

FORM No. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. original Application No. 58/06

2. Misc Petition No. _____

3- Contempt Petition No. _____

4. Review Application No. _____

Applicant(S) Smti. Jayanti Malakar

Respondants U. O. I. Ans

Advocate for the Applicant(S) Mrs. M. D. Das
Dr. M. C. Sarma

Advocate for the Respondant(S) Ry. ... Connal

Notes of the Registry	Order of the Tribunal
-----------------------	-----------------------

03.03.06

This application is in form
is filed/C. P. No. 30/-
d. pos.

No. 2663/9367

Dated 23.2.06

Dy. Registrar

Steps taken with
envelops.

Di

Extra cost Rs. 5/- for

Respondent NO. 6. not yet
disposed by the applicant

Please remove the
above defects.

21/3/06

Pl. comply order dated
3.3.06.

VS
3-3-06

Present: Hon'ble Mr. K. V. Sachidandan,
Vice-Chairman.

The husband of the applicant was
found missing on 02.10.01 and FIR lodged
by the applicant in the Lumding Police
Station. The representations (Annexure
3 & 4) have been filed by the applicant
before the respondents for settlement
dues for her missing husband, but the
representations has not yet been dispo-
sed of. The applicant is aggrieved and
she has filed this O.A.

Issue notice on the Respondents.
Post on 27.4.06.

Vice-Chairman

Im
27.4.2006

Dr. J. L. Sarkar, learned standing
counsel for the Railways requests for
time to file reply statement. Let it
be done. Post on 29.5.2006.

Vice-Chairman

bb

29.05.2006

Dr. J.L. Sarkar, learned standing counsel for the railways requested further time to file reply statement.

Post on 09.06.2006.

Vice-Chairman

mb

19.06.2006

Dr. M.C. Sarma, learned counsel for the respondents sought for four more weeks to file reply statement. Let it be done.

Post on 20.07.2006.

Vice-Chairman

mb

20.07.2006

Dr M.C. Sarma, learned railway counsel submitted that he would like to have three weeks more time to file reply statement. Let it be done.

Post on 11.08.2006.

Vice-Chairman

11.08.2006

Post on 12.09.2006.

Vice-Chairman

Member

mb

12.9.2006

post on 21.9.2006 granting time to the respondents to file reply statement as requested by Dr.M.C.Sharma, learned Railway counsel.

Vice-Chairman

bb

Notice & order sent to D/section for issuing to resp. nos. 1 to 6 by regd. A/D post.

8/3/06 D/No=300 to 305
Dt=10-3-06.

Notice duly served on resp. nos. 2, 3, 4, 5

22/3/06 (A/D card at file-e
of OA 57/06)

① Service report omitted

my
26.4.06

- Power has been filed
by Dr. M.C. Sarma

NS
6.5.06

No. W/Ls have been

biked.

my
26.5.06

16-6-06

No W/Ls have been biked.

19-7-06

No. W/Ls have been
biked.

my
No. W/Ls have been
biked.

22.8.06

21.9.2006

Dr.M.C.Sharma, learned Railway counsel has filed reply statement. Copy of the same is furnished to the learned counsel for the applicant Ms.U.Das.

The O.A. is admitted. post on 14.11.2006 for orders.

Received
Usha Das
Addl CSE
22/9/06.

Vice-Chairman

bb

14.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Dr. M.C. Sarma, learned Railway Counsel submitted that he has filed reply statement. Post on 12.12.2006. In the meantime, the Applicant is given liberty to file rejoinder, if any.

Vice-Chairman

/mb/

11.12.06

Counsel for the applicant wanted to take instruction from the applicant and prays for time.

post on 10.1.07 for hearing.

Vice-Chairman

pg
10.1.07.

Post the matter on 22.1.07.

lm

Vice-Chairman

No rejoinder has been filed.

22
8.12.06.

No rejoinder has been filed.

22
9.1.07.

No rejoinder has been filed.

22
19.1.07.

25.9.06
W/S Submitted
by the Respondents.

22

13-11-06
① W/S filed by the Respondents.
② no rejoinder filed.

22

OA 58/06

22.1.2007

When the matter came up for hearing today Ms.U.Das, learned counsel for the Applicant submitted that in the reply statement filed by the Railways it is stated that the missing employee has taken treatment at Railway Hospital in 2004 and if that is the case she requested time to take instruction from her client. Let it be done. Post on 21.2.2007.

WB has been filed.

5.2.07

Vice-Chairman

/bb/

26.3.07

When the matter came up for hearing the learned counsel for the applicant has submitted that she does not want to pursue the matter and she prays for permission to withdraw the application. Permission is granted to withdraw the O.A. Accordingly, O.A. is dismissed on withdrawal.

Vice-Chairman

lm

21.3.07
Copy of the
order handed
over to the
advocate
for the parties
etc.

6

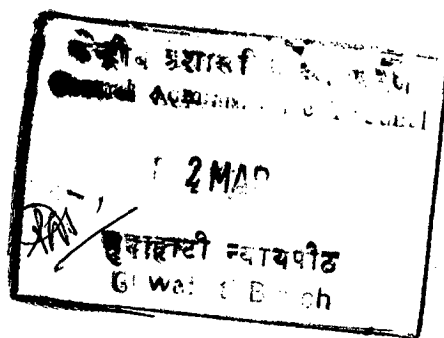
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Original application No. 58/106

1. a) Name of the Applicant: Sr. Jyoti Malakar
b) Respondants: Union of India & Ors.
c) No. of Applicant(S): -
2. Is the application is the proper form: Yes / No.
3. Whether name & description and address of the all the papers been furnished in cause title :- Yes / No.
4. Has the application been duly signed and verified :- Yes / No.
5. Have the copies duly signed :- Yes / No.
6. Have sufficient number of copies of the application been filed : Yes / No.
7. Whether all the annexure ~~parties~~ are impleaded :- Yes / No.
8. Whether ~~English~~ translation of documents in the Language :- Yes / No.
9. Has the application is in time :- Yes / No.
10. ~~Has~~ the Vakalatnama/Memo of appearance /Authorisation is filed: Yes / No.
11. Is the application by IPO/BD/for Rs. 50/- 266319367
12. Has the application is maintainable : Yes / No.
13. Has the Impugned order original duly attested been filed: Yes / No.
14. Has the legible copies of the annexure duly attested filed: Yes / No.
15. Has the Index of the documents been filed all available :- Yes / No.
16. Has the required number of enveloped bearing full address of the respondents been filed: Yes / No.
17. Has the declaration as required by item 17 of the form: Yes / No.
18. Whether the relief sought for arises out of the Single: Yes / No.
19. Whether interim relief is prayed for :- Yes / No.
20. Is case of Condonation of delay is filed is it Supported :- Yes / No.
21. Whether this Case can be heard by Single Bench / Division Bench:
22. Any other point :-
23. Result of the Scrutiny with initial of the Scrutiny Clerk:
The application is in order

SECTION OFFICER(J)

DEPUTY REGISTRAR



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Title of the case :

OA No. 58 of 2006

BETWEEN
SMT. JAYANTI MALAKAR

ANDAPPLICANT.

UNION OF INDIA & ORS
.....RESPONDENTS

I N D E X

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5.	Annexure-3	11
6.	Annexure-4	12
7.	Annexure-5	13, 14

Filed by : Miss Usha Das
Advocate

Regn. No.:
Date :

K

LIST OF DATES

DATES	PARTICULARS
1) 02.10.2001	Husband of the applicant ^{was} found missing
2) 25.12.2002	FIR lodged by the applicant in the Lumding Police Station
3) 28.12.2002	Lumding Police Station registered a Case GDE No.849
4) 21.3.2003	Certificate issued by the Officer-in-Charge, Lumding Police Station in respect of the missing of the husband of the applicant
5) 16.1.2002	Representation filed by the applicant before the respondent authority informing about the missing of her husband and made a request to take necessary action into the matter.
6) 1.3.2004	Representation preferred by the applicant request has been made to pay all settlement dues on account of missing of her husband and to consider her daughter's case for compassionate appointment under the light of the Railway Board's letters.
7) 25.5.2005	Another representation filed by the applicant reiterating her prayer for settlement dues as well as to consider her daughter's case for compassionate appointment.

PRAYER MADE BY THE APPLICANT

- 1) To direct the respondents to arrange payment of final settlement dues of the disappeared Railway employee named Shri Sukesh Malakar, the husband of

the applicant, in respect of Provident Fund, Gratuity, Leave Salary, Bonus, difference of pay fixation due to enhancement of D. A. and other reliefs time to time granted by the Central Government, Pension/ Pensionary benefits with commutation value and all other pay and allowances admissible as per prevailing system and Rules of the Railway.

- 2) To direct the respondents to pay the interest on market rate on the amount payable to the applicant on account of her husband's dues from the date of accrual till payment.
- 3) To direct the respondents to release the family pension to the surviving family of the disappeared Railway employee mentioned above.
- 4) Cost of the application
- 5) Any other relief or reliefs to which the applicant is entitled to, under the facts and circumstances of the case as this Hon'ble Tribunal may deem fit and proper.

Alsha Das

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

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

OA NO. /05

BETWEEN

Smti Jayanti Malakar,
Wife of Shri Sukesh Malakar,
DTS Hill Colony, (near Children Park),
P.O. Lumding, Dist. Nagaon, Assam.
.....Applicant.

Versus

1. Union of India, represented by
General Manager, N. F. Railway, Maligaon,
Guwahati- 781011.
2. The Chief Engineer, N. F. Railway, Maligaon,
Guwahati-781011.
3. The Chief Personnel Officer, N. F. Railway,
Maligaon, Guwahati-781011.
4. The Divisional Railway Manager, N.F. Railway, Lumding,
Dist . Nagaon, Assam.
5. The Senior Divisional Engineer, N. F. Railway, Lumding,
P. O. Lumding, Dist. Nagaon, Assam.
6. The Senior Sectional Engineer/P.Way/Hill/N.F.Railway,
P.O.Lumding, Dist. Nagaon.
.....Respondents.

1. Details of Application against which the Application is made:

This application is made against the action of the respondents in not finalizing the settlement dues inspite of repeated requests and the representations preferred by the applicant dated 16.1.2002, 1.03.04 & 25.5.2005 before the respondents for her husband Sri Sukesh Malakar, a senior Watchman under SSE/P.Way/Hill/Lumding,

9
 Filed by
 the applicant through
 Usha Das.
 Advocate
 28/2/06

28/2/06
 Usha Das

found missing at different times in the year 2000 and completely disappeared with effect from 02.10.2001.

2. Jurisdiction.

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

3. Limitation:

The applicant further declares 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 a citizen of India and as such is entitled to the rights, protections, and privileges guaranteed under the Constitution of India.

4.2. That the applicant begs to state that her husband Sri Sukesh Malakar had been working in the capacity of a Senior Store Watchman under Senior Sectional Engineer/P. Way/Hill/Lumding, respondent No.6, under the exclusive control of the respondent No.4.

4.3. That the applicant begs to state, albeit it is her family affair, nevertheless it has since reasoned to be focused under the sun, that her husband Sri Sukesh Malakar mentioned above was found missing at different times in the year 2000 and 20001 for the reasoned best known to him and the efforts made by the applicant for the peaceful and happy conjugal life with her husband Sri Sukesh Malakar were of no fruitful result prior to the period of his occasional disappearance in 2000-2001, rather her husband Sri Sukesh Malakar was found to be missing complete since 02.10.2001 and hereafter there was no whereabouts known to this applicant nor any sort communication made by the husband of the applicant till date.

4.4. That the applicant begs to submit that after waiting considerable period of time for return of her husband Sri Sukesh Malakar and on being totally disappointed for his not returning to his family, it became the painful necessity for the applicant to make an FIR lodge with the Lumding Police Station which was registered on 25.12.2002

21/12/2002
JTB
25

under Lumding Police Station GDE No.849 dated 28.12.2002 so as to make a through probe into the matter by the Protectors of Law and order.

- 4.5. That the Lumding Police Station after getting the FIR in respect of the missing of the husband of the applicant, Shri Sukesh Malakar, took all necessary steps in the matter, but as ill-luck would have it, all efforts were in vain. Eventually the Lumding Police Station gave a certificate in this context to the applicant on 21.03.03.

Copies of certificate issued by the Officer-in Charge, Lumding Police Station mentioned above is annexed herewith and marked as Annexure-1.

- 4.6. That a the applicant begs to state that the disappearance of her husband Shri Sukesh Malakar put the family consisting of the applicant, his wife and the only daughter aged about 23 years to innumerable sufferings and immense hardships as there is no guardian to look after and no other alternative sources of income by the family for their survival.
- 4.7. That it is submitted that being faced by the dire consequences of the disappearance of the husband of the applicant, the applicant made countless approaches to the various authorities, mainly the respondents No.4, 5, &6, for the settlement of the dues of Shri Sukesh Malakar pending with the respondents for final settlement and early payment to the applicant, but it is a matter of peculiar grief and great regret that till date no communication has been received by the applicant. The respondents are quite silent in regard to the rightful dues of Shri Sukesh Malakar, who has culminated a good span of sterling services under the cause of the N. F. Railway Administration, and, to the best knowledge and information of the applicant, the services rendered by her husband were satisfactory to all concerned.

Copies of the representations dated 16.01.2002; 01.3.2004 and 25.5.2005 submitted to the respondents are annexed as Annexure-2, 3 & 4 respectively.

21/12/15
J-12-25

4.8. That the applicant begs to submit that even after submitting written prayers to the respondents Nos.4, 5,6 mentioned above vide her applications dated 16/1/2002, 1/3/2004 and 25/5/2005 for the good conscience of the respondents but, it felt those prayers were devoid of acidity and for which they had not made them felt for a moment to realize the circumstances faced by the applicant that how she along with her daughter has been passing the days the applicant that how she along with her daughter has been passing the days in this severe economic crisis, specially when there has been no forceful earning -member in the family on account of the disappearance of her husband.

4.9. That the approached by the applicant and her daughter from pillar to post of all these years have become completely futile and now they are almost on the position of starvation and edge of their survival. The respondents by their chilly silence on the matter skewed the applicant to be condemned to fight a losing battle. Finally the applicant has come to this Hon'ble Tribunal praying for justice finding no other solace and way.

4.10. That in this connection the applicant begs to state that in accordance with the Railway Board's Circular No.F(E)/IN/86/PN-1/17 dated 21.1.1994 the Railway Board have categorically instructed for granting for settlement dues to eligible family members of Railway employees who have suddenly disappeared and whose whereabouts are not known only after lodging the FIR on expiry of one year period and arrange payment of the benefits like DCRG and family Pension to the rightful claimants, in addition to the immediate payment of Provident Fund money including amount of salary, leave encashment, bonus and other dues.

A copy of The Railway Board's circular is annexed as Annexure - 5

4.11. That in this connection it is submitted that in accordance with the aforementioned Railway Board's Circular the payment of Pension/Family Pension shall have to be made from the date of accrual in respect of the disappeared employee's cause of incidence.

4.12. That the applicant most humbly and with suave submission begs to state that in spite of the aforementioned Railway Board's categorical instructions and the issuance of Master Circular, which is the guideline of the Railway's competency and

*Annexure - 5
Dep't of IR
25/12/25*

compliance, the respondents have not taken any sort of initiative to arrange payment of the final settlement dues of Shri Sukesh Malakar, the missing husband of the applicant, even after lapse of about 4 years time despite submission of personal approaches and appeals to all concerned authorities.

- 4.13. That the applicant begs to submit that the respondents have also invited the infringement of Section 7, more particularly, 7 (3) and 7 (3) (a) of the Payment of Gratuity Act, 1972, wherein the provisions have been candidly mentioned that for the culpable delay by the employer of the employee for payment of Gratuity from the due date shall have to be paid at simple interest rate, although the Apex Court in their celebrated judgment on different occasions mentioned that, market rate of interest shall have to be paid on the final settlement dues by the employer if it is found that the delay was made beyond 2 months and there was no fault on the part of the employees and/or their family members.
- 4.14. That the applicant begs to submit that in spite of above statutory provisions and the Railway's own Rules and Codified Laws and the prevailing system of the respondents, more particularly the respondents No. 4, 5 & 6, deliberately and with wanton attitude have not taken any initiative or to give response in respect of the applicant's approaches for final settlement of her husband's dues till-to-date which, rather, postulates to be of clandestine motive, whims and caprices of the respondents.
- 4.15. That it is submitted that the respondents have clearly proved their unfair play and have not shown any equitable justice to the applicant for the payment of settlement dues of the rightful claim for her disappeared husband with a view to showing a boon to them for their survival considering the sterling services rendered by her husband while he had been in the service till his disappearance.
- 4.16. That it is submitted that the conduct of the respondents have invited the infringement of Constitutional Provisions under Articles-14, 16 (1), 21, 39(D) and 309 of the Constitution of India for the reasons mentioned in the foregoing paras.

5. GROUNDS FOR RELIEFS:

Filed No. 175 P.C. 25

5.1) For that the respondents have violated their own prevailing system and flouted the Railway Board's instructions, Circulars and even Master Circular.

5.2) For that the inaction of the respondents for not settling the final settlement dues to the family of the Railway employee named Shri Sukesh Malakar invited the wanton attitude and unfair play and the whims and caprices of the respondents.

5.3) For that the respondents have caused the infringement of Articles-14, 16(1), 21, 39(D) and 309 of the Constitution of India and thereby made discrimination with the applicant while the cases of the other similarly placed circumstances were considered and arrangement made for expeditious payment of the final settlement dues to the surviving members of the disappeared family in the past.

6. DETAILS OF THE REMEDY EXHAUSTED:

The applicant humbly declares that failing to get her grievances redressed she has come to this Hon'ble Tribunal for having justice which seem to her efficacious as per Article-21 of the Constitution of India and there remains no other alternative way to get justice of her grievances.

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

The applicant most humbly submit that she has not filed any other application, writ petition or suit regarding the matter in respect of which this application has been made by her before any court or any other authority or any other Bench of this Hon'ble Tribunal.

8. RELIEF SOUGHT:

In the circumstances detailed above the applicant humbly prays that your Lordships be pleased to admit this application and notice be issued to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs:

8.1) To direct the respondents to arrange payment of final settlement dues of the disappeared Railway employee named Shri Sukesh Malakar, the husband of the

Bakul K. S. 15/12/25

applicant, in respect of Provident Fund, Gratuity, Leave Salary, Bonus, difference of pay fixation due to enhancement of D.A. and other relieves time to time granted by the Central Government, Pension/Pensionary benefits with commutation value and all other pay and allowances admissible as per prevailing system and Rules of the Railway.

8.2) To direct the respondents to pay the interest on market rate on the amount payable to the applicant on account of her husband's dues from the date of accrual till payment.

8.3) To direct the respondents to release the family pension to the surviving family of the disappeared Railway employee mentioned above.

8.4) Cost of the application.

8.5) Any other relief or reliefs to which the applicant is entitled to, under the facts and circumstances of the case as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

Pending finalization of this application the applicant prays for an interim order directing the respondents to release the Family Pension to the applicant for her survival with her only daughter.

10)

This application is filed through Advocate.

10. PARTICULARS OF THE I.P.O.

- i) I.P.O. No.: 26 h 319367
- ii) Date of issue: 23/2/06
- iii) Payable at Guwahati: Guwahati

12) LIST OF ENCLOSERS:

As given in the Index

26/12/15 19:22

VERIFICATION

I, ~~Shri~~ Jayanti Malakar....., Wife of Shri Sukesh Malakar,
aged about 42 yrs resident of D.T.S Hill Colony, P.O. - Lunding
Nagaon, Assam... I am the applicant in the present OA hence competent to sign this
verification, do hereby solemnly affirm and state that the statement made in
paragraph 1-41, 43, 46, 48, 49 ^{411 to 12} are true to my knowledge and belief, those made in
paragraph 42, 44, 45, 47, 48, 410 are matter of records, are true to my information derived
there from and the rest are my submission before this Hon'ble Tribunal. I have not
suppressed any material fact.

And I sign this verification on this... 18..th day of Feb 2005 at Guwahati

জয়ন্তী মালিকার

DEPONENT

TO WHOM IT MAY CONCERN.

Ref:- Lunding, P.S. G.D.E.N. 949, dtd. 28/12/02.

This is to certify that, on 25/12/2002, SMT JAYANTI MALAKAR, reported at P.S. to the effect that her husband Sri Suresh Malakar, Sr. Store Watchman under SSE/P.WAY/HILL/LMG. has been missing intermittently at different spells of time during the year 2000 and 2001. Presently he is untraced since 02.10.2001. Efforts have been made to trace out his whereabouts by Police as well as his family members, but all efforts were in vain. Sri Suresh Malakar is not suspected to be involved in any criminal case/to have joined any terrorist organisation/gone abroad.

[Signature]
21/2/03

*Attested
was
Advocate*

- 10 -

99

Sir,

So I request you kindly to take necessary action so as to find out the whereabouts of my husband.

Dated. 16-01-02...../

(Jayanti Malakar)

W/O Shri Suresh Malakar
Sr. Store watchman under
SSE/P-Way/Hill/LMG.

R
17/10/02

✓
... ..
... ..
... ..
... ..
... ..

Attested
by an
Advocate

Annexure - 3

To,
The DRM(P)/Lumding,
N.F. Railway.

(2) Sr.DEN(C),
N.F. Railway, Lumding,

(3) SSE/P.Way/Hill/LMG,
N.F. Railway.

Sub : Prayer for payment of Settlement dues
and appointment on Compassionate Ground
on account of my missing husband.

Sir,

I have the honour to inform you that my husband Shri Suresh Malakar is a Sr.Store Watchman under SSE/P.Way/Hill/LMG. He was found missing at different times in the year 2000 and 2001. Now he has been missing since 02.10.2001. So, a FIR was lodged with the Lumding Police Station. It was registered under Lumding Police Station, GDE No. 849 dtd. 28.12.2002. Necessary efforts were made by the police department as well as by us to trace out his whereabouts. But he could not be found. Photocopy of Police Report dtd. 21.03.2003 is enclosed.

That sir, his disappearance has thrown my family consisting of my self, and my only daughter aged about 23 to innumerable sufferings. We are passing days with immense hardship. As our family has no other alternative source of income.

Under these above, I request you kindly to pay me all the Settlement dues on account of my missing husband and appoint my daughter Miss Gita Malakar aged about 23 years in Railway Service on Compassionate Ground and for which act of your kindness I shall ever remain grateful to you.

Yours faithfully,

Encl: one

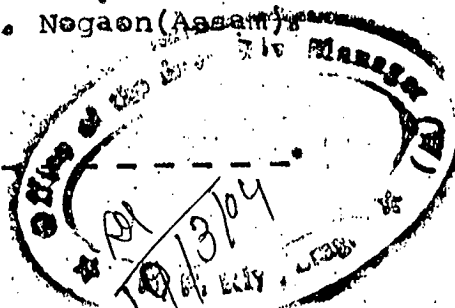
Present address for Communication.

Smt. Jayanti Malakar,
W/o Suresh Malakar,
DTS Hill Colony (Near Children Park),
and Gharea Office,
P.O. : Lumding, Dist. Nagaon (Assam).

Dated, Lumding,

The 1/3/04

(SMT. JAYANTI MALAKAR)
W/o Suresh Malakar,
Sr. Watchman under SSE/P.Way/
Hill/Lumding.



1/3/04
SMT(P)

Attested
11/03/04
Adm
Adv

-12-

20

Annexure-4

To
The DRM(P)/Lumding.
N.F.Railway

Sir,

I have the honour to inform you that Shri Sukdesh Malakar, Sr.Store watchman under SSE/P-way/Hill/LMG is my husband. He was missing at different times in the year 2000 and 2001. Lastly he has been untraced since 2.10.2001. In this connection I requested you by my several applications to take necessary actions to find out the whereabouts of my husband, and to pay me the settlement dues and for appointment in Rly. service as my family is in the state of starvation due to the fact that my husband was the only income earner in the family. But it give me much pain to state that nothing has been done by the administration.

I had to lodge a FIR with the Lumding Police Station as to the missing of my husband. Despite of the efforts of the Police station my husband could not be traced out. Photocopies of the Police report were also Annexed along with my applications submitted earlier.

You are requested to kindly pay me the settlement dues and appoint my daughter in Rly. service on account of my missing husband on compassionate ground.

Dated:
25/5/2005

Yours faithfully,

জয়ন্তী/মালক/ক/ব

(Jayanti Malakar)
W/O Shri Sukesh Malakar
Sr. Store watchman under
SSE/P way/ Hill/LMG

Address for communication:
Shri Jayanti Malakar
W/O Shri Sukesh Malakar
D/O Hill colony, Near Children Park,
P.O. Lumding, Nagaon, Assam.

Attested
hDas
Advocate

- 13 -

Annexure-5

FS- 815

N. F. Railway.

No.E/207/O Pt.XVIII(C).

Maligaon, dt. // -2-94.

To
 All Heads of Departments.
 All DRMs, DAOs, WAOs, NBO & DBWS.
 All Distt. and Asstt. Officers
 of non-divisionalised Offices.

General Secy./NFRMU/PNO with 40 spare copies.
 General Secy./NFRMU/PNO with 40 spare copies.
 General Secy./AISCTREA/MLG with 40 spare copies.

Sub:- Grant of settlement dues to eligible family members of Railway employees who have suddenly disappeared and whose whereabouts are not known.

A copy of Railway Bd's letter No.F(E)111/86/PN-1/17 dated 21.1.94 on the above subject is forwarded for information and guidance. Board's earlier letters dt. 19.9.86 and 27.3.91 as referred to in their present letter were circulated under this Office No.FS-705/E/207/O Pt.XVI dt. 30.7.87 and FS-781/E/207/O Pt.XVIII(C) dt. 10.5.91 respectively.

Purna

for Chief Personnel Officer:MLG.

(Copy of Rly. Bd's letter No.F(E)111/86/PN-1/17 dated 21.1.94.)

Sub:- Grant of settlement dues to eligible family members of Railway employees who have suddenly disappeared and whose whereabouts are not known.

Attention is invited to this Ministry's letters of even number dated 19.9.86 and 27.3.91 on the above subject as per which the families of the employees/pensioners whose whereabouts are not known are paid in the first instance, the amount of salary due, leave encashment due and the amount of Provident Fund pertaining to his own subscription in the State Railway Provident Fund having regard to the nomination made by the employee and after the lapse of a period of one year other benefits like LQAG and family pension are also paid. The period of one year is reckoned with reference to the date on which FIR is lodged with the police about the disappearance of the concerned employee/pensioner. At present the family pension is sanctioned and paid to the eligible member of the

Contd.....2/-)

Attested
was
 Advocate

family one year after the date of registering the FIR which with the police and no family pension is paid for the intervening period of one year from the date the FIR is lodged to the date the family pension can be sanctioned. It has now been decided that the family pension, which in pursuance of the earlier orders, will continue to be sanctioned and paid one year after the date of lodging the FIR will accrue from the date of lodging the FIR or expiry of leave of the employee who has disappeared whichever is later. When the sanction for family pension is issued, the payment of pension from the date of accrual may be authorised. The usual procedure of obtaining the indemnity bond etc. as laid down in the letter dated 19.9.86 will continue to be followed. While sanctioning payment of family pension, it will be ensured by the concerned authorities that family pension is not authorised for any period during which payment of pay & allowances in respect of the disappeared employee has been made.

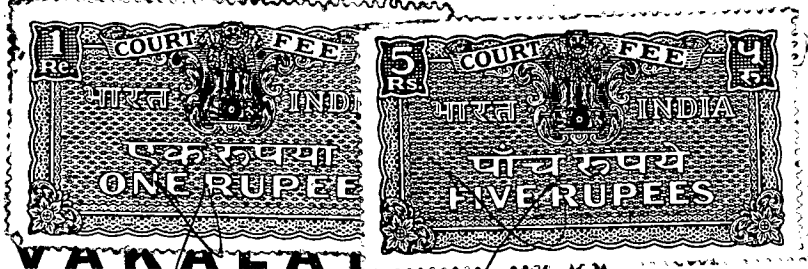
This is in supersession of Board's earlier orders of even number date, 21.1.1992.

Please acknowledge receipt.

ad/-9.2.94

Attended
Room
Advocate

SL. No. **38599**
DISTRICT:



IN THE GAUHATI HIGH COURT

[THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM
AND ARUNACHAL PRADESH]

OA NO 58 OF 2006

Smt. Jayanti Malakar
VERSUS

APPELLANT
PETITIONER

Union of India & ors.

RESPONDENT
OPPOSITE-PARTY

Know all men by these presents that the above named applicant
do hereby nominate, constitute and appoint Sri/Smti Usha Das

Advocate and such of the undermentioned Advocates as shall
accept this Vakalatnama to be my/our true and lawful Advocates to appear and act for me/us in the matter noted above
and in connection therewith and for that purpose to do all acts whatsoever in that connection including depositing or
drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/We agree
to ratify and confirm all acts to be done by the said Advocates as mine/ours for all intents and purposes. In case of non-
payment of the stipulated fee in full, no Advocate will be bound to appear and act on my/our behalf.

In Witness Whereof I/We hereunto set my/our hand on this 22nd Day of Feb. 2006

N. M. LAHIRI (Sr. Adv.)	K.R. PATHAK (Sr. Adv.)	D.C. MAHANTA (Sr. Adv.)	K.K. BHATRA
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D.R. BORA	SATYAJEET SHARMA	A.K. BARUAH (II)	O.P. SAHARIA
H.R. KHAN	DEBA KR. DAS	BALDEV SINGH	S.C. ACHARYA
SYEDI. RAHMAN	PRIYATOSH BHATTACHARJEE	Y.S. MANNAN	S.S. DUTTA
PARAMANANDA BORAH	PARITOSH PURKAYASTHA	RAJ SEKHAR	AKHTAR PARVEZ
JAYANTA TALUKDAR	MS. RINA BHATTACHARYYA	PULIN BISWAS	MS. N.S. THAKURIA
MS. BONTI SARMA	DEBAJIT BHATTACHARJEE	MONOJ BHAGABATI	S.S. MOZINDER BAROOAH
KULENDRA BHATTA	PRADIP DUTTA ROY	SONESWAR DAS	DIPU MANI THAKURIA
MS. A. DEKA LAHKAR	M.K. MAJUMDAR	MRINAL SARMA	JAINUL ABEDIN (II)
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B.K. BAISHYA	DR (MRS.) M. PATHAK	U.S. AGARWALLA	BIKRAM CHOUDHURY
IFTE KHAR AHMED	MS. KALPANA BARUAH	P.K. SENSOWA	NABAJIT BHARALI
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 MRS. NIBEDITA SARMAH
 MANASH HALOI
 MISS SUSMITA KANUNGOE
 MS. TEENA SHARMA
 MS. MANISHA SARMAH
 MISS BIJU RANI KALITA
 MISS BARASHA DAS

SAMUDRAGUPTA DUTTA
 MISS KABITA GOSWAMI
 RAJEEB KALITA
 TRIDEEP BARUAH
 MS. AFSANA IRFAN
 MRS. DIKSHA H. BAROOWA
 MS. TRIPTI PATOWARY
 KRISHNA KT. DAS
 NAYAN MONI HAZARIKA
 ZAKIR HUSSAIN (II)
 ABDUS S. AKAND
 MRS. SABINA YESMIN (II)
 MRIDUL MAHANTA
 MRS. SONGITA MAHANTA
 ABDUL GONI
 TILAK RANJAN SARMA
 MD. BAHARUL ISLAM (II)
 MOHENDRA DEKA
 MRS. BABLI DAS SARKAR
 JONE KUMAR SENAPATI
 IFTIQUER RAFIQUE
 IDRISHALI SHEIKH
 MISS ELAKSHI DEKA
 MD. ABDUL AWAL ALAMGIR
 KAMAL KISHORE GOSWAMI
 BHASKAR JYOTI DAS
 BIBEKA NANDA GOGOI
 DHRUBOJYOTI CHAKRABORTY
 MS. ARUNDHUTI BARUAH
 ARUNANGSHU DHAR
 MS. SHABANA AZIZ CHOWDHURY
 TAPAN RANJAN DEURI
 MANOJ KR. SARMA (III)
 MRIDUPAWAN GOSWAMI
 AMLAN SARMA
 MS. MADHURIMA DUTTA
 AMIT GOYAL
 DEBASISH SINGHA
 YADAV PRAN DAS
 JAGAT CHANDRA BORAH
 ANGSHUMAN SARMA
 MS. TINKU SOM
 MD. IMRUL HASSAN
 MS. APARAJITA BHUYAN
 BHUPEN SARMA
 BISHWAJYOTI PATHAK
 AZIM HUSSAIN LASKAR

Received from the executant,
 satisfied and accepted

Advocate

Mr/Ms..... will lead
 me/us in the case

Advocate

And Accepted

Advocate

And Accepted

Advocate

And Accepted

Advocate



Notice

29
Date - 28/2/06

From, Usha Das.
Advocate

To, Mr. J. L. Sawarkar
Railway Standing Counsel.

Sub: OA no. 106 filed by Smt. J. Mahabhar

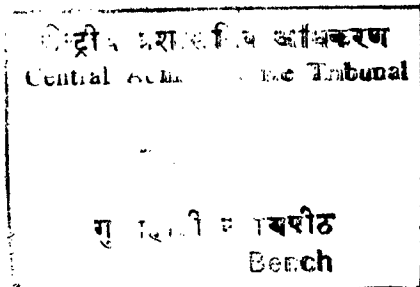
Sir, Please find herewith a copy of
OA being filed today. Kindly
acknowledge the receipt thereof.

Thanking You.

Received copy

Sincerely Yours
Usha Das.
Advocate

Standing Counsel, Railway J. Undertake
to send a copy of
OA on Mr. J. L.
Sawarkar, S.C. Rly.
Usha Das.



VAKALATNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

Case No. OA 58/2006

Smt. Jayanti Malakar Plaintiff / Petitioner.

-Versus-

Union of India & others Defendant / Respondents.

I, we, KHWAIKAKLAM RATAI SINGH and
Divisional personnel officer / IC / M. F. Riyatmeling of the
Northeast Frontier Railway Administration, who is also Ex-officer authorised to act for and on
behalf of the Union of India as representing the Northeast Frontier Railway Administration do
hereby appoint and authorised Shri M. C. Sarma Advocate, Guwahati.

to appear, act, apply, plead in and prosecute the above described suit/ appeal/ proceedings on
behalf of the Union of India to file and take back documents, to accept process of the Court to
appoint and instruct Counsel, Advocate or Pleader, to with draw and deposit moneys and
generally to represent the Union of India in the above described suit/ appeal/ proceedings and
to do all things incidental to such appearing, action, applying, pleading and prosecuting for the
Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that
behalf has previously been obtained from the appropriate Officer of the Government of India,
the said Counsel/Advocate/ Pleader or any Counsel, Advocate or Pleader appointed by him
shall not withdraw or withdraw, or abandon wholly or partly from the suit/ appeal/ claim/ defence/
proceedings, against all or any defendants/ respondents/ appellants/ plaintiffs/ opposite parties
or enter into agreement, settlement or compromise hereby the suit/ appeal/ proceedings is/ are
wholly or partly adjusted or refer all or any matter or matters arising out of dispute therein to
arbitration PROVED THAT IN exceptional circumstances when there is not sufficient time to
consult such appropriate Officer of the Government of India and or omission to settle or
compromise would be definitely prejudicial to the interest of the Government of India the said
Pleader/ Advocate or Counsel may enter into any agreement, settlement or compromise
whereby the suit/ appeal proceedings is / are wholly or partly adjusted and in every such case
the said Counsel/ Advocate/ Pleader shall record and communicate forthwith to the said Officer
the special reason for entering into the agreement, settlement or compromise.

I, hereby agree to ratify all acts done by the aforesaid Shri M. C. Sarma
Advocate, Guwahati in pursuance of this authority.

IN WITNESS WHEREOF THESE presents are duly executed for an on behalf of the Union of
India. this day of 200

Accepted

me

27/4/06

*M. C. Sarma
Rly. Advocate*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF

O.A.58/2006

Smt. Jayanti Malakar ...

Applicant

Versus

Union of India & Others ...

Respondents

AND

IN THE MATTER OF

Written Statement on behalf of respondents.

The answering respondents most respectfully SHEWETH :

1. That the respondents have gone through the copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which have been borne on records all other averments/allegations made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.
2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the respondents have confined their replies to those allegations/averments of the applicant which are found relevant for enabling the Hon'ble Tribunal to take a proper view and decision on the matter.
3. That the application suffers from want of a valid cause of action. The averment of the applicant that her husband Shri Suresh Malakar, Senior Store Satchman under Senior Section Engineer/Hill/Permanent Way/Lumding had disappeared is not correct. As a matter of fact, Shri Suresh Malakar, the applicant's husband, has a record of being unauthorisedly absent from time to time since the year 2000-2001. Apart from cases of unauthorised absence at different spells of time in 2000, he was absent from work for over two years and eight months from 2.10.2001 upto 15.06.2004 without any intimation to his superiors or to the Railway Medical Hospital, Lumding, which lies within half a kilometre of his residence at Lumding, as required under the rules. For joining duty he produced private medical certificate from a Homeopathic Doctor located near his Railway quarter at Lumding in spite of the fact that the Divisional Railway Hospital with full medical facilities and specialists were available within literally shouting distance from his residence. Due to such past records, a

Filed by :
Memo - 2/19/06
(DR. M. C. SARKAR)
Rly. Advocate
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एल. कामिक आवक
१. सी. रेल. एम. डि.
Div. Person. Other
N. P. Lumding

major penalty memorandum was issued against Shri Sukesh Malakar. It has not been possible to proceed with the DAR case due to his intermittent unauthorised absence and the DAR proceedings are still pending.

As per records, Shri Sukesh Malakar underwent treatment in the Divisional Railway Hospital at Lumding from 23.07.2004 to 09.08.2004 but he has again remained unauthorisedly absent from work from 25.09.2004 and has not joined his duties since then.

From the details of his record of service given above it can be concluded that Shri Sukesh Malakar, the husband of the applicant, has not disappeared as alleged, but has remained unauthorisedly absent from duty in order to escape disciplinary action and take some accompanying benefits out of his alleged act of disappearance. Therefore, it is humbly submitted that the applicant's plea for the clearance of the final settlement dues etc. cannot be sustained under extant instructions.

The respondents therefore beg to humbly submit that according to the competent authorities the case is NOT genuine.

4. Parawise comments

4.1 and 4.2. As regards paragraphs 4.1 and 4.2, the respondents beg to offer no comments as they are part of the records.

4.3. That as regards paragraph 4.3, the respondents beg to state that the applicant's husband remained in unauthorised absence during the following periods :-

a) From 16.10.2000 to 13.11.2000	-	29 days.
b) From 09.01.2001 to 23.03.2001	-	45 days.
c) From 02.10.2001 to 15.06.2004	-	983 days.
d) From 22.09.2004 to 23.09.2004	-	2 days.
e) From 25.09.2004 till date		unauthorisedly absent.

The respondents beg to deny the claim made by the applicant in para 4.3 of the O.A. that "her husband was found missing completely from 02.10.2001" because the husband of the applicant was under treatment in the Divisional Railway Hospital, Lumding from 23.07.2004 to 09.08.2004. It may be noted that a major penalty memorandum was issued against the applicant's husband vide No.E/74/2(LM-E)/183 dated 20.03.2003 for his remaining absent from duty without authority. It is quite likely that he remained absent to avoid the consequences.

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 100. श्री सुकेश मलकर

4.4. That as regards paragraphs 4.4, 4.5 and 4.6 the respondents beg to deny that the applicant's husband was missing in 2003. The certificate issued by the Police Station on 21.03.2006 stating that the applicant's husband could not be traced was not a conclusive evidence that he had disappeared for good as subsequent events proved to the contrary. As indicated in paragraph 4.3 above, the applicant's husband was under treatment in the Divisional Railway Hospital, Lumding from 23.07.2004 to 09.08.2004 as per record. In view of this factual position the claim that he had disappeared in March, 2003 would not carry any conviction.

4.5. That as regards paragraphs 4.7 and 4.8 the respondents beg to state that the representations annexed as annexures 2, 3 and 4 could not be acted upon by the respondents as resurfacing of the applicant's husband on various dates created a situation where no positive action was possible. The Police report was dated 21.03.2003 and the applicant's letter at annexure 3 dated 01.03.2004 received on 10.03.2004 was subsequently proved to be of no importance as the applicant's husband appeared for treatment in the Railway Hospital at Lumding on 23.07.2004. The claim that the applicant's husband disappeared in March, 2003 therefore carried no meaning.

4.6. That as regards paragraphs 4.9, 4.10 and 4.11 and 4.12, the respondents beg to state that the case of the applicant is not covered by the Railway Board's letter dated 21.01.2004 which deals with employees who have disappeared. In actual fact the applicant's husband only temporarily disappeared but resurfaced in June, 2004 and was under treatment in the Divisional Railway Hospital, Lumding from 23.07.2004 to 09.08.2004. In the mean time a major penalty memorandum for unauthorised absence was issued against the applicant's husband, though this could not be finalised by processing enquiry etc. due to want of co-operation from the employee concerned. Under the circumstances, the respondents were unable to pursue the case for settlement of dues as per the circular of the Railway Board annexed as Annexure 6 (letter dated 21.01.1994)†.

The respondents also beg to submit that in view of the special circumstances of the case, the respondents cannot be accused of violating any provision of the Constitution of India as the applicant has strenuously tried to prove.

33
 Div. Personnel Officer
 N. P. Lumding

(4)

4.7. That as regards paragraphs 4.13, 4.14, 4.15 and 4.16, the respondents beg to submit before the Hon'ble Tribunal that the case of the applicant's husband is not one of disappearance but of unauthorised absence from work and it is because of this flaw in the service record of the employee that his final settlement dues could not be paid as per rule and extant procedure. In view of the clarifications and submissions made in paragraphs hereinabove, more specifically in paragraphs 3, 4.3, 4.4, 4.5 and 4.6, the respondents deny the allegations that they have violated the provisions of the Gratuity Act, 1972 or any of the Constitutional provisions and codes and procedures framed by the respondents.

In the circumstances as detailed above, the respondents beg to submit that the case of the applicant has no merit whatsoever and that therefore the O.A. merits to be dismissed.

And for this act of kindness the respondents shall as in duty bound ever pray.

VERIFICATION

I, Shri K. P. SINGH, son of KH. DINAMANI SINGH, aged about 34 years and at present working as DPO/IC/Lundina N.F. Railway, do hereby verify and solemnly affirm that the statements made in paragraphs 1 to 4.7 are true to the best of my knowledge and information derived from records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the _____ day of _____, 2006.

Signature

Designation.

400 कार्मिक अधिकारी
१० वीं तलाक़ा
Div. Personnel Office
N. F. R. Lundina

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400 कार्मिक अधिकारी
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Div. Personnel Office
N. F. R. Lundina