01.05.06 submitted by the applicant praying for his posting at Barpeta Road was pending before the authority. (Annexure- 3)

Sadhan Mandal

20.06.2006- President, Bongaigaon Zila Anusuchit Jati Parishad, Bongaigaon vide his letter dated 20.06.06 addressed to the Divisional Railway Manager, N.F Railway, Rangiyia Division requested to cancel transfer order of the applicant from New Bongaigaon to North Lakhimpur and to arrange to post him near his home town as per concession given to SC & ST candidate by Railway Board vide their Letter No. E (SCT) 70/CM 15/3 dated 22.06.70 circulated vide CPO/MLG's letter No. Misc/483 dated 07.01.71 clearly stated that regarding transfer and posting of the SC & ST candidates near home station and save a SC candidate from deprivation.

(Annexure- 4)

12.06.1989- Govt. of India, Department of Personnel and Training, New Delhi has issued O.M dated 12.06.89 whereby it has been directed that SC/ST employees of the Govt. of India should not be transferred and posted in far off places and effort should be made to accommodate them in their home district or at best in the adjacent district.

(Annexure- 5)

09.08.2006- Divisional Railway Manager (P) vide his impugned office order dated 09.08.2006 issued another temporary transfer and posting order of inasmuch as 5 employees, without canceling or modifying the impugned transfer and posting order dated 31.03.06, in the said impugned order applicant is placed at Sl. No. 3. (Annexure- 6)

Hence this Original Application.

P R A Y E R S

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order bearing letter No. E/240/RP/S&T/RN dated 31.03.2006 (Annexure- 1) as well as the impugned order bearing No. E/283/S&T/Pro-Tra/RN/14 dated 09.08.06 (Annexure- 6) so far the applicant is concerned.
2. That the Hon'ble Tribunal further be pleased to direct the respondents to allow the applicant to continue in his present place of posting, in the same capacity or to accommodate him at Bongaigaon, Barpeta Road or at any nearby place.
3. Costs of the application.

Sachin Mandel

4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to stay the operation of impugned transfer and posting order bearing letter No. E/240/RP/S&T/RN dated 31.03.2006 (Annexure- 1) as well as the impugned order bearing No. E/283/S&T/Pro-Tra/RN/14 dated 09.08.06 (Annexure- 6) so far the applicant is concerned till disposal of the Original Application.
2. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

Sardhan Mondal.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
गुवाहाटी बैठक
GUWAHATI BENCH, GUWAHATI

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

Title of the case : O.A. No. 210 /2006

Shri Sadhan Mandal : Applicant.

-Versus-

Union of India & Ois. : Respondents.

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| 3. | 1 | Copy of the impugned order dated 31.03.06 | |
| 4. | 2 | Copy of the representation dated 01.05.06. | |
| 5. | 3 | Copy of the order dated 29/30.05.06. | |
| 6. | 4 | Copy of the representation dated 20.06.06. | |
| 7. | 5 | Copy of the OM dated 20.06.1989. | |
| 8. | 6 | Copy of the impugned transfer order dated 09.08.06. | |

Filed By:

S. Nath

Advocate

Date: - 17.08.06

Sadhan Mandal.

16
Filed by the applicant
through S. M. Mandal
17.05.2008

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 210 /2006

BETWEEN:

Shri Sadhan Mandal,
S/o- Late Dhirendra Chandra Mandal,
Mechanical Signal Maintainer (MSM -I),
Working under Senior Section Engineer (Signal),
Goalpara, N.F. Railway,
New Bongaigaon, Assam.

-AND-

Applicant.

1. The Union of India,
Represented by the General Manager,
N. F. Railway,
Maligaon, Guwahati-781011.
2. Divisional Railway Manager (P)
N.F. Railway, Rangiya,
Rangiya.
Assam- 781356.
3. Senior Divisional Signal & Telecom Engineer,
N.F. Railway
Rangiya.
4. Senior Section Engineer (Signal)
Goalpara, N.F. Railway,
New Bongaigaon, Assam.

..... Respondents.

DETAILS OF THE APPLICATION

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

Sadhan Mandal.

This application is made against the impugned transfer and posting order bearing No. E/240/RP/S&T/RN dated 31.03.2006 (Annexure-1) as well as impugned order bearing No. E/283/S&T/Pro-Tra/RN/14 dated 09.08.2006 (Annexure- 6) whereby the applicant is sought to be transferred and posted from New Bongaigaon to North Lakhimpur in total violation of Railway Board order bearing No. L/No. E (SCT) 70/CM 15/3, dated 22.06.70 circulated vide CPO/MLC's L/No. Misc/483 dated 07.01.71 as well as Govt. of India, DOPT, O.M dated 20.06.1989 and praying to allow the applicant to retain in the present place of posting at New Bongaigaon or to be posted at nearby places of his home town in the light of the aforesaid Railway Board circular dated 22.06.70 and dated 20.06.89.

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 Tribunals Act' 1985.

4. Facts of the case:

- 4.1** That the applicant is a citizen of India and a permanent resident of the State of Assam. He belongs to SC community and as such he is entitled to special facilities, protections and privileges as guaranteed under the Constitution of India.

- 4.2** That your applicant was initially appointed to the post of Khalasi in NF Railway on 05.07.1989 under compassionate ground, thereafter he was promoted to the post of Helper and promoted to the post of MSM III in the year 1998. He was further promoted to the post of MSM II in the year 2000 and thereafter he was promoted to the post of MSM I in the year 2003 and

Sachin Mondal

at present applicant is serving to the post of Mechanical Signal Maintainer Gr. I (for short MSM- I) and posted under the Senior Section Engineer (Signal), Goalpara at NF Railway, New Bongaigaon.

It is submitted that the applicant was appointed on compassionate ground after death of his father and he is to look after his younger brothers who are dependent on him. Being a low paid Group 'C' employee and as such applicant is spending huge expenditure in connection with the maintenance of his family as well as his younger brother.

4.3 That it is stated that the Divisional Railway Manger (P) Rangiya, issued impugned letter bearing No. F/240/RP/S&T/RN dated 31.03.2006, whereby applicant along with others is sought to be transferred on administrative ground. In the said impugned letter applicant has been placed at Sl. No. 2 and he is sought to be transferred from New Bongaigaon (for short NBQ) to North Lakhimpur (for short NLP). It is stated in the impugned letter dated 31.03.06 that due to abolition of Mechanical Gears from NBQ (i.e. New Bongaigaon) & RNGN (i.e. Bongaigaon) the staffs are transferred and posted w.e.f. 01.04.06. In this connection it is ought to be mentioned here that the applicant belongs to SC community and he has been sought to be transferred to North Lakhimpur which is about 405 Km away from New Bongaigaon and as a result applicant will suffer a lot if the impugned order of transfer and posting is implemented in respect of the present applicant. However, the impugned transfer order dated 31.03.06 has not been implemented till filing of the application and the applicant has not been spared/released from his present place of posting i.e. from New Bongaigaon.

Copy of the impugned order dated 31.03.06 is enclosed herewith for perusal of Hon'ble Tribunal and marked as Annexure- 1.

Sachin Mandal

4.4 That your applicant begs to state that immediately after receipt of the impugned order dated 31.03.06 he submitted a representation on 01.05.2006 addressed to the Sr. Divisional Signal & Telecom Engineer i.e. respondent No. 3, praying inter alia for his posting at Barpeta Road (for short BPRD) as MSM Gr-I. In his representation dated 01.05.06 the applicant categorically stated that on being appointed on compassionate ground after the premature death of his father he is entrusted with all the responsibilities of his younger brothers. He also requested that in the event of transfer to North Lakhimpur it will create enormous hardship to him and his family and dependent brother will be guardian less and he could not discharge his moral responsibilities entrusted to him by his deceased father. Therefore, the applicant earnestly requested the respondent No. 3 to look into his genuine problem and thereby arrange to post him to Borpeta Road if it is at all not possible to post him at New Bongaigaon or Bongaigaon. But the said representation of the applicant dated 01.05.06 was not replied due to the reasons best known to the respondents.

Copy of the representation dated 01.05.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 2.

4.5 That your applicant begs to say that DRM (P) Rangiyra, most surprisingly vide his office order bearing No. E/240/RP/S&T/RN dated 29.05.2006 modified the transfer and posting of Shri Paritosh Kr. Shome MSM Gr. I to Barpeta Road, who was initially transferred to Goalpara and placed at Sl. No. 5 of the impugned order dated 31.03.06 when the representation dated 01.05.06 submitted by the applicant praying for his posting at Barpeta Road was pending before the authority. In this connection it is relevant to mention here that Shri P.K Shome is a General category employee and the present applicant is a SC category candidate who has been granted special privileges by the Railway Board's circular bearing No. L/No. E (SCT) 70/CM 15/3 dated 22.06.70, regarding transfer and posting near home

Sachin Mandel.

station, but the respondents in violation of the guideline of the Railway Board's circular has sought to transfer the present applicant in a far off place like North Lakhimpur, whereas the respondents could accommodate Shri P.K Shome at Barpeta Road when the representation of the applicant praying for posting at Barpeta Road is pending for consideration. Such action of the respondents is arbitrary, malafide, suffers from favoritism and opposed to principle of natural justice and on that score alone the impugned transfer and posting order dated 31.03.2006 is liable to be set aside and quashed so far the applicant is concerned.

Copy of the order dated 29/30.05.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 3.

4.6 That the President, Bongaigaon Zila Anusuchit Jati Parishad, Bongaigaon vide his letter dated 20.06.06 addressed to the Divisional Railway Manager, N.F Railway, Rangiya Division requested to cancel transfer order of the applicant from New Bongaigaon to North Lakhimpur and to arrange to post him near his home town as per concession given to SC & ST candidate by Railway Board and save a SC candidate from deprivation. In the letter dated 20.06.06 it is also stated that Railway Board vide their Letter No. E (SCT) 70/CM 15/3 dated 22.06.70 circulated vide CPO/MLG's letter No. Misc/483 dated 07.01.71 clearly stated that regarding transfer and posting of the SC & ST candidates near home station. It is also stated that the applicant had earlier applied to Sr. DSTE/RNY for posting near home town at NBQ/BNGN and BPRD but his appeal is not given due weightage. Therefore, the Parishad requested the Divisional Railway Manager, N.F. Railway, Rangiya to look into the matter judiciously and arrange to cancel his transfer order from NBQ to NLP and arrange to post him near his home town as per concession given to a SC candidate by Railway Board and save a SC candidate from deprivation. But this time also respondents did not replied the representation submitted by the Bongaigaon Zila Anusuchit Jati Parishad, Bongaigaon for the reasons best known to them. In this

connection the applicant begs to state that in spite of his best effort the applicant could not collect a copy of the Railway Board vide their Letter No. E (SCT) 70/CM 15/3 dated 22.06.70 circulated vide CPO/MLG's letter No. Misc/483 dated 07.01.71.

Copy of the representation dated 20.06.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 4.

4.7 That the Govt. of India, Department of personnel and training, New Delhi has issued Office Memorandum bearing letter No. AB-14017/27/89-Estt. (RR) dated 20.06.1989 whereby it has been directed that SC/ST employees of the Govt. of India should not be transferred and posted in far off places and effort should be made to accommodate them in their home district or at best in the adjacent district for general welfare of the persons belonging to the SC/ST community when the Govt. of India has provided reservation in central government services accompanied by various other benefits, concession and relaxation. In the said circular it has been instructed that SC/ST employees may be transferred and posted in other places very rarely and for very strong reasons only but in the instant case of the applicant the competent authority initially posted the Shri P.K Shome at Goalpara from Bongaigaon but subsequently a fresh transfer and posting order dated 29.05.06 has been issued accommodating the Shri P.K. Shome at Barpeta Road when the representation of the applicant praying for accommodate him at Barpeta Road is pending before the respondents. Transfer is an incidence of service but it is not fair to transfer an employee belonging to SC community and to accommodate another person of general category who was initially transferred and posted at Goalpara. Therefore, impugned transfer and posting order dated 31.03.06 is highly unfair, illegal and malafide and same is liable to be set aside and quashed so far the applicant is concerned.

Sadhan Mandal.

Copy of the OM dated 20.06.1989 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 5.

4.7 That most surprisingly the Divisional Railway Manager (P) vide his impugned office order bearing No. E/283/S&T/Pro-Tra/RN/14 dated 09.08.2006 issued another temporary transfer and posting order of inasmuch as 5 employees, without canceling or modifying the earlier impugned transfer and posting order dated 31.03.06, in the said impugned order applicant is placed at Sl. No. 3. In this connection it is stated that in the impugned transfer order dated 09.08.2006 name of Shri N.C. Malakar, Shri Asarfi Hazra, Shri P.K Shome, Shri Babulal Brahma is absent who were also transferred vide impugned order dated 31.03.06 and in place of them another 2 employees Shri Pijush Kr. Guha and Shri Banaras Sharma has been included and no reason for such modification in the impugned transfer order dated 31.03.06 has been assigned. Be it stated that no reasons for issuance of temporary transfer order dated 09.08.06 without canceling the earlier impugned order dated 31.03.06 has been assigned by the respondents. In this connection applicant begs to state that he is apprehending that though the order dated 09.08.06 has been issued as temporary transfer order but the order may be continued for long time and it may be alerted in a permanent transfer later on at the disadvantage of the applicant. It is stated that applicant submitted his representation praying for cancellation of his transfer and posting order dated 31.03.06 and the Bongaigaon Zila Anusuchit Jati Parishad, Bongaigaon vide his letter dated 20.06.06 addressed to the Divisional Railway Manager, N.F Railway, Rangiya Division requested to cancel transfer order of the applicant from New Bongaigaon to North Lakhimpur and to arrange to post him near his home town as per concession given to SC & ST candidate by Railway Board and save a SC candidate from deprivation but the respondents in spite of giving any reply to the representation submitted by the applicant on 01.05.06 issued the impugned order dated 09.08.06 that too modifying and

Saddan Mandal.

canceling name of 5 persons from the impugned order dated 31.03.06 but the representation of the applicant has not been considered at all when the impugned order dated 09.08.06 was issued and on that score alone the impugned order dated 09.08.06 is liable to be set aside and quashed so far the applicant is concerned.

Copy of the impugned transfer order dated 09.08.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 6.

4.8 That the applicant categorically begs to state that one Shri D.K. Chattarjee, MSM, Bongaigaon has been promoted to the post of Master Craftsman (MCM) vide order bearing No. E/240/RP/RNY dated 23.08.04 and no one has been posted in place of Shri D.K. Chattarjee and as a result one post of MCM-I is still lying vacant at Bongaigaon against which the applicant can be accommodated easily but the respondents did not consider the case of the applicant for posting him at Bongaigaon which is near to his home town New Bongaigaon. It is also submitted that there are at least one post of MCM- I is still lying vacant under the Rangiya Division against which the applicant can be accommodated.

4.9 That your applicant begs to state that he is Gr. 'C' employee serving in the NF Railway and belongs to SC community and with the meager income of him he is unable to maintain two establishment in the event of his transfer and posting at North Lakhimpur as such he will suffer irreparable loss. Therefore, finding no response from the respondents regarding his representation praying for his transfer and posting at New Bongaigaon, Bongaigaon or Barpeta Road the applicant is approaching before this Hon'ble Tribunal praying for setting aside the impugned transfer and posting order dated 31.03.06 (Annexure- 1) as well as the impugned order dated 09.08.06 (Annexure- 6) so far the applicant is concerned.

Be it stated that the applicant has not been spared/released till filing this Original Application, therefore the applicant humbly prays

Sudhan Mondal

before this Hon'ble Tribunal for passing appropriate order staying operation of impugned order dated 31.03.06 as well as the impugned order dated 09.08.06 so far the applicant is concerned.

4.10 That this application is made bonafide and for the cause of justice.

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

5.1 For that, the applicant is SC employee working in Gr. C post in the NF Railway and he has been sought to be transferred and posted in a far off place like North Lakhimpur in violation of guideline issued by Railway Board vide circular dated 22.06.70, regarding transfer and posting near home station as such impugned order dated 31.03.06 as well as impugned order dated 09.08.06 are liable to be set aside and quashed.

5.2 For that, applicant has to maintain his younger brothers who are dependent on him and in the event of implementation of the order dated 31.03.06 as well as order dated 09.08.06 he will have to maintain 2 establishment with such a meager income which will cause great hardship to the applicant.

5.3 For that, no reason has been assigned for issuance of transfer order dated 09.08.06 without modifying or canceling the earlier transfer order dated 31.03.06 that too dropping name of 3 persons and including another 2 persons.

5.4 For that, the Govt. of India, department of Personnel and Training issued the Office Memorandum bearing letter No. AB-14017/27/89-Estt. (RR) dated 20.06.1989 whereby restriction has been imposed in the matter of transfer and posting of the SC/ST employees for the welfare of the members of the said community wherein it has been specifically provided that employees belonging to the category of SC/ST shall not be transferred and posted in a far off places and if the transfer and posting is

Sachin Mondal

at all required they should be transferred within their home district or in the nearby district that too rarely and for very strong reasons and the employer i.e. the respondents are bound to follow the said instructions issued by the Govt. of India and the impugned memorandum of transfer dated 31.03.06 as well as dated 09.08.06 have been issued in respect of the applicant in total violation of the Railway Board's circular dated 22.06.70 and memorandum dated 20.06.1989 and on that score alone the impugned transfer and posting order dated 31.03.06 as well as dated 09.08.06 are liable to be set aside and quashed.

- 5.5 For that, Shri P.K. Shome, a general category employee who have been accommodated at Barpeta Road when the applicant being a SC candidate submitted his representation praying for accommodation at Barpeta Road and such action of the respondents smacks malafide and violative of principles of natural justice and also discriminatory in nature and on that score alone the impugned order dated 31.03.06 as well as order dated 09.08.06 are liable to be set aside and quashed.
- 5.6 For that, Shri P.K. Shome, MCM- I was transferred and posted at Goalpara vide impugned order dated 31.03.06 and he was later on accommodated at Barpeta Road vide order dated 29.05.06 but the case of the applicant who belongs to SC community was not considered and he has again been picked up for posting in a far off place like North Lakhimpur only in order to accommodate Shri P.K. Shome.

6. Details of remedies exhausted.

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

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

Sachin Mondal.

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 Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order bearing letter No. E/240/RP/S&T/RN dated 31.03.2006 (Annexure- 1) as well as the impugned order bearing No. E/283/S&T/Pro-Tra/RN/14 dated 09.08.06 (Annexure- 6) so far the applicant is concerned.
- 8.2 That the Hon'ble Tribunal further be pleased to direct the respondents to allow the applicant to continue in his present place of posting, in the same capacity or to accommodate him at Bongaigaon, Barpeta Road or at any nearby place.
- 8.3 Costs of the application.
- 8.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

9.1 That the Hon'ble Tribunal be pleased to stay the operation of impugned transfer and posting order bearing letter No. E/240/RP/S&T/RN dated 31.03.2006 (Annexure- 1) as well as the impugned order bearing No. E/283/S&T/Pro-Tra/RN/14 dated 09.08.06 (Annexure- 6) so far the applicant is concerned till disposal of the Original Application.

9.2 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10

11. Particulars of the I.P.O

i) L.P.O No. : 266 325978
 ii) Date of issue : 14.08.2006
 iii) Issued from : G.P.O, Bawali.
 iv) Payable at : G.P.O, Bawali.

12. List of enclosures:
 As given in the index.

VERIFICATION

I, Shri Sadhan Mandal, S/o- Late Dhirendra Chandra Mandal, aged about 40 years, working as Mechanical Signal Maintainer (MSM -I), under Senior Section Engineer (Signal), Goalpara, N.F. Railway, New Bongaigaon, Assam. 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 17th day of August 2006.

Sadhan Mandal



-14-

Annexure-1

N.P. Railway

Office of the
DRM(P)/RNY

Sub:- Redistribution of Section.

Due to closure of NG section between NBQ-CGS excluding RNY and installation and commissioning of Panel interlocking at NBQ, the following redistribution of the section and transfer & posting of staff are hereby ordered to take effect from 01.04.06.

A) The Section of SSE/Sig/GLPT will be AYU-AZA w.e.f. 01.04.06 and the following staff will continue to be under SSE/Sig/GLPT for the Section AYU-AZA with HQ at GLPT :-

S/Shri

1. S. Pegu, JE/S/NBQ with HQ/GPZ at NBQ-for AYU,JPZ,PNVT Station.
2. Ratan Kr. Malakar, Mason/II with HQ at GLPT
3. Badal Ch. Dey, Painter/I/NBQ with HQ at GLPT
4. Sankar Sutradhar, Carpenter/III/NBQ with HQ at GLPT
5. Damoodhar Rabha, ESM/I/NBQ with HQ at GLPT
6. Goutam Karmakar, ESM/III/NBQ with HQ at GLPT
7. Suresh Sharma, B/Smith/II with HQ at GLPT
8. Raju Kr. Bahadur, Kh-HL/NBQ with HQ at JPZ
9. Uttam Kr. Prasad, Kh-HL/NBQ with HQ at GLPT
10. Subrata Das, Kh-HL/NBQ with HQ at GLPT
11. Rajendra Sha, Kh-HL/NBQ with HQ at GLPT
12. S.M. Yadav, Kh/NBQ with HQ at GLPT
13. Bhupen Singha, Kh/NBQ with HQ at GLPT.

B) The NBQ- yard(East Zone & West Zone) will be under SSE/Sig/CABIN(E) w.e.f. 01-04-06.

- i) NBQ-East Zone : will comprise of all gears under NBQ-East Cabin.
- ii) NBQ-West Zone : will comprise of all gears under NBQ-Central Cabin & West Cabin.

Following staff are hereby transferred and posted as under SSE/Sig/BNGN(E) with HQ at NBQ :-

| Sl. No. | Name (S/She) | Designation | To work at |
|---------|-------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Nasim Ali Ahmed | SE/S/NBQ | will be over all supervision of NBQ-Yard(East Zone & West Zone) under SSE/Sig/BNGN(E). He will look after the NBQ-West Zone till JE/Sig/NBQ/WZ posted. |
| 2. | S. M. Rabia | JE/T/S/NBQ/ER | NBQ-East Zone. |
| 3. | P. K. Khan | EM/H/I | NBQ-East Zone (Shifting) |
| 4. | B. Karna | EM/I | NBQ-East Zone (Shifting) |
| 5. | Prakash Kanti Das | ESM/I | NBQ-East Zone (Shifting) |
| 6. | Gobinda Ch. Borah | MCM/E | NBQ-West Zone (Shifting) |
| 7. | A. K. Choudhury | ESM/I | NBQ-West Zone (Shifting) |
| 8. | Kartick Ch. Das | ESM/II | NBQ-West Zone (Shifting) |
| 9. | L. N. Choudhury | ESM/II | NBQ-West Zone (RG) |
| 10. | D. C. Deh Rath | ESM/I | NBQ-West Zone (RG) |

(Contd. 1/2)

*Affected
Law Advocate*

| Sl. No. | Name (S/sbri) | Designation | To work at |
|---------|--------------------|-------------|------------|
| 11. | Makhan Lal Roy | MSM/I/II | NBQ |
| 12. | Chait Lal Prasad | ESM/III | NBQ |
| 13. | Sohim Brahma | ESM/III | NBQ |
| 14. | Kullesh Choudhury | Kh-HL | NBQ |
| 15. | Sipath Komath | Kh-HL | NBQ |
| 16. | Jogen Ch.Das | Kh-HL | NBQ |
| 17. | Dip Ch.Raha | Kh-HL | NBQ |
| 18. | Gopal Das | Kh-HL | NBQ |
| 19. | T.C. Brahma | Kh-HL | NBQ |
| 20. | Bhadreswar Daimary | Kh-HL | NEQ |
| 21. | K.S. Basumatary | Kh-HL | WBQ |
| 22. | B.Daimary | Kh-HL | NBQ |
| 23. | Nedhab Ch.Roy | Kh-HL | NBQ |
| 24. | Ratan Karmakar | Kh-HL | NBQ |
| 25. | Subal Ch.Das | Kh-HL | NBQ |

C) Due to abolition of Mechanical Gears from NBQ & BNQN the following staff are transferred and posted w.e.f. 01-04-06 :-

1. Shri T.K. Mitra, MSM/I/NBQ transferred & posted at RPAN
2. Shri Sadhan Mandal, MSM/I/NBQ transferred & posted at NLP
3. Shri N.C. Malakar, Tin Smith/I/NBQ transferred & posted at RPAN
4. Shri Asat Ell Hazra, Black Smith/NBQ transferred & posted at NLP
5. Shri P.K. Shome, MSM/I/BNQN transferred & posted at GLPT
6. Shri Babulal Brahma, MSM/I/BNQN transferred & posted at GPZ
7. Shri Mankosh Choudhury, MSM/I/NBQ transferred & posted at RNY
(For MG Section)

All the staff are transferred and posted in same post and capacity on administrative ground.

This has the approval of competent authority.

(S. Samah)

APC/1/RNY

for DRM(P)/RNY

DT: 31-03-2006.

No. E/240/RP/S&T/RNY

Copy forwarded for Information & necessary action to:-

- 1) S.E. DSTE/RNY, (2) ADGTE/BNQN (3) DPM/RNY
- 4) SSE/Sig/BNQN(E), GLPT, RNY, RPAN, SE/Sig/NBQ & JE/I/Sig/NBQ, SE/I/4/1g/NBQ, JE/Sig/NLP, SSE/T/BNQN
- 5) Divl. Secy., NFRDU/RNY & Convener, NFRDU/RNY
- 6) Dr. Secy., NFRDU/31/RNY, RPAN, BNQN, GLPT
- 7) ES/E/3111(S&T)/RNY
- 8) P/Case & Staff concerned.

for DRM(P)/RNY

31/03/06

Sr. Divisional Signal & Telecom Engineer
N. E. Railway
Rangiya

Dali - 01-5-2006

Sub :- Prayer for posting at BPRD as MSM/Gr - I

Ref :- DRM/P/RNY/L/NQ. E/240/RP/S&T/RN dt - 31-03-2006

Respected Sir,

With due respect I beg to state you that I am working as MSM/Gr I at NBQ on being appointed on compassionate ground after the premature death of my father. After the death of my father I am entrusted with all the responsibilities of my young ^{er} brothers. I am a schedule caste employee.

But Sir, my transfer to NLP will create enormous hardship to me and my families and my dependent brothers will be guardian-less and I could not discharge my moral responsibilities entrusted to me by the dying father.

Hence I would earnestly request you to kindly look into my genuine problem and thereby arrange to post me at BPRD if it is at all not possible to post me at NBQ or BNGN and for which act of your kindness I shall ever remain grateful.

Thanking you.

Forwarded
to Sr. DSE/RNY for
consideration of possible
posting at BPRD
This copy to be sent to
Sr. Divisional Signal & Telecom
Engineer (SDE),
N.C. Assistant, Guard, Rangia

Yours faithfully

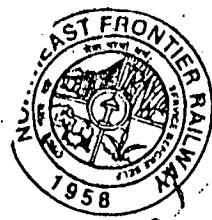
Sardam. V. Comat.
P.M./Gr - I
Working under: 552/514/616
at N.R.A.
N.C. 154

5/2/06

Attest
Jas.
Advocate

-17-

Annexure - 3



NORTHEAST FRONTIER RAILWAY

Office of the
Divl. Rly. Manager (P)
Rangiya

OFFICE ORDER

Shri Paritosh Kr. Shome, MSM / Gr. I / BNGN under SSE / Sig / E / BNGN is hereby transferred and posted at BPRD under SSE / Sig / E / BNGN on same pay and scale against the existing vacancy on administrative ground.

This issues with the approval of competent authority.

(S. SARMAH)
APO / I / RNY

For Divl. Rly. Manager (P)
N.F. Rly. Rangiya

No. E/240/RP/S & T/RN

Date: - 29.05.2006

Copy forwarded for information and necessary action to: -

1. Sr. DSTE/RNY.
2. ADSTE/RNY, BNGN.
3. DFM/RNY.
4. SSE/Sig/E/BNGN, RNY, GLPT.
5. OS/E-Bill (S & T)/RNY.
6. Divl. Secy. NFREU/RNY.
7. Br. Secy. NFREU - MU/RNY, BNGN, GLPT, RPAN.
8. P / Case & staff concerned.

Signature

(S. SARMAH)
APO / I / RNY
For Divl. Rly. Manager (P)
N.F. Rly. Rangiya

*Attest
for
Advocate*

BONGAIGAON ZILA ANUSUCHIT JATI PARISHAD

BONGAIGAON

Affiliated by : Asom Anusuchit Jati Parishad, Guwahati (Assam)
(Regd. No. 1046 / 1981-82)
GUAHATI - 781001

H.O. : DR. B.R. AMBEDKAR HALL BONGAIGAON P.O. & DIST. BONGAIGAON (ASSAM)

Ref. No. B.Z.A.J.P. - 67/06

Date

Date: 24-06-06

To,
The Divisional Rly Manager.
N.E. Railway Rangia Division.

Through the Assistant Divisional Signal Telecomm. Engineer.
N.E. Railway Bongaigaon.

Sub:- Deprivation to a schedule caste candidate.

Dear Sir,

I on behalf of Bongaigaon Zila Anusuchit Jati Parishad I am very much sorry to bring to your notice that a S.C. candidate is being deprived in regard to transfer and posting. Sri Sadhan Mandal, MSM /I/NBQ working under SSE/SIG/GLPT is transferred to NLP on administrative ground on same pay and scale without disturbing other unreserved candidate, through post exists.

Rly. Board vide their L/No. E(SCT) 70/CM 15/3 dt.22-06-70, circulated vide CPO/MLG's L/No. Misc/483 dt. 07-01-71 clearly states regarding transfer and posting of S.C & S.T near home station. In this regards Sir Sadhan Mandal had ~~earlier~~ applied to Sr. DSTE/RNY for posting near home station at NBQ/BNGN & BPRD but his appeal is not given due weightage.

Hence this Parishad would request you to look in to the matter judiciously and arrange to cancel his transfer order from NBQ to NLP and arrange to post him near his home town as per ~~concession~~ given to a S.C & S.T. Candidate by Rly Board and save a S.C. candidate from deprivation.

Thanking you.

Yours faithfully,

*Udhas Dc
20/06/06*

Copy to:-

1. ADSTE/NFR, Bongaigaon.
2. Sadhan Mandal.
3. Office Copy.

*Abesha
Dutta
Advocate*

time of framing Recruitment Rules or while amending the existing Recruitment Rules, the adverse effect of this measure on the interests of SCs/STs should be clearly brought out on file and specific orders of the Minister-in-charge should be obtained.

4. The interests of Scheduled Castes and Scheduled Tribes are adversely affected also while changing from non-selection method to selection method for promotion. Before making such changes also in respect of Group 'C' or Group 'D' posts, the procedure suggested above should be followed for obtaining the approval of the Minister-in-charge.

5. It is also requested that if any changes of the nature referred to above adversely affecting the interests of Scheduled Castes and Scheduled Tribes have been made in the recent past in Group 'A' or Group 'B' posts/services, the same may kindly be reviewed in consultation with the Department of Personnel and Training.

59

G.I., Dept. of Per. & Trg., O.M. No. AB-14017/27/89-Estt. (RR),
dated 20-6-1989

Subject:—Examination Centres/Interview Boards for recruitment should be set up where SC/ST candidates are concentrated.

The undersigned is directed to say that a Committee of Members of Parliament which examined various matters relating to representation of Scheduled Castes and Scheduled Tribes in Government services have made the following recommendation:

"Recruitment Boards be sent tribal concentration areas such as Santhal Parganas in Bihar where Scheduled Tribe candidates are available in large number." Government have carefully examined the recommendation and have decided as follows:—

(a) Wherever recruitment is made on the basis of competitive examinations, centres for examination should be set up at all places where a sizeable number of tribal candidates appear at the examination in addition to the usual centres of examination.

(b) Where selection is made by interview, the Recruitment Boards should be sent to places where there is a concentration of candidates belonging to Scheduled Tribes.

2. These instructions may also be communicated to subordinate formations and recruitment agencies under the control of Ministries/Departments.

60

G.I., Dept. of Per. & Trg., O.M. No. AB-14017/27/89-Estt. (RR),
dated 20-6-1989

Subject:—SC/ST candidates recruited for Groups 'C' and 'D' posts, be given posting near their native places.

The undersigned is directed to say that a Committee of Members of Parliament, which examined matters relating to representation of Scheduled

*Attn: Mr.
Advocate*

Castes and Scheduled Tribes in Government services, has recommended that tribals should, as far as possible, be posted near their native place.

2. The recommendation has been examined carefully. It may not be possible or desirable to lay down that holders (belonging to SC/ST) of Group 'A' and Group 'B' posts who have All India transfer liability should be posted near their native places. It has, however, been decided that in the case of holders of Group 'C' and Group 'D' posts who have been recruited on regional basis and who belong to Scheduled Tribes may be given posting as far as possible, subject to administrative constraints near their native places within the region.

3. Suitable instructions may also be issued to all subordinate units.

61

G.I., Dept. of Per. & Trg., O.M. No. 36012/6/88-Estt. (SCT), (SRD III), dated 24-4-1990 and No. 36036/8/98-Estt. (Res.) dated 16-3-1999.

Subject:—Caste/Tribe certificates issued by the judicial/revenue authorities only to be accepted as proof at the time of initial appointment and not Matriculation Certificate.

It has been brought to the notice of the Government that there are cases in which candidates have produced false caste certificates as belonging to Scheduled Castes/Scheduled Tribes and secured Central Government jobs against vacancies reserved for SCs/STs. Instructions already exist which provide that the services of the candidates claiming to be belonging to SCs/STs would be terminated, if their claims are found to be false on subsequent verification through District Magistrates.

2. At present, the following certificates can be accepted by the Appointing Authorities as sufficient proof in support of candidate's claim as belonging to SC/ST:—

Matriculation or School Leaving Certificate or birth certificate giving the caste/community of the candidate and the place of his residence.

3. It has now been decided that henceforth the certificates as mentioned in Para. 2 above should not be accepted as proof of caste at the time of initial appointment. The Caste/Tribe certificates issued by the following authorities in the prescribed form in Appendix-14 of the Brochure on Reservation for Scheduled Castes/Scheduled Tribes (Seventh Edition) (see Appendix-2) will only be accepted:—

- (1) District Magistrate/Additional District Magistrate/Collector/Deputy Commissioner/Additional Deputy Commissioner/Deputy Collector/I Class Stipendiary Magistrate/Sub-Divisional Magistrate/Taluka Magistrate/Executive Magistrate/ Extra Assistant Commissioner.
- (2) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate.
- (3) Revenue Officer not below the rank of Tehsildar; and
- (4) Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

*Alleski
Advocate*

P-739
01-09/08/06

-21-

✓Annexure-6

NORTH EAST FRONTIER RAILWAY

Office of the
Divi. Rly. Manager (P)
Rangiyā

OFFICE ORDER

The following temporary transfer and posting are ordered to take with immediate effect as under:

| SN | Name S / Shri | Design. | Existing place of posting | | New place of posting | |
|----|--------------------|------------|---------------------------|--------------|----------------------|--------------|
| | | | At | Under | At | Under |
| 01 | Tapan Kr. Mitra | MSM/I | NBQ | SSE/Sig/GLPT | RPAN | SSE/Sig/PPAN |
| 02 | Pijush Kr. Guha | MSM/I | NBQ | SSE/Sig/GLPT | TNL | SSE/Sig/RNY |
| 03 | Sadhan Mendal | MSM/I | NBQ | SSE/Sig/GLPT | (NLP) | SSE/Sig/PPAN |
| 04 | Maniosti Choudhury | MSM/I | NBQ | SSE/Sig/GLPT | RNY | SSE/Sig/RNY |
| 05 | Banarsi Sharma | B/Smith/II | BNGN | SSE/Sig/BNGN | RNY | SSE/Sig/RNY |

This issues with the approval of competent authority.

(S. SARMAH)
APO/I/RNY
For DRM (P) RNY

Date: - 09.08.2006

No. E/283/S & I/Pro-Tre/RN/14

Copy forwarded for information and necessary action to:-

01 Sr. DSTER/RNY. 2. APMTE/RNY, BNGN. 3. DFM/RNY.
 04. SSE (sig) T/PNGN, GLPT RNY, RPAN. 5. SE/Sig/NBQ.
 06. OS (E)/MII (S & T)/RNY. 07. Divi. Secy. NFERU - MU/RNY.
 08. Convener NFERU/RNY.
 09. Div. Secy. NFERU - MU/RNY, GLPT, RNY.
 10. P / Cuse & staff concerned

For Divi. Rly. Manager (P)
N E Railway, Rangiyā

Afforded
Full Service

26 SEP 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

GUWAHATI.

O. A. NO. 210/2006

Sri Sadhan Mandal

-Vs-

U. O. I. & Ors.

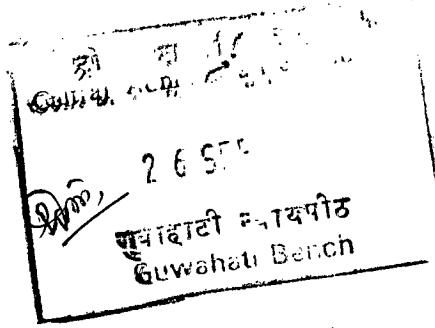
Written statement of the respondents

The respondents most respectfully beg to state as under :-

1. That the respondents have gone through the O.A. and understood the contents thereof :
2. That in reply to statements in para 4.3 it is stated that in the office order dated 31.3.06 names are not shown in order of seniority. Applicants position shall be lower as per seniority.
3. That in reply to statements in para 4.4. it is stated that application dated 1.3.06 as stated has not been received in the office of the DRM(P), Rangiya. It is stated that large number of candidates are appointed

Contd.....2/-

Filed by the respondent
Divisional Personnel Officer
Dr. J. L. Sarkar, Adm.
Date on 26/09/07
P. C. R. G. 2007



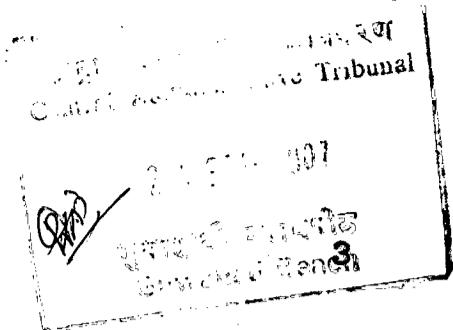
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Joseph Gourabbar
म.एन. कार्यक्रम के अधिकारी
Divisional Personnel Officer
प.स. रोड, रामगंगा
L. F. Bajpaee

in the Railways on compassionate ground to look after the family of ex-employees but it is not possible to post them nearest to family due to non availability of vacancies as per their trade/qualification.

4. That in reply to statements in para 4.5 to 4.9 it is stated that Shri P.K. Shome is senior to the applicant. It is not feasible to accomodate all SC/ST candidates in their home district. It is very difficult to accomodate all SC/ST in home district. The office order has been issued as a result of abolition of Mechanical gears from New Bongai gaon/Bongaigaon. There is no vacancy of MSM/I of Mechanical Signalling.

5. That in the circumstances explained above the O.A. deserves to be dismissed with cost.



VERIFICATION

I, Shri Somen Chatterjee, DPO, Kausikia
aged about 57 years do hereby verify
that the statements 1 to 5 above
are true to my knowledge.

21.9.2007

Signature

“ रेल कार्पोरेशन ऑफिसर ”
Divisional Personnel Officer
पू. सी. रेलवे, रांगीया
P. S. Railway, Rangiya

12 OCT 2007
गुवाहाटी बैठक
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

Filed by the applicant
Konghi, S. Nalik
12/10/07

In the matter of:-

O.A. No. 210 of 2006

Shri Sadhan Mandal.

.... Applicant.

-Versus-

Union of India & Ors.

..... Respondents.

-And-

In the matter of:-

Rejoinder submitted by the applicant in
reply to the written statements
submitted by the respondents.

The applicant above named most humbly and respectfully begs to state as
under:-

- That the applicant categorically denies the statements made in Paragraphs 1, 2 and 3 of the written statements save and except which are borne out of record and further begs to state that the impugned order of transfer and posting dated 31.03.06 has not been given effect till date. In reply to paragraph 3 of the written statement the applicant begs to state that his representation dated 01.05.06 was duly forwarded to Sr. DSTE, Rangiya for consideration, as such non-receipt of the application dated 01.03.06 by the DRM (P) Rangiya is due to lapse on the part of the respondents and the applicant cannot be held responsible for this. Moreover, it is also stated that the applicant is a member of SC community, as such he deserves benefit of Govt. of India O.M dated 20.06.1989 (Annexure- 5 to the O.A) but in the instant case the respondents have ignored the Govt. of India's O.M dated 20.06.1989 in the matter of transfer and posting of the

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गुवाहाटी न्यायपीठ

Bench

applicant and he has been sought to be transferred from New Bongaigaon to North Lakhimpur without any administrative exigency. It is stated that the applicant belongs to SC community and in view of the special Constitutional protection given to the SC/ST employees transfer of applicant stands on different footing than the other 4 employees, who were transferred and posted vide impugned order dated 09.08.06. It is also categorically stated that Sl. No. 1 and 2 of the impugned order dated 09.08.2006 i.e. Sri Tapan Kr. Mitra and Sri Pijush Kr. Guha did not carry the transferred order dated 09.08.06 and the respondents of their own did not give effect of transfer order in respect of Sri T.K. Mitra and Sri P.K. Guha. Therefore, it appears that the impugned transfer order dated 09.08.06 was not passed due to administrative exigency but it was routine transfer order as such the Hon'ble Tribunal be pleased to direct the respondents to consider transfer of the applicant at New Bongaigaon/Bongaigaon in the light of the Govt. of India O.M dated 20.06.1989.

2. That with regard to the statements made in para 4 of the written statement, it is stated that Sri P.K. Shome has retired from service on superannuation in the month of January, as such the post of MSM-I is lying vacant at Barpeta Road and the applicant may be accommodated at Barpeta Road without any difficulty. It is also stated that the applicant belongs to SC category, as such he deserves special privileges as guaranteed by the Article 16 (4) and 37 of the Constitution of India. Moreover, in the instant case the respondents have equated transfer of the applicant, who is an SC candidate along with the other employees who were transferred and posted vide impugned order dated 31.03.06 and 09.08.06, without keeping in mind the provision of the O.M dated 20.06.1989, wherein it has been provide that the ST candidate should as per as possible be posted near their native place. It is pertinent to mention here that question of postings and transfers of the members of the SC/ST is concerned, this stands on a different footing and unless there are strong and exceptional reasons of public interest and administrative exigency, the transfers of SC/ST official away from their native places should not be

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Guwahati Bench

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made. It is further categorically stated that there are still vacancies of MSM/I available at Bongaigaon and New Bongaigaon, as such the applicant can be accommodated at Bongaigaon or New Bongaigaon in terms of the guidelines of the O.M dated 20.06.1989. But the respondents in the instant case of the applicant failed to explain the very strong reason behind the transfer of the applicant to a far off place i.e. at North Lakhimpur. Moreover, respondents have not stated anywhere in the written statement who are the SC/ST employees working as MSM/I have been posted at Bongaigaon/New Bongaigaon, and very casually stated that it is not possible to accommodate all the SC/ST candidates at their home district, as such the impugned transfer order dated 31.03.06 and 09.08.06 are liable to be set aside and quashed so far the applicant is concerned.

3. That the applicants categorically deny the statements made in paragraphs 5 of the written statement and further reiterates the statement made in Original Applicant and most humbly begs to state that the Original Application deserves to be allowed with cost.
4. That in the facts and circumstances stated above, the applicants most respectfully submit that ^{he is} ~~they are~~ entitled to the reliefs prayed for and the original application deserves to be allowed with cost.

12 OCT 2007

गुवाहाटी बायपीठ
Guwahati Bench

VERIFICATION

I, Shri Sadhan Mandal, S/o- Late Dhirendra Chandra Mandal, aged about 41 years, working as Mechanical Signal Maintainer (MSM -I) (now Technician-I), under Senior Section Engineer (Signal), Goalpara, N.F. Railway, New Bongaigaon, Assam, do hereby verify that the statements made in Paragraph 1 to 4 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 10th day of October 2007.

Sadhan Mandal.