

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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SECTION OFFICER (JUDL.)

ORDER SHEET

1. Original Application No. 103/07

2. Misc Petition No. _____

3. Contempt Petition No. _____

4. Review Application No. _____

Applicant(S) Dr. Palvir K. Deb vs Union of India & Ors

Advocate for the Applicant(S) S.N. Tamuli

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

Notes of the Registrar

Date

Order of the Tribunal

7.5.07.

This application is in form
is filed in P. for Rs. 50/-
d. posted vide JPL/BD
No. 266/351681
Dated 12.2.07

Dy. Registrar

Petitioner's & his
issue notices are
received without
stamps

Steps taken without
envelops for issue
notices.

The applicant was in Group A service under Indian Railway working as Sr.DMO. On 16.12.2003 the applicant received a transfer order by which applicant was transferred from Alipurduar Railway Hospital to New Bongaigaon Railway Hospital. Due to sudden transfer and other family problem applicant's mental condition the applicant applied for leave. On 4.10.2004 the applicant received a memorandum of charges by which authority propose to conduct inquiry against the applicant for unauthorised. On 1.5.2006 the applicant received an order from the disciplinary authority by which applicant's service was terminated. Being aggrieved the applicant has filed this O.A.

I have heard Mr.M.Chanda learned counsel for the applicant and Mr.J.L.Sarkar learned Railway counsel for the Respondents. Considering the issue involve I am of the view that the application has to be admitted. Application is admitted. Issue notice on the respondents. Six weeks time is granted to file written statement. Post the matter on 28.5.07.

2

0A 103/07

20.6.07.

At the request of learned counsel the respondents four weeks further time is granted to the respondents to file written statement. Post the matter on 12.7.07.

Wls not filed

11.7.07

Vice-Chairman

Lm

Notice & order sent to D/Section for issuing to resp. nos. 1 to 7 by regd. A/D post. D/No. 754 to

DT= 759

20/7/07 - 25/7/07.

Notice duly served on R 1, 2 & 5. 20/7/07.

Wls not filed.

21.8.07.

Wls not filed.

5.11.07.

Wls not filed.

18.12.07.

12.7.07.

Let the case be listed for filing of written statement and further orders. In the meantime, respondents are at liberty to file written statement. Post the matter on 21.8.07. Vice-Chairman

lm

22.8.2007

D.J.L.Sarkar, learned Railway Standing counsel submitted that since the reply has to be sent from Railway Board it may take some longer time and hence he prays for two months time to file reply statement. However, six weeks time is granted for the same.

Post the case on 6.11.2007.

Vice-Chairman

/bb/

06.11.07.

Written Statement is not filed. At the request of Mr. S.Nath on behalf of Dr.J.L.Sarkar, learned Railway Standing Counsel has prayed for time to file written statement. Prayer is allowed.

Call this matter on 19.12.07.

Member(A

Lm

19.12.2007

Written statement is stated to have already been filed in this case, after serving a copy on the learned counsel for the Applicant. Registry to verify and bring the same on record.

Mr. M. Chanda, learned counsel appearing for the Applicant, seeks six weeks time to file rejoinder. Prayer is allowed.

Call this matter on 07.02.2008 expecting rejoinder from the Applicant.

(M.R. Mohanty)
Vice-Chairman

16.1.08
Rejoinder filed
by the Applicant.
Copy served.

P.A.

W/s and rejoinder
filed by the parties. /bb/
07.02.2008

6.2.08.

In this case written statement and Rejoinder has already been filed.

Call this matter on 20th March, 2008 for hearing.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

Lim

20.03.2008

Call this matter on

9.4.2008.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

19.3.08

lm

1.4.08
Additional Rejoinder
filed by the Applicant.
Copy served.

P.A.

The case is ready
for hearing. 11.4.08.

O.A. 103 of 07

09.04.2008

Call this matter on 30.05.2008.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

30.05.2008

Division Bench matter. Hence adjourned
to be taken up on 11.07.2008 for hearing.

(Khushiram)
Member (A)

/bb/

11.07.2008

Mr.M.Chanda, learned counsel for the
Applicant is present. Dr.J.L.Sarkar, learned
Standing counsel for the Railways is absent for
the reason of his sickness.

Call this matter on 27.08.2008 for hearing

(M.R.Mohanty)
Vice-Chairman

/bb/

The case is ready
for hearing.

26.08.2008

26.8.08.
Additional
Reply to the Respondent
filed by the Respondent.
Copy saved.

Q.A.

27.08.2008

Mr. M. Chanda, learned counsel appearing for the Applicant is present. However, Dr. J. L. Sarkar, learned Standing Counsel for the Railways seeks an adjournment. Prayer is allowed.

Dt. 27.8.08.

Pl. hand over a copy of this order to Dr. J. L. Sarkar, Ld. Standing Counsel for Rly. and to the Ld. Counsel for the Applicant.

[Signature]
28/8/08

[Signature]
21/9/2008

The case is ready for hearing.

Call this matter on 17.09.2008 for hearing; when the Respondents should cause production of all the departmental proceedings records pertaining to the Applicant.

A copy of this order to be handed over to Dr. J. L. Sarkar, learned Standing Counsel for the Railways and to the learned counsel for the Applicant.

[Signature]
(Khushiram)
Member(A)

[Signature]
(M.R. Mohanty)
Vice-Chairman

lm

17.09.2008

Names of the Counsel for the Parties have wrongly been shown in the cause list of today.

Call this matter on 18.11.2008 for hearing.

Send copies of this order to the Applicant and the Respondents in the addresses given in the O.A. and also to the Counsel for the parties.

[Signature]
(Khushiram)
Member(A)

[Signature]
(M.R. Mohanty)
Vice-Chairman

Dt. 17.9.08

Pl. send copies of this order to the Applicant and the Respondents and also to counsel for the parties.

[Signature]
16/10/08

Copies of order dt. 17/9/08 send to D/Section for issuing to applicant and the respondents by post and also to counsel nkm for the parties.

Copy 26/9/08. D/No- 4166 to 4175
Dt- 1-10-08.

The case is ready for hearing.

[Signature]
17.11.08

17.11.08

Reply to the additional
statement of the Applicant
filed by the Respondent.
Copy served.

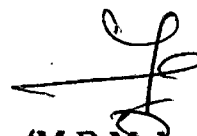
18.11.2008

Heard the learned counsel
appearing for the parties in part.

Call this matter on 20.11.2008.



(S.N. Shukla)
Member(A)



(M.R. Mohanty)
Vice-Chairman

pg

O.A. 103 of 07

20.11.2008 Heard Mr. S. N. Tamuli, learned
counsel appearing for the Applicant and Dr.
J.L. Sarkar, learned Standing counsel for the
Railways; who has produced the
departmental files.

Hearing concluded. Orders reserved.



(S.N. Shukla)
Member(A)

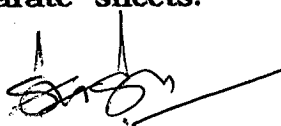



(M.R. Mohanty)
Vice-Chairman

pb

O.A. 103/07 - 7

19.12.2008 Judgment pronounced in open Court. Kept in separate sheets.


(S.N. Shukla)
Member(A)


(M.R. Mohanty)
Vice- Chairman

bb


R
Sum.
Advocate for
applicant.
20/2/09.

Recd.
28.2.2009
34/Rys.

5.3.09


Copy of the Judgment
sent to the office for
filing the same to the
applicant as well
as to the Respondent No. 1 to
7 by post.

kb

Received on 20/2/09
E/74/GAZ/466/CON
(D.A.R. as per Dr. R. N. Sel.)

23/3/09

O. A. 103/07 -8-

19.12.2008 Judgment pronounced in open Court. Kept in
separate sheets.


(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman

hb

O.A. 103 of 2007(M.P.63 of 2009)

20.10.2009 List on 27.11.2009 along with
M.P.No.63 of 2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

OA already
disposed of.
by

20/7/09
15

The following may come
for news on
22/7/2009.

M.P. --- / 2009
IN

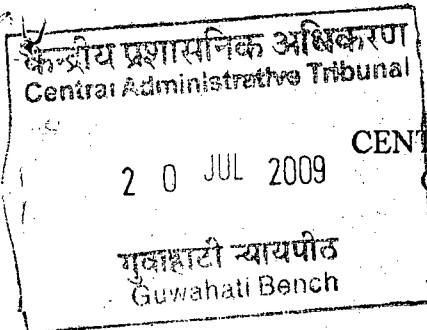
OA no. 103/2008

V.O. I am.

Dr. PK. Sub.

Allowed on
22.7.09 drawn:
bms
20/7/09

Wan
Adv.
=



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
O.A. No. 103 of 2007

Guwahati, this the 19th day of December, 2008

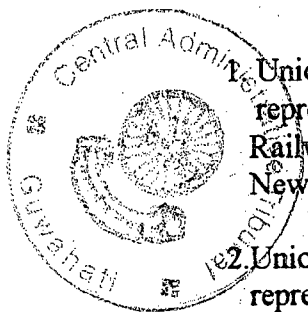
Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
Hon'ble Mr S.N.Shukla Member [Administrative]

Dr. Prabir Kumar Deb
Bungalow No.1224
Railway Hospital Colony
Alipurduar Junction
Alipurduar

Applicant

By Advocate Mr S.N. Tamuli

-versus



1. Union of India
represented by Secretary,
Railway Board,
New Delhi.

2. Union Public Service Commission
represented by Secretary
Railway Board,
New Delhi.

3. General Manager
N.F. Railway
Maligaon, Guwahati

4. Divisional Railway Manager
Alipurduar Junction, PO Alipurduar
Dist. Jalpaiguri
West Bengal.

5. Sri T. Rabha [I.O.]
Chief Public Relation Officer,
N.F. Railway, Maligaon.

6. Chief Medical Superintendent
Alipurduar Junction,
PO Alipurduar,
Dist. Jalpaiguri.

Chief Medical Director
N.F. Railway, Maligaon,
Guwahati.

Respondents

By Advocate Dr. J.L. Sarkar, Standing Counsel for the Railways

Attested
S. 16/7/09

... कानून अधिकारी (न्याय) ...
... Legal Officer (Legal) ...
... न्याय, गुवाहाटी ...
... Guwahati ...

21
20 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

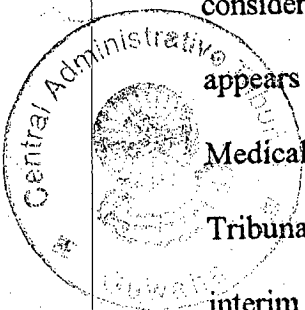
O.A. No. 103 of 2007

ORDER

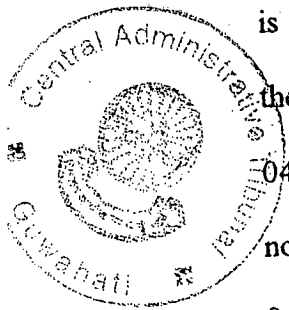
Manorajan Mohanty, Vice-Chairman:-

This case is the second journey of the Applicant to this Tribunal. The facts leading to filing of this case are described as under in the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. Applicant, having been recruited through Union Public Service Commission, joined as a Group A Gazetted Officer in Indian Railways [as Medical Officer] in North-East Frontier Railways and posted at Katihar on 07.07.1986. He did his Diploma in Medical Radio Diagnosis during 1990 from Calcutta University. During 1991, he came to be posted in Alipurduar Junction of N.F. Railway and was sent to Australia [for a Diploma in Health Management] during 1995. On his return, he joined at Alipurduar Junction and, during 1996, was promoted as Senior Divisional Medical Officer under N.F. Railway. Later, on 16.12.2003, he was transferred as Sr. DMO of New Bongaigaon. He represented, on 22.12.2003, against the said order [of transfer] by pointing out his personal difficulties and that the Chief Medical Director of N.F. Railway at Maligaon considered the same as a case of "family problem, as mentioned in his application, appears to be genuine". On 23.12.2003, he submitted an application, to the Chief Medical Director, seeking leave from duty. The Applicant also approached this Tribunal [by way of filing Original Application No. 295 of 2003] and obtained an interim order [on 30.12.200] of keeping the order [of transfer] under abeyance till end of the academic session. It has been alleged that although the Chief Medical Director of N.F. Railway wrote letters [on 16.01.2004 and on 27.01.2004] to



allow the Applicant to continue at Alipurduar, the same [letters] were never served on the Applicant. It is stated that the General Manager of N.F. Railway, who granted a personal hearing to the Applicant, assured him [Applicant] to be allowed to continue at Alipurduar. The interim order, that was passed by this Tribunal was vacated on 16.02.2004 and the case [O.A.No. 295/2003] was withdrawn on 20.02.2004. The Applicant, although allowed to resume duty at Alipurduar, could not resume duty for the reason of his serious illness; for which he was treated by Dr. S.P.Ghosh of Alipurduar Govt. Hospital. Said Dr. Ghosh of Govt. Hospital was also an attending expert physician [Psychiatry] of Railway Hospital at Alipurduar. Applicant reported sick by his letter dated 23.02.2004. Applicant was charge-sheeted on 04.10.2004 [alleging unauthorized absence from 17.12.2003] and along with the said charge-sheet, copies of both the letters [dated 16.12.2003 & 04.06.2004] of Chief Medical Director [by which the Applicant was allowed to resume duty in Alipurduar Junction] were supplied to the Applicant. It is alleged that those 2 letters were never served on the Applicant and the copies thereof came to his hand, for the first time, along with the charge-sheet dated 04.10.2004. It is said that although the General Manager of N.F. Railway was not the Disciplinary Authority of the Applicant, still then the charge-sheet dated 04.10.2004 was drawn by him/G.M. of N.F. Railway. In his written statement of defence/explanation [dated 10.11.2004] to the charge-sheet, the Applicant stated that enquiry need only be conducted after his recovery from mental & physical ailments. Despite that enquiry commenced and in the enquiry, although the Applicant prayed on 13.04.2005 to examine the Dy. CPO [G] and DPO/APDJ, the said prayer was not granted. The enquiry report dated 12.05.2005 having been supplied to the Applicant on 19.05.2005; he submitted his representation on 15.06.2005 and finally, the Railway Board passed orders, on 01.05.2006,



Attested

Sd/- 16/7/05

अधीक्षक न्यायाधीश (न्याय)
Asst. Personal Officer (Legal Cell)
Central Administrative Tribunal
Guwahati Bench

20 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

23 dismissing the Applicant from service. Challenging the said order of dismissal from service, the Applicant filed the present Original Application.

3. By way of filing a written statement, the Respondents have raised a point that the prayer of the Applicant [to this Tribunal] to reassess the evidence [like an Appellate Authority] is not permissible; because this Tribunal has got the power to grant judicial review only and to find out as to whether the procedure prescribed under the Rules were properly followed [during the enquiry] or not and to find out as to whether principles of natural justice was duly followed or not. It has been pointed out that for the reason of the provisions of para 547 [3] of Vol. I of Indian Railway Medical Manual, the Applicant could only have been treated himself by a Railway Doctor.

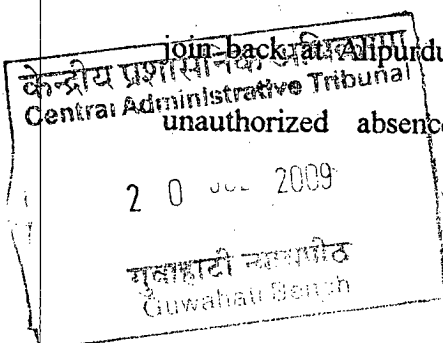
4. By way of filing a Rejoinder and Additional Rejoinder the Applicant has supported his case and opposed the stand of the Respondents/Railways. Applicant has also filed an additional statement in this case.

5. Replies to the said Rejoinder and the Additional Rejoinder have also been filed, by the Respondents/Railways, in this case. A Reply to the additional statement [of the Applicant] has also been filed by the Respondents.

6. We heard Mr. S.N. Tamuli, learned Counsel appearing for the Applicant and Dr. J.L. Sarkar, learned Standing Counsel for the Railways and perused the materials placed on record.

7. As per the materials placed on record, the Applicant, for the reason of his genuine difficulties, could not proceed to join at the new place of posting. He obtained interim protection from this Tribunal and, ultimately, he was allowed to join back at Alipurduar. He could not get the orders; by which he was asked to

join back at Alipurduar. Thus, that period was not available to be branded as unauthorized absence period; unless it is proved that both the orders [dated



16.01.2004 & 27.01.2004] were served upon him. When, ultimately, he was to resume duty at Alipurduar, he became sick and consulted a Non-Railway Doctor and, on the strength of the same, he reported sick. In terms of para 547 [3] of Vol. I of IRMM, "if an officer is forwarded to the authorized Medical Officer, with a Private Medical Certificate, a generally worded fit certificate should be issued". The said provisions of the Rules gives scope to be examined by a private medical practitioner. Thus, when the Applicant produced a certificate from a Non-Railway Doctor, he should have been forwarded to an Authorised Medical Officer [of Railways] for needful action. There are no material placed on record to show that the Applicant was ever sent to a Railway Doctor for opinion. In the said premises, the period of absence [for the reason of sickness covered under certificate from a non-Railway Doctor] could not have been branded as unauthorized straightway and the Applicant ought not to have been subjected to a disciplinary proceeding without verification of fact as to whether he was really sick or not, especially when there are/were no psychiatry experts in Railways Hospital at Alipurduar.

8. Learned Counsel for the Applicant has also raised a point that since the Applicant was a Senior Gazetted Officer, the disciplinary proceeding could only have been initiated by the Railway Board/President and not by the General Manager of N.F. Railway.

9. Dr. Sarkar, learned Standing Counsel for the Railways pointed out that for the reason of Rule 8[2] of the Railway Servants[Discipline & Appeal] Rules, 1968, an authority, who is competent to impose minor penalty, is also competent to initiate a major penalty proceeding against an officer, of whom it is not the disciplinary authority.

Central Administrative Tribunal

20 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

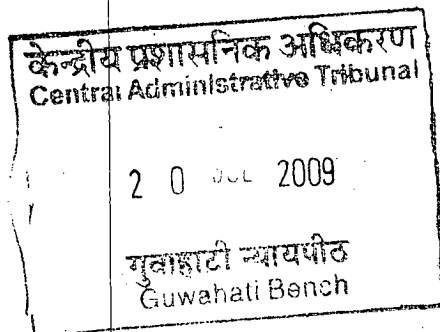
Attested
16/7/09
श्री: कान्ति बाबुकारा (विभा. १)
Asst. Personnel Officer (Legal Cell)
श्री: हरी, मालिका, गुवाहाटी
Railway Station

10. Rule 8[2] of the Rules of 1968 is as under:-

"8. Authority to institute proceedings.-

XXX XXX XXX

[2] A disciplinary authority competent under these rules to impose any of the penalties specified in clauses [i] to [iv] of rule 6, may, subject to the provisions of clause [c] of sub-rule [1] of rule 2, institute disciplinary proceedings against any Railway servant for imposition of any of the penalties specified in clauses [v] to [ix] of rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties."



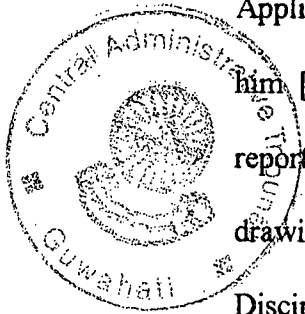
11. Thus, it is clear that initiation of the major penalty proceeding against the Applicant was not bad.

12. Faced with above situation, the Advocate for the Applicant pointed out that the authorities of N.F. Railway, after initiating a major penalty proceeding against the Applicant, ought to have placed the matter before the Railway Board/GOI for further action. It is submitted, instead of doing that, they [authorities of N.F. Railway] proceeded with the enquiry etc. and at the final stage [after forming an opinion to impose a major penalty only] sent the papers to Railway Board/GOI, who passed the final order and that, as such, the final order passed by the Railway Board/GOI [impugned in this case] is not sustainable being outcome of non-application of mind.

13. Powers to take disciplinary action against a Govt. Servant have been vested with Specified Authorities under the Statutory Rules. Thus, an authority [in whom power to proceed against and impose penalty] notified under the Statutory Rules is to initiate the same and pass final orders after following a specified procedure prescribed under the Rules. In the same Rules, exceptions/relaxations have also been provided and, as a result thereof, an authority, who is only competent to impose minor penalty, have also been vested

with the powers to initiate [neither to proceed with nor to finalise] a major penalty proceeding against a Government Servant. Such an authority, as a necessary consequence, upon initiation of a major penalty proceeding, ought to have transmitted the papers to the authority competent to impose major penalty for needful further action.

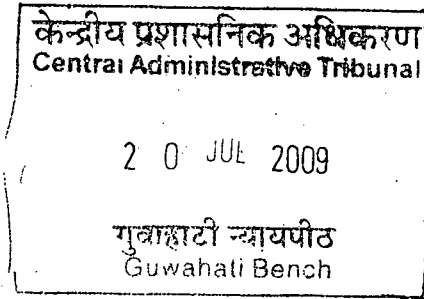
14. As it appears, without sending the papers to the Railway Board/GOI for taking the follow-up action [on the major penalty proceeding initiated against the Applicant], the authorities of N.F. Railway [who were incompetent to deal with a major penalty proceeding against the Applicant] unauthorisedly and, as it appears from the records of the disciplinary proceeding [produced by Dr. J.L. Sarkar, learned Standing Counsel for the Railway], at a very final stage the papers were sent to Railway Board/GOI for passing of the final orders. Records of N.F. Railway [in which grievances pertaining to transfer of the Applicant and disciplinary proceedings against the Applicant were dealt with] goes to show that the N.F. Railway [although incompetent to impose major penalty on the Applicant] not only initiated the major penalty proceeding but proceeded against him [Applicant] at enquiry stage, at the stage of consideration of the enquiry report [and representation thereon] and drawing the final order and that, only after drawing the final order, sent the same to Railway Board [who did not act like a Disciplinary Authority] but acted as a post-office in sending the papers to U.P.S.C. for obtaining the advice and, thereafter, passed the impugned order [in the same line as that drawn by the G.M. of N.F. Railway] to the prejudice of the Applicant. No special consideration, even, were given to the defence of the Applicant and to the last representation submitted after receipt of a copy of the enquiry report.



Attested

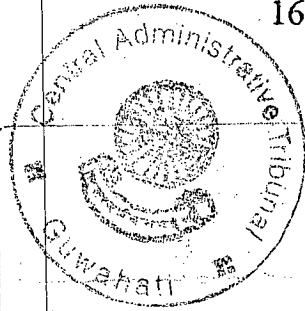
J. 16/7/09

अ. न्यायाधीश (न्यायाधीश)
अ. न्यायाधीश (न्यायाधीश)
अ. न्यायाधीश (न्यायाधीश)
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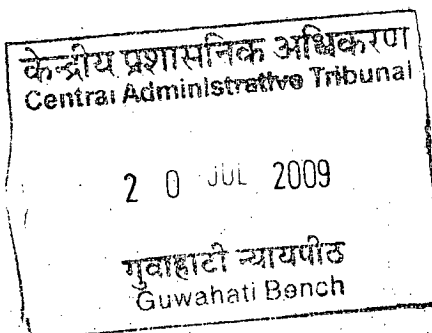
15. Thus, judging from all angle, we are of the opinion, that there were gross miscarriage of justice in the decision making process [right from the stage of initiation of disciplinary proceeding] leading to imposition of the major penalty/issuance of the impugned order against the Applicant and, as such, we quash the impugned order with the entire proceeding against the Applicant; who should be treated as continuing in service of the Railway. He should be reinstated with all back wages.

16. In the result, this case is allowed. Nocosts.



TRUE COPY
प्रतिलिपि
अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी न्यायपीठ
Guwahati Bench
गुवाहाटी-5
Guwahati-5

Sd/-
M.R. MOHANTY
VICE CHAIRMAN
Sd/-
S.N. SHUKLA
MEMBER (A)



28

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 103 of 2007

Date of order 19th December, 2008

Dr. Prabir Kumar Deb

Applicant

By Advocate Mr S.N. Tamuli

Versus

The UOI & others

Respondents

By Advocate Dr. J.L. Sarkar

CORAM

The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman

The Hon'ble Mr. S.N. Shukla, Member [Administrative]

1. Whether reporters of local newspapers may be
Allowed to see the Judgment?

Yes/No

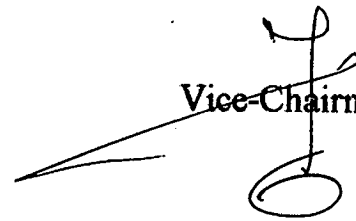
2. Whether to be referred to the Reporter or not?

Yes/No

3. Whether their Lordships wish to see the fair
Copy of the Judgment ?

Yes/No

Vice-Chairman



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
O.A. No. 103 of 2007

Guwahati, this the 19th day of December, 2008

Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
Hon'ble Mr S.N.Shukla Member [Administrative]

Dr. Prabir Kumar Deb
Bungalow No.1224
Railway Hospital Colony
Alipurduar Junction
Alipurduar

Applicant

By Advocate Mr S.N. Tamuli

-versus

1. Union of India
represented by Secretary,
Railway Board,
New Delhi.

2. Union Public Service Commission
represented by Secretary
Railway Board,
New Delhi.

3. General Manager
N.F. Railway
Maligaon, Guwahati

4. Divisional Railway Manager
Alipurduar Junction, PO Alipurduar
Dist. Jalpaiguri
West Bengal.

5. Sri T. Rabha [I.O.]
Chief Public Relation Officer,
N.F. Railway, Maligaon.

6. Chief Medical Superintendent
Alipurduar Junction,
PO Alipurduar,
Dist. Jalpaiguri.

7. Chief Medical Director
N.F. Railway, Maligaon,
Guwahati.

Respondents

By Advocate Dr. J.L. Sarkar, Standing Counsel for the Railways



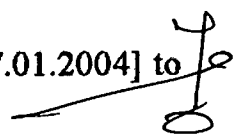
O.A. No. 103 of 2007

ORDER

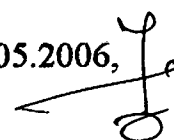
Manorajan Mohanty, Vice-Chairman:-

This case is the second journey of the Applicant to this Tribunal. The facts leading to filing of this case are described as under in the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. Applicant, having been recruited through Union Public Service Commission, joined as a Group A Gazetted Officer in Indian Railways [as Medical Officer] in North-East Frontier Railways and posted at Katihar on 07.07.1986. He did his Diploma in Medical Radio Diagnosis during 1990 from Calcutta University. During 1991, he came to be posted in Alipurduar Junction of N.F. Railway and was sent to Australia [for a Diploma in Health Management] during 1995. On his return, he joined at Alipurduar Junction and, during 1996, was promoted as Senior Divisional Medical Officer under N.F. Railway. Later, on 16.12.2003, he was transferred as Sr. DMO of New Bongaigaon. He represented, on 22.12.2003, against the said order [of transfer] by pointing out his personal difficulties and that the Chief Medical Director of N.F. Railway at Maligaon considered the same as a case of "family problem, as mentioned in his application, appears to be genuine". On 23.12.2003, he submitted an application, to the Chief Medical Director, seeking leave from duty. The Applicant also approached this Tribunal [by way of filing Original Application No. 295 of 2003] and obtained an interim order [on 30.12.200] of keeping the order [of transfer] under abeyance till end of the academic session. It has been alleged that although the Chief Medical Director of N.F. Railway wrote letters [on 16.01.2004 and on 27.01.2004] to



allow the Applicant to continue at Alipurduar, the same [letters] were never served on the Applicant. It is stated that the General Manager of N.F. Railway, who granted a personal hearing to the Applicant, assured him [Applicant] to be allowed to continue at Alipurduar. The interim order, that was passed by this Tribunal was vacated on 16.02.2004 and the case [O.A.No. 295/2003] was withdrawn on 20.02.2004. The Applicant, although allowed to resume duty at Alipurduar, could not resume duty for the reason of his serious illness; for which he was treated by Dr. S.P.Ghosh of Alipurduar Govt. Hospital. Said Dr. Ghosh of Govt. Hospital was also an attending expert physician [Psychiatry] of Railway Hospital at Alipurduar. Applicant reported sick by his letter dated 23.02.2004. Applicant was charge-sheeted on 04.10.2004 [alleging unauthorized absence from 17.12.2003] and along with the said charge-sheet, copies of both the letters [dated 16.12.2003 & 04.06.2004] of Chief Medical Director [by which the Applicant was allowed to resume duty in Alipurduar Junction] were supplied to the Applicant. It is alleged that those 2 letters were never served on the Applicant and the copies thereof came to his hand, for the first time, along with the charge-sheet dated 04.10.2004. It is said that although the General Manager of N.F. Railway was not the Disciplinary Authority of the Applicant, still then the charge-sheet dated 04.10.2004 was drawn by him/G.M. of N.F. Railway. In his written statement of defence/explanation [dated 10.11.2004] to the charge-sheet, the Applicant stated that enquiry need only be conducted after his recovery from mental & physical ailments. Despite that enquiry commenced and in the enquiry, although the Applicant prayed on 13.04.2005 to examine the Dy. CPO [G] and DPO/APDJ, the said prayer was not granted. The enquiry report dated 12.05.2005 having been supplied to the Applicant on 19.05.2005; he submitted his representation on 15.06.2005 and, finally, the Railway Board passed orders, on 01.05.2006,



dismissing the Applicant from service. Challenging the said order of dismissal from service, the Applicant filed the present Original Application.

3. By way of filing a written statement, the Respondents have raised a point that the prayer of the Applicant [to this Tribunal] to reassess the evidence [like an Appellate Authority] is not permissible; because this Tribunal has got the power to grant judicial review only and to find out as to whether the procedure prescribed under the Rules were properly followed [during the enquiry] or not and to find out as to whether principles of natural justice was duly followed or not. It has been pointed out that for the reason of the provisions of para 547 [3] of Vol. I of Indian Railway Medical Manual, the Applicant could only have been treated himself by a Railway Doctor.

4. By way of filing a Rejoinder and Additional Rejoinder the Applicant has supported his case and opposed the stand of the Respondents/Railways. Applicant has also filed an additional statement in this case.

5. Replies to the said Rejoinder and the Additional Rejoinder have also been filed, by the Respondents/Railways, in this case. A Reply to the additional statement [of the Applicant] has also been filed by the Respondents.

6. We heard Mr. S.N. Tamuli, learned Counsel appearing for the Applicant and Dr. J.L. Sarkar, learned Standing Counsel for the Railways and perused the materials placed on record.

7. As per the materials placed on record, the Applicant, for the reason of his genuine difficulties, could not proceed to join at the new place of posting. He obtained interim protection from this Tribunal and, ultimately, he was allowed to join back at Alipurduar. He could not get the orders; by which he was asked to join back at Alipurduar. Thus, that period was not available to be branded as unauthorized absence period; unless it is proved that both the orders [dated



16.01.2004 & 27.01.2004] were served upon him. When, ultimately, he was to resume duty at Alipurduar, he became sick and consulted a Non-Railway Doctor and, on the strength of the same, he reported sick. In terms of para 547 [3] of Vol. I of IRMM, "if an officer is forwarded to the authorized Medical Officer, with a Private Medical Certificate, a generally worded fit certificate should be issued". The said provisions of the Rules gives scope to be examined by a private medical practitioner. Thus, when the Applicant produced a certificate from a Non-Railway Doctor, he should have been forwarded to an Authorised Medical Officer [of Railways] for needful action. There are no material placed on record to show that the Applicant was ever sent to a Railway Doctor for opinion. In the said premises, the period of absence [for the reason of sickness covered under certificate from a non-Railway Doctor] could not have been branded as unauthorized straightway and the Applicant ought not to have been subjected to a disciplinary proceeding without verification of fact as to whether he was really sick or not; especially when there are/were no psychiatry experts in Railways Hospital at Alipurduar.

8. Learned Counsel for the Applicant has also raised a point that since the Applicant was a Senior Gazetted Officer, the disciplinary proceeding could only have been initiated by the Railway Board/President and not by the General Manager of N.F. Railway.

9. Dr. Sarkar, learned Standing Counsel for the Railways pointed out that for the reason of Rule 8[2] of the Railway Servants[Discipline & Appeal] Rules, 1968, an authority, who is competent to impose minor penalty, is also competent to initiate a major penalty proceeding against an officer of whom it is not the disciplinary authority.



10. Rule 8[2] of the Rules of 1968 is as under:-

"8. Authority to institute proceedings.-

XXX XXX XXX

[2] A disciplinary authority competent under these rules to impose any of the penalties specified in clauses [i] to [iv] of rule 6, may, subject to the provisions of clause [c] of sub-rule [1] of rule 2, institute disciplinary proceedings against any Railway servant for imposition of any of the penalties specified in clauses [v] to [ix] of rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties."

11. Thus, it is clear that initiation of the major penalty proceeding against the Applicant was not bad.

12. Faced with above situation, the Advocate for the Applicant pointed out that the authorities of N.F. Railway, after initiating a major penalty proceeding against the Applicant, ought to have placed the matter before the Railway Board/GOI for further action. It is submitted, instead of doing that, they [authorities of N.F. Railway] proceeded with the enquiry etc. and at the final stage [after forming an opinion to impose a major penalty only] sent the papers to Railway Board/GOI, who passed the final order and that, as such, the final order passed by the Railway Board/GOI [impugned in this case] is not sustainable being outcome of non-application of mind.

13. Powers to take disciplinary action against a Govt. Servant have been vested with Specified Authorities under the Statutory Rules. Thus, an authority [in whom power to proceed against and impose penalty] notified under the Statutory Rules is to initiate the same and pass final orders after following a specified procedure prescribed under the Rules. In the same Rules, exceptions/relaxations have also been provided and, as a result thereof, an authority, who is only competent to impose minor penalty, have also been vested

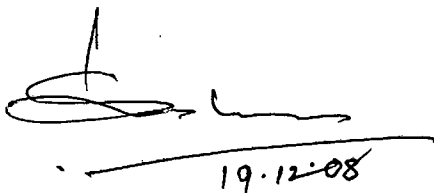
with the powers to initiate [neither to proceed with nor to finalise] a major penalty proceeding against a Government Servant. Such an authority, as a necessary consequence, upon initiation of a major penalty proceeding, ought to have transmitted the papers to the authority competent to impose major penalty for needful further action.

14. As it appears, without sending the papers to the Railway Board/GOI for taking the follow-up action [on the major penalty proceeding initiated against the Applicant], the authorities of N.F. Railway [who were incompetent to deal with a major penalty proceeding against the Applicant] unauthorisedly and, as it appears from the records of the disciplinary proceeding [produced by Dr. J.L. Sarkar, learned Standing Counsel for the Railway], at a very final stage the papers were sent to Railway Board/GOI for passing of the final orders. Records of N.F. Railway [in which grievances pertaining to transfer of the Applicant and disciplinary proceedings against the Applicant were dealt with] goes to show that the N.F. Railway [although incompetent to impose major penalty on the Applicant] not only initiated the major penalty proceeding but proceeded against him [Applicant] at enquiry stage, at the stage of consideration of the enquiry report [and representation thereon] and drawing the final order and that, only after drawing the final order, sent the same to Railway Board [who did not act like a Disciplinary Authority] but acted as a post-office in sending the papers to U.P.S.C. for obtaining the advice and, thereafter, passed the impugned order [in the same line as that drawn by the G.M. of N.F. Railway] to the prejudice of the Applicant. No special consideration, even, were given to the defence of the Applicant and to the last representation submitted after receipt of a copy of the enquiry report.

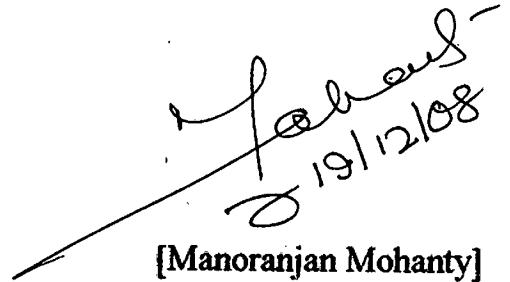


15. Thus, judging from all angle, we are of the opinion, that there were gross miscarriage of justice in the decision making process [right from the stage of initiation of disciplinary proceeding] leading to imposition of the major penalty/issuance of the impugned order against the Applicant and, as such, we quash the impugned order with the entire proceeding against the Applicant; who should be treated as continuing in service of the Railway. He should be reinstated with all back wages.

16. In the result, this case is allowed. Nocosts.

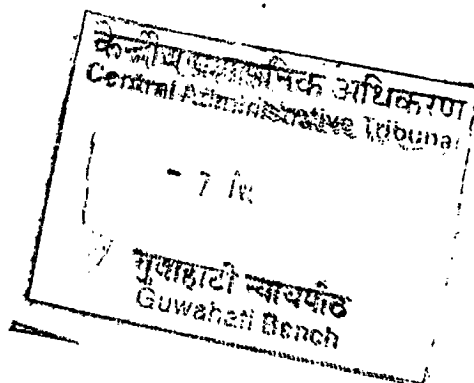


[S.N.Shukla]
Member[A]


19/12/08

[Manoranjan Mohanty]
Vice-Chairman

cm



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI
BENCH, GUWAHATI

103
O.A No-130/2007

Dr. Prabir Kumar Deb

Applicant

-VS-

U.O.I & O R S

.....Respondents

Additional statements responding to the reply to the
Rejoinder.

The applicant most humbly begs to pray as under.

1. That in reply to the statements in Para 2 of the 'reply to the rejoinder' the applicant humbly states that the respondents are repeatedly mentioning about the O.A.No 295/03. They were highly annoyed on him for filing the said O.A.which was filed in peculiar circumstances including mental sickness of the applicant. The said O.A. was conducted by duly engaged lawyer. The Hon'ble Tribunal was also pleased to grant interim orders (Annexure F of the O.A.) which have already been explained in this O.A.The larned advocate in the case appreciating the totality of the case including the psychological strain of the applicant advised the applicant to approach the officers of the Railways and explained the real position for humanitarian considerations. The applicant according got an interview with the then G.M who also was concerned for the health of the applicant. After that applicant advice his counsel to withdraw the case O.A. No 295/03 and the counsel had withdrawn the case (Annexure G1 of the O.A.).In the circumstances the termination of the applicant showing connection with the facts of the said O.A. 295/03 is beyond judicial process.

Prabir Kumar Deb.

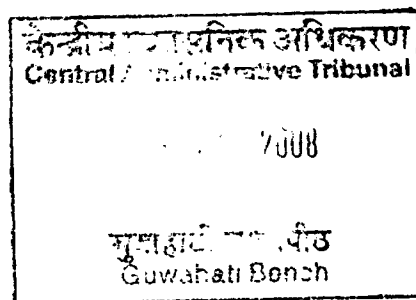
Filed by the applicant
through S.N. Tomuli
Advocate
7/11/08

Recd
27/9/2008
SC/Khs.

2. That in reply to statements in Para 3 to 6 of the 'reply to rejoinder' it is denied that the action of the respondents has been as per rules of the Railways. It is stated that admittedly applicant was psychiatric patient, but the manner in which he was treated by the respondents is most inhuman. The so called spare order was handed over to him after office ^{as}house by calling him from his residence. He was not allowed to enter his chamber to take even his personal belongings, not to speak of formal handing over charge. The respondents treated and discuss^{ed} among themselves very shabbily with derogation as if he was a mad man.

All the procedures in the rules and codes have been neglected arbitrarily and not follow^{ed}. Indian Railway Establishment Code Vol.I, Para 521(2) which is under article 309 of the constitution of India has not been followed. The provision of Indian Railway Medical Manual has been totally ignored. Procedures laid down in Railway Servants (Discipline and Appeal) Rules has been ignored totally. The Memorandum of Charges has not been issued and signed by the competent Authority. It has been issued and signed by the General Manager who is not the Competent Authority to sign this. The officers requested to be called as witnesses to depose on the relevant facts of the case were taken note of by the IO but were not summoned though they were relevant witnesses to depose on the letters issued from the Maligaon Railway Head Quarters and to depose on the process and procedures and personnel matters. There has been total denial of procedural Justice and violation of R. S. (D & A) Rules 1968.

3. In the facts and circumstances of the Case the application deserve to be allowed with costs.



Prabir Kumar Deb.

VERIFICATION

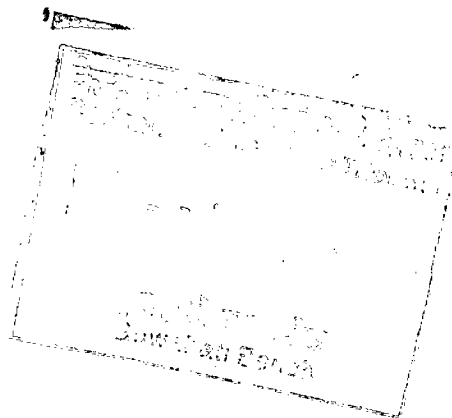
I *Shri Prabir Kumar Deb* about 46 years, Son of *ShriAshit Baran Deb*, resident of Alipurduar, P.O.Alipurduar, Dist:-Jalpaiguri, W.B., hereby verify that the statements made in paragraphs 1-3 are true to my knowledge and I have not suppressed any material facts.

AND I sign this verification on this 25th day of Sept, 2008 at Guwahati.

Place:Guwahati

Date:25/9/2008.

Prabir Kumar Deb
Signature



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH, GUWAHATI.

O. A. No. 103/07

Dr. P. K. Deb

- Vs -

U. O. I. & Ors.

LIST OF DATES.

Date	Particulars	Para No. / Annexure
7.7.1986	The applicant after qualify- ing examination by U.P.S.C. joined in Group A Gazetted service under Indian Railways as <u>Medical Officer</u> in N. F. Railway at Katihar w.e.f. 7.7.1986. He carried out every order of the authority and served in different stations as Medical Officer with unblemished service record with utmost satisfaction of the authorities.	Para-4.1
1990	The applicant did his Diploma in Medical Radio Diagnosis (DMRD) in 1990 from Calcutta University.	Para- 4.2
1991	The applicant was transferred to Alipurduar Junction, N.F. Railway.	Para- 4.2

Date	Particulars	Para No. /Annexure
1995	In the year 1995 for his satisfactory works he was selected by the Railway authorities for training on Health Management and was send to Australlia and he obtained the Graduate Diploma in Health Management from New England University, Australlia.	Para- 4.3
1996	On return from Australlia he was posted back to Alipurduar Junction in 1996 and was promoted as Sr. Divisional Medical Officer (Sr. DMO) considering his bright carrier and unblemished records. While working as such he became victim of <u>mental depression</u> .	Para- 4.4
16.12.03	By an order dated 16.12.2003 the applicant was transferred as Sr. DMO New Bongaigaon.	Annexure-C Para- 4.5
22.12.03	Applicant has family problems with two minor children and old mother with parkinson Disease with the sudden transfer and due to his mental presure he fell sick. He submitted representation dated 22.12.03 to the Chief Medical Superintendent which was forwarded to the Chief Medical Director, N.F. Railway Maligaon mentioning that "his family	

Date	Particulars	Para No. / Annexure.
	Q problem as mentioned in his application Q	
	Q appears to be genuine." Q	
	Q Q	
23.12.03	Q The applicant submitted applica- Q	Para-4.7
	Q tion for leave to the Chief Medical Q	
	Q Director. Q	
	Q Q	
30.12.03	Q The applicant approach the Q	
	Q Hon'ble Tribunal (O.A.No. 295/03). The Q	
	Q Hon'be Tribunal was pleased to pass Q	Annexure-F
	Q interim order directing the respondent Q	Para-4.7
	Q that order of transfer dated <u>16.12.03</u> Q	
	Q should be kept in abeyance till the end Q	
	Q of the accademic session of the school. Q	
	Q Q	
8.01.04	Q The Respondents informed that Q	Para-4.8
	Q It is a routine transfer order. Q	Annexure-G
	Q Q	
16.01.04	Q The Chief Medical Director, N. F. Q	
27.01.04	Q Railway, Maligaon, by letter dated Q	Annexure-H
	Q 16.01.2004 on the subject of joining Q	
	Q report of the applicant forwarded the Q	
	Q Hon'ble CAT/GHY's order dated 30.12.03 Q	
	Q regarding his joining at Alipurduar Q	
	Q Hospital. By letter dated 27.01.2004 Q	
	Q CMD, Maligaon again confirmed that Q	
	Q applicant should be allowed to join Q	
	Q duty at Alipurduar Hospital. Q	

Date	Particulars	Para No./ Annexure.
	<p>This order of the CMD Maligaon</p> <p>was not withdrawn but the Respondent</p> <p>No. 4 maliciously suppressed these</p> <p>letters of 16.01.04 and 27.01.04. In</p> <p>fact after these letters order of</p> <p>transfer dated 16.12.04 became nonest/</p> <p>infractuous. This aspect was specifi-</p> <p>cally placed before the inquiry officer</p> <p>but I.O. for reasons known to him did</p> <p>not take any action and keep silent</p> <p>on this point.</p>	<p>Para-4.9</p> <p>Page 42</p> <p>(Annexure-N</p> <p>contd.)</p>
16.02.04	<p>The General Manager, N.F. Rly.</p> <p>& was kind enough to give the applicant</p>	
20.02.04	<p>a personal hearing after the order of</p> <p>the CMD dated 27.01.04. He was very</p> <p>sympathetic seeing the physical</p> <p>condition of the applicant with mental</p> <p>depression and assured that he would</p> <p>be accommodated at Alipurduar and he</p> <p>should withdraw the case. After that</p> <p>the applicant didnot contest the case</p> <p>and interim order was vacated by an</p> <p>order dated <u>16.02.04</u> (on 27.01.04 the</p> <p>CMD had already confirmed that the</p> <p>applicant should be posted at Alipur-</p> <p>duar which made the transfer order</p> <p>infractuous). The O.A. was withdrawn</p> <p>on 20.02.04</p>	<p>Annexure-I & GI</p> <p>(page-23)</p> <p>Para-4.10</p>

Date	Particulars	Para No./ Annexure
23.02.04	<p>In pursuance to the interim order of the Hon'ble Tribunal and order of the CMD, Maligaon, the applicant was allowed to join duty at Alipurduar. But unfortuaatly his condition further deteriorated and ultimatly he became seriously ill. He continued to be under treatment of doctor S.P. Ghosh of Ali- purduar Civil Hospital, who was also Railway Hospital's attending expert physician (Psychiatry). The applicant reported sick by letter dated 23.2.04 enclosing medical certificates from the attending physician.</p>	<p>Para-4.11 Annexure-H1</p>
04.10.04	<p>Memorandum of charges dated 4.10.04 issued to the applicant alleging unauthorised absent w.e.f. 17.12.03. The letters shown against Sl. No. 1 and 2 (in the list of documents of the charge sheet) dated <u>16.12.2003</u> and <u>4.6.2004</u> were not delivered to the applicant earlier and he received the same for the first time with the chargesheet.</p> <p>The applicant was not in unautho- rised absent and his case was that he</p>	<p>Annexure-J (page 40)</p> <p>Annexure-I (page-26)</p> <p>&</p> <p>Annexure-N (page 40)</p> <p>Para-4.12 & Para-4.15</p>

Date	Particulars	Para No./ Annexure
	<p>was sick supported by medical certificate Government Doctor(expart) which was duly submitted to the respondents. He was staying in Railway Quarter at Alipurduar and :</p> <p>(i) at no point of time a Railway Doctor was deputed to his Railway resident to examine him and arrange for treatment in any hospital</p> <p>(ii) he was never intimated that the sick certificate issued by the government doctor was rejected.</p> <p>(iii) Alipurduar hospital had no arrangement for specialised treatment for depression/psychatrary) submitted.</p>	
10.11.04	<p>Charge Sheet was issued by the GM, who is not Disciplinary authority, violating Rule 9(c)</p> <p>The applicant his defence statement and nominated defence counsel. He requested to conduct inquiry only after the applicant was mentally and physically fit but the inquiry was started.</p>	<p>Para-4.12 & 4.15</p> <p>Annexure-J Para-4.13</p>

Date	Particulars	Para No. / Annexure
13.4.05	<p>During inquiry the applicant prayed for calling Dy. CPO(G) and DPO, APDJ as witnesses. This was recorded in the proceedings dated 13.4.05. The witnesses were not called for though they were the proper persons to explain in the non compliance of CMD, Maligaon's letters dated 17.01.04 and 27.1.04 allowing the applicant to join. He submitted representation dated 13.4.05 calling for witnesses and document</p>	<p><u>Annexure-M</u> (Page 34 also page 41 and 42 of Annexure-N) <u>Para-4.15</u></p>
4.5.05	<p>During the inquiry the applicant submitted that he had fallen sick and also that he applied for leave, 5 days Casual leave w.e.f. 17.12.03 and 15 days LAP w.e.f. 23.12.03 and the application was received in CMS APDJ's office under signature and seal. He also disclosed the fact that the GM/ N. F. Railway granted him the interview and assured his posting at Alipurduar on withdrawal of the case.</p> <p>In the O.A. the applicant reiterated that it was incumbent upon the Railway Medical Officer to depute a</p>	<p><u>Para-4.16</u> <u>Annexure-0</u> (page 44)</p>

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Date	Particulars	Para No.7
		Annexure
	(3) The I.O. decided that it was not permissible to take treatment and give certificate from private medical doctor. Such decision is illegal and violative of provisions of Indian Railway Establishment Code and Indian Railway Medical Manual.	
15.6.05	The applicant submitted his reply to the Inquiry Report and explained his position of treatment under Dr. S.P. Ghosh, M.O. and explained that he had a right to receive treatment from doctor of his choice and that he was always present in his Railway Bungalow and making correspondence with the Railway Administration. The applicant clearly stated in his reply that he was not asked by the Railway Administration to obtain Railway Medical Certificate at any stage.	Para-4.21 Annexure-Q.
	There was no scope of treatment for the ailment of the applicant depression/psychiatry at Alipurduar Railway Hospital.	Para-4.20.

Date	Particulars	Para No.7 Annexure
	<p><u>The fact is that on the basis of the sick report submitted by the applicant from Specialist Government Doctor the respondent found that the applicant was seriously suffering from mental speknness disease and the fit certificate on a plain paper as contemplated under the rule 547(3) of IRMM was not issued. Applicant's absence was therefore covered by sick certificate and not unauthorised</u></p>	<p>Para-4 (page 3) of the rejoinder.</p>
01.5.06	<p>By order dated 01.5.06 of the Railway Board applicant have been dismissed from service.</p> <p>The applicant relies on the following rules :</p> <p>(i) Para 521(2) of the Indian Railway Establishment Code Vol.I</p> <p>(ii) Indian Railway Medical Manual, Vol. II, 2000 Edition</p> <p>(1) Section C-Objectives, Para 108 - Mission statement - Human approach.</p>	<p><u>Annexure-R</u> Para-4.22</p>

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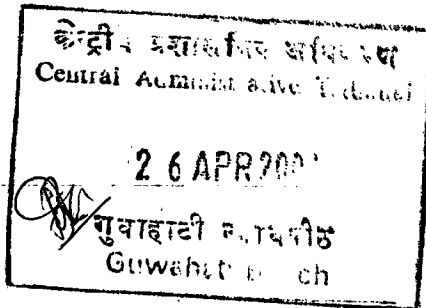
Date	Particulars	Para No./ Annexure
	(ii) Para 547 - (1), (3)	
	and(4)	
	(iii) Judgment & Order dated	
	11.4.2008 in O.A. No. 205/	
	2007 (Shri N.C. Singha Roy	
	Vs. U.O.I & Ors.)	

Filed by

 18/11/08

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI



O.A. No. 103... 2007

Dr. Prabir Kumar Deb

-VS-

U.O.I. & ORS.

Filed by: S.N. Tomuli
Advocate.

SYNOPSIS

Applicant was in Gr 'A' service under Indian Railway. He initially joined as medical officer in Railway and was subsequently promoted as Sr. DMO for his distinguished and unblemished service record. During his service period applicant completed his post graduation in the year 1990 from Calcutta University in Radiology. Considering his distinguished service he was sent to Australia on deputation by Railway in the year 1995 where he obtained the Graduate Diploma in Health Management from New England University, Australia in the year 1996. But unfortunately he became the victim of acute depression of psychiatric disease and was under treatment of expert doctors at Alipurduar. Suddenly on 16/12/2003 applicant received a transfer order by which applicant was transferred from Alipurduar Railway Hospital i.e. where he was serving at that point of time to New Bongaigaon Railway Hospital. Due to sudden transfer and other family problem applicants mental condition started deteriorating. Applicant could not decide what to do and ultimately applied for leave.

He even could not enquire whether his leave was sanctioned or not and also received no communication from Railway authority intimating him about cancellation of the leave and was under the impression that his leave was sanctioned. But suddenly on 4/10/2004 applicant received a memorandum of charges by which authority propose to conduct inquiry against the applicant for unauthorised. Applicant despite of his sickness and absence though was under treatment fully cooperate with the inquiry officer during inquiry. On 1/5/2006 applicant received an order from the disciplinary authority by which applicants service was terminated. During inquiry both Inquiry Officer and disciplinary ignored the fact that applicant was under serious mental illness and was under treatment of renowned doctors. Moreover they did not make any effort to ascertain the health condition of the applicant and imposed punishment on the applicant. Being aggrieved applicant filed this O.A.

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHA BENCH, GUWAHATI**

O.A. NO. 103.....2007

Dr. Prabir Kumar Deb

-VS-

U.O.I & ORS.

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

O.A. NO. 103.....2006

Dr. Prabir Kumar Deb
Bungalow No. 1224
Railway Hospital Colony
Alipurduar Junction
Alipurduar.

.....Applicant.

-VERSUS-

(i) Union of India

Represented by Secretary

Railway Board

New Delhi.

(ii) Union Public Service Commission

Represented by Secretary

Railway Board

New Delhi.

(iii) General Manager

N.F. Railway

Maligaon

Guwahati-II

(iv) Divisional Railway Manager

Alipurduar Junction P.O. Alipurduar

Dist: Jalpaiguri

West Bengal

(v) Sri T. Rabha (I.O)

Chief Public Relation Officer, N.F. Railway

Maligaon

(vi) Chief Medical Superintendent

Alipurduar Junction

P.O. Alipurduar

Dist - Jalpaiguri

West Bengal

(vii) Chief Medical Director

N.F. Railway Maligaon

Maligaon Guwahati

..... Respondents

Filed by the applicant
through S.N. Tomuli
Advocate
S3
Srinivas Kumar

DETAILS OF THE APPLICATION:**1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:**

This application is made before this Tribunal against the order dated 01/05/06, NO E (0)1-2005-2/NE/58 issued by Railway Board imposing penalty of "Dismissal from service",

2. JURISDICTION OF THE TRIBUNAL:

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

3. The applicant further declare that this application is filed within the period of limitation prescribed under section-21 of the Administrative Act 1985

4. FACTS OF THE CASE:

4.1 That applicant is a citizen of India and as such is entitled to all the rights and privileges guaranteed under the Constitution of India.

4.1 That the applicant joined Gr'A' service under Indian Railway after qualifying U.P.S.C examination as medical officer (M.O) at Katihar on 7.7. 1986. He has been serving the organisation with utmost sincerity and devotion carrying out every order of the authority without any resistance. During his service tenure as Medical Officer he has served in different stations and maintained an unblemished record of service with utmost satisfaction of the authority. In the year 1991 he was transferred to Alipurduar. During service period, he did Post Graduation in Radiology (DMRD) in 1990 from Calcutta University.

4.3 That during his posting at Alipurduar he was selected for training on Health Management and was sent on deputation to Australia in the year 1995. He obtained Graduate Diploma in Health Management from New England University, Australia. On completion of his training he was brought back to his place of posting at Alipurduar in the year 1996. In the meantime he was promoted to the post of Sr. Divisional Medical Officer (Sr. DMO in short) considering his bright carrier and unblemished service record.

4.4 That as mentioned in the aforesaid paras applicant was serving the Railway with utmost sincerity and devotion since his appointment. But unfortunately became the victim of acute depression a psychiatric disease and was under going treatment

Prabir Kumar Das

of the expert doctors both at Alipurduar and calcutta namely Dr. P.B. Barma and Dr. S.P. Ghosh. At that point of time applicant was serving as Sr. D.M.O/Radiology/ Alipurduar. Considering the nature of the disease doctors advised him not to take any mental stress or strain which may prove dangerous to the applicant.

Copies of the medical certificate and prescription are enclosed as **Annexure A & B** respectively.

4.5 That the applicant while working as Sr. D.M.O. Aliparduar by an order dated 16/12/03 issued by DPO/APDJ in pursuance of the office order No. 31/2003 (Medical) endorsement No. E/283/III/130/ pt XII (o) dated 16/12/2003 applicant was transferred and posted as Sr. DMO/ New Bongaigaon Hospital.

Copy of the letter dated 16/12/03 is enclosed as **Annexure C**.

4.6 That applicant was shocked to receive the transfer order dated 16/12/03 as his two minor child was studying at that point of time at Alipurduar who need escort to school. Moreover his wife was also serving at Alipurduar as doctor and applicants old mother who was suffering from parkinsonism was also staying with him. Applicant in this situation was in a helpless situation. Due to the increasing mental pressure due to sudden transfer along with day to day office duty applicants condition started detoriating and he ultimately fall sick. Then applicant submitted a representation to the Chief Medical Superintendent, N.F. Railway; Alipurduar junction which was immediately forwarded by the Chief Medical Superintendent to the Chief Medical Director by letter dated 22/12/03. It may be mentioned here that in his letter, Chief Medical Superintendent, Alipurduar Junction, mentioned that "his family problem as mentioned in his application appears to be genuine".

A copy of the letter dated 22/12/03 are enclosed as **Annexure D**.

4.7 That on 23/12/03 applicant out of mental anxiety and urgent work at Guwahati submitted a leave application Chief Medical Director and went on leave. Subsequently applicant approach this Hon'ble Tribunal on 30/12/03 as he did not get any favorable result from the authority concerned and Hon'ble Tribunal was pleased to pass an

Ranjan Kumar 02

interim order directing the respondent to keep the applicant's transfer order dated 16/12/2003 passed by the DRM (P) in abeyance till the end of the academic session of the school.

Copies of the leave application dated 23/12/03 and dated 30/12.03 are enclosed as **Annexure E and F** respectively.

4.8. That in the meantime by an order dated 8/1/04 Chief Medical Director, N.E. Railway, Maligaon disposed the representation date 18.12.03 upholding the transfer order as valid and considering it as routine transfer.

A copy of the order dated 8/1/04 is enclosed as **Annexure G**.

4.9. That applicant vide letter dated 14/1/04 submitted Hon'ble CAT'S order dated 30/12/03 to CMD/ NFR/ MLG. CMD vide letter dated 27/1/04 informed Chief Medical Superintendent, APDJ that in pursuance with Hon'ble CAT Ghy's order dated 30/12/03 applicants transferred to New Bongaigaon Hospital (NBQ in short) be allowed to join duty at Alipurduar hospital.

A copy of the letter dated 27/1/04 is enclosed as **Annexure H**.

4.10. That as already started the applicant was suffering from acute depression and was under treatment of psychiatrist at Alipurduar and Calcutta. Transfer further aggravated his sickness. The lawyer conducting the case also advised him not to think in terms of the case in the CAT. to avoid tension. The Chief Medical Director, Maligaon had also passed order accommodating him at Alipurduar. But the Chief Medical Superintendent, APDJ did not pass any order that allowing the applicant to join in Alipurduar Hospital nor allowed him to join and in absence of order from CMS/APDJ the applicant could not resume duty at APDJ. In this connection it is stated that then General Manager Mr. Vipin Nanda was pleased to give him a personal interview and was very sympathetic and told him that he will be accommodated at Alipurduar if he withdraw the case pending at CAT Guwahati and applicant subsequently on 20-2-04 withdraw his case. It may be mentioned here that when the applicant was under a phase of acute depression, a communication gap was created between him and his lawyer conducting the case i.e., O.A. NO - 295/03. Thereafter he got communication from the lawyer who send a copy of the order of the Hon'ble Tribunal in M. P. No 7/04.

Rishu Kumar Das

A copy of the order dated 16/2/04 is enclosed as **Annexure I-1**

4.11. That applicant in the meantime on interim order of the Hon'ble Tribunal was allowed to join duty at Alipurduar. But unfortunately his condition further deteriorated and ultimately he became seriously ill and continued to undergo treatment under Dr. S.P. Ghosh of Alipuduar Civil Hospital, Alipuduar. It is stated that Dr. S.P. Ghosh was used to be called for by Railway to Alipuduar Railway Hospital for treatment of critically ill patients there. On the advice of the said Dr. Ghosh applicant reported sick before the Chief Medical Director on 23/2/04. It may be mentioned here that it was clearly stated on the application that doctor advised him not to take any mental strain and also to stay attached to the family which will enable him to get rid of tension and would prevent further deterioration of his condition. Since then applicant was sick and was under treatment of physician. Applicant also submitted a copy of the Medical Certificate along with his letter dated 23/2/04.

Copies of the order dated 20/2/04 and letter dated 23/2/04 are enclosed as **Annexure GI & HI** respectively.

4.12. That applicant received a copy of memorandum of charges dated 4/10/2004 where it was proposed to hold an inquiry against the applicant under Rule 9 of Railway Servants (Discipline and Appeal) Rules 1968 asking him to submit his written statement of defence within 10 days. Article of charges framed against the applicant (enclosed as Annexure I of the memorandum of charges) states that applicant was in unauthorized absent from duty with effect from 17/12/03. It was alleged that applicant exhibited lack of devotion to duty. It stated that applicant was shocked to receive the memorandum of charges as he reported sick and was in sick list and also submitted a valid Medical Certificate from a government (non Railway) doctor along with his application dated 23/2/06. Hence he cannot be considered as unauthorized absent. Moreover during this entire period he was staying in Railway Quarter at Alipurduar Junction. In no point of time it was intimated to the applicant that his sick leave was cancelled. In this connection it is stated that most unfortunately no Railway doctor was deputed to his railway residence to examine him medically to

ascertain his physical/mental condition and arranged for further treatment in any good hospital. Alipurduar has no arrangement for specialized treatment for depression/psychiatry. Most E curiously after the charge sheet was given the authority to cover-up their unsympathetic attitude deputed railway doctors when the inquiry after the charge sheet was going on.

A copy of the memorandum dated 10/11/

04 is enclosed as **Annexure I.**

4.13. That vide letter dated 10/11/04 applicant submitted his defence statement where applicant denies all the charges levelled against him in the memorandum of charges. Applicant also informed the authority about the appointment of Shri Shymal Kumar Choudhury, Ex Office Supt. under DRM (w)/APDJ (Ex General Secretary/N.F. Railway/ Employees Union) as his defence assistance and also requested the authority concerned to conduct enquiry only after the applicant is mentally and physically fit. But authority took no note of the sickness of the applicant and started the inquiry.

A Copy of the defence statement dated

10/11/04 is enclosed as **Annexure J.**

4.14. That vide letter dated 2/12/04 issued by the General Manager, N.F. Railway applicant was informed that Shri T.Rabha, CPRO/Maligaon/N.F. Railway was appointed as the inquiry officer to inquire in to the charges against the applicant.

A Copy of the office order dated 2/12/

04 is enclosed as **Annexure K.**

4.15. That preliminary inquiry was held on 30/3/05 at the office of the CPRO/Maligaon, Applicant being a disciplined officer, despite of his sickness cooperate with the authority in the inquiry proceedings. In the inquiry applicant denies the charges of unauthorized absence as he was on sick list. It may be mentioned here that due to his depressed mental condition applicant was not in a position to inquire whether his leave was sanctioned or not. It is stated that administration also made no correspondence with the applicant in this regard though applicant was staying in his official quarter for the entire period. During inquiry applicant denied the statement that he had received letter dated 16/12/03 issued by GM (P)/MLG and letter dated

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Shri Kumar s.d.

4/6/04 issued by the same authority, he had received those letters only with the chargesheet. In this connection it is stated that most unfortunately no Railway doctor was deputed to his Railway residence to examine him medically to ascertain his physical/mental condition and arranged for further treatment in any good hospital. Alipurduar had no arrangement for specialized treatment for depression /psychiatry. During the inquiry proceeding applicant requested the IO to call Dy CPO/G as well as DPO/APDJ as court witness and also submitted five documents in his favour. Vide letter dated 13/4/05 i.e. the present applicant made a formed request in this regard.

A copy of the letter dated 30/3/05, 13/4/05 and inquiry-proceedings copies are enclosed as **Annexure LM and N** respectively.

4.16. That on 4.5.2004 again inquiry was held in I.O's chamber and applicant fully cooperated with the administration to in the inquiry. Applicant explained the situation/ circumstances for which he could not observe the formal procedure for treatment as prescribed by the railway or could not collect a copy of the Railway Medical Certificate. Applicant also explained his mental condition. It is stated that inquiry officer did not gave any sympathetic condition to the applicants mental condition and concluded the inquiry proceedings. It is stated that it was incumbent upon the Railway Medical Officer to depute Railway Medical Officer at the residence for medical examination of the applicant. This was also not done.

A copy of the inquiry proceeding dated 4.5. 2005 is enclosed as **Annexure O.**

4.17. That vide letter dated 19/5/05 issued from the office of the General Manager (p), Maligaon applicant was supplied a copy to the inquiry report and was informed to submit final defence statement if any within fifteen days. The applicant submitted reply by letter dated 15.6.2005 denying the charges.

A copy of the letter dated 19/5/2005 is enclosed as **Annexure P.**

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Rabin Kumar

4.18. That it may be mentioned here that Inquiry officer decided in a subjective manner and also held that the applicant was suppose to comply with the transfer order. It is stated that the IO instead of inquiring in to the matter took the decision against the applicant as if the IO was working for respondent Railway authority. This is prejudicial to the applicant and not fitting into requirement of quasi-judicial functioning of the IO. the IO decided as if he was the disciplinary authority and/or the defence counsel of the respondents.

4.19. That in the findings it has not been found that Railway respondents have been able to prove the allegations against the applicants. Nor the inquiry officer has been able to come to any conclusion that the charges and allegations were proved. He proceeded with the assumption that there was unauthorised absence without in any manner coming to such conclusions proving allegations of such unauthorised absence. The findings as such is perverse and not as per procedure established by law. On this account alone the inquiry report should be set aside and quashed and the penalty based upon such inquiry report should be set aside and quashed.

4.20. That the reasons given by the inquiry officer that applicant did not take medical certificate from Rly Hospital is of casual and perfunctory nature. Inspite of the fact that he produced medical certificates from renowned medical experts with recognition from Indian Medical Council the Inquiry officer did not consider the fact in the factual conspectus. The fact is that Alipurduar Railway Hospital has no scope of treatment for the ailment of the applicant (depression and psychiatry) and therefore the member of the family and well wishers took immediate step for expert treatment and certificates were also given to the Railway. The inquiry officer deliberately did not consider and discuss these aspects. Prayer for calling Dy CPO and DPU/APDJ was rejected. These two officers would be able to depose on the rules and scope of treatment under Railway establishment rules and instructions in case where treatment is not available in the Railway Hospital. It is unfortunate that IO neglected all these aspects. It is stated that applicant was in mental imbalance. The members of the family and well wishers caused the fact to be submitted to the Railway Authority. The respondents not only neglected humanitarian aspects but also neglected requirements under rules to depute Railway doctors to the residence. The findings of the IO is

only subjective not as quasi judicial functioning and he took the view that applicant's efforts were to try to cancel the transfer order. In this mental unbalance position why he had withdrawn the O.A. (O.A. 295/03) was also placed before the IO but this has not at all been discussed and considered and ultimately the I.O. came to the conclusion that charges against the applicant are proved beyond doubt. Such findings and conclusion is perverse.

4.21. That on 15/6/2005 applicant submitted his final defence on the inquiry report submitted by the IO to the General Manager, N.F. Railway, Maligaon where he stated that he was not in unauthorized absence. Applicant also explained about his sickness. Applicant though submitted non railway medical certificate and was staying in his official quarter at Alipurduar he was not asked by the administration to produce a Railway medical certificate. This aspect was neglected by the I.O. It may be mentioned here that there is no rule that applicant is bound to take treatment of Railway doctors only. General Manager, N.F. Railway also did not consider those aspects and accepted the view of the I.O. and recommended for imposition of major penalty on the applicant.

A copy of the final defence report is enclosed as **Annexure Q**.

4.22. That vide order dated 01/05/2006 (No E (O) 1-2005/PU-2/NF/58) issued by Railway Board i.e. disciplinary authority imposed the penalty of Dismissal from Service. In the circumstances explained above the order of penalty is on wrong premises and deserves to be set aside and quashed.

A copy of the order dated 01/05/2006 is enclosed as **Annexure R**.

5. GROUNDS WITH LEGAL PROVISIONS :-

- (i) For that the applicant was on sick list and was under the treatment of registered medical practitioner and cannot be considered as unauthorised absent.
- (ii) For that Inquiry Officer has not been able to prove the allegations brought against the applicant in the chargesheet.

Raman S.D.

(iii) For that the Inquiry Officer worked with a close mind and acted on presumptions and conjectures.

(iv) For that any event of the matter the penalty imposed has been unduly harsh and disproportionate to the charges alleged.

(v) For that the Inquiry Officer the Disciplinary Authority and Appellate Authority has not given any consideration to the serious mental disability (acute depression) of the applicant and fact that he was under treatment of expert psychiatrist.

(vi) For that the Inquiry Officer and Disciplinary Authority has not taken into consideration the act of negligence of the concerned authority to depute, and or initiate arrangement for treatment of the applicant by deputing railway doctor to the residence of the applicant or bring him to the railway hospital or sending him to any appropriate hospital.

6. DETAILS REMEDIES EXHAUSTED :

There is no remedy under any rule and this Hon'ble Tribunal is the only forum for redressal of the grievances.

7. MATTER NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicant declare that he have not filed any other original application in any Tribunal or court.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances the applicants pray for the following reliefs.

8.1. The punishment order No E (O) I-2005/PV-2/NF/58 dated 1/5/06 issued by the Railway Board be set aside and quashed and applicant may be reinstate in service with back wages and all other allied benefits.

8.2 Any other relief or reliefs the Hon'ble Tribunal may deem fit and proper.

The above reliefs is prayed for on the grounds stated in para-5 above.

9. This application is filed through an Advocate.

10. Particulars of the Postal Order.

(i) IPO No. 26 G 351 681

(ii) Date of issue 12/2/07

(iii) Issued From G.O. Post Office

(iv) Payable at HPO, Ghy

(11) Enclosures as stated in the index.

Rudra Kumar

DS

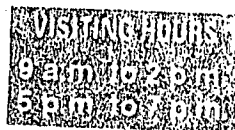
VERIFICATION

I Prabir Kumar Deb, aged about 46 years, Son of Late Asit Baran Deb, resident of _____
Alipurduar, do hereby verify that the statements made in Paragraph 1, 4 and 6 12 are true
to my knowledge and those made in Paragraph 2,3 and 5 are true to my legal advice and I
have not suppressed any material fact.

AND I Sign this versification on this 22nd day of April, 2007

Prabir Kumar Deb.

Dr. S.P. GHOSH
M.B.B.S. (CAL) M.D. (CAL)
Physician & Cardiologist
Hospital Road, Alipurdwar.
Dist. Jalpaiguri.
Ph. (03564) 255061



Annexure A
ANNEXURE A

ডাঃ এস. পি. হো
এম. বি. বি. এস (ক্যাল) এম. ডি (ক)
ফিজিসিয়ান এন্ড কার্ডিওলজি
হাসপাতাল রোড, আলিপুরদুয়ার
জেলা : জলপাইগুড়ি
দূরভাষ : (০৩৫৬৪) ২৫৫০৬

Date 23/9/05

This is to certify that Mr. A.K. Deb is suffering
from Acute Depression and is under my treatment.
He is advised not to take any more
stress and strain till he is fit.

Dr. S.P. Ghosh
23.9.05
Regd No 36571

Dr. S.P. Ghosh
M.B.B.S (Cal) M.D (Cal)
Physician & Cardiologist
Hospital Road Alipurdwar

EMC BY APPOINTMENT

Attested
By
Advocate

-13-

Annexure B

-13-

ANNEXURE B

Dr. Punyabrata Barma
MBBS, DPM

Consultant Neuropsychiatrist

Residence:

Rupa Apart-I

Flat No.-3, 281 Canal Street P.O. Sreebhumi,
Cal-48, Phone : 521-3776.

Chamber :

Sreebhumi Specialist Centre
225, Canal Street, Cal-48

Phone : 521-4474.

Tue & Sat : 4-6 P.M. (Opp Daffodil Nursing Home)

Date :

21st April 2004

Rx

Dr P. K. Datta

Psychiatric Referral

✓ Sub SRT

1 hr CD for 12 sessions

✓ Sub CBT (10)

1 hr CD for 12 sessions

✓ SUPERVISED MEDICATION

✓ Review after 3 months

Regd. No. 51542

DPM / MD

Attested

Dr. Punyabrata Barma

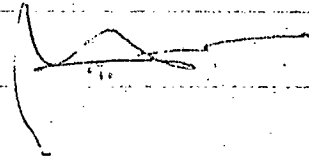
Advocate

ANNEXURE B cont

14.08.1904

sk. early call

criticism from in
moderate



2nd. Feb '05

criticism from moderate

14.08.1905

And. Shin

✓ Job SRT (100)

1 in 100 for 6 criticism

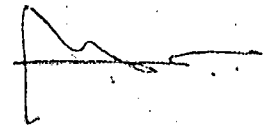
✓ Job OTM (10)

2 can 100 for 6 criticism

✓ Job KET (15)

1 in 100 for 6 criticism

Results after 6 months



Attended
Camp

ANNEXURE C

(A)

N.F. RAILWAY

OFFICE ORDER NO.21/2003(MEDICAL)

Dr P.K.Deb, Sr.DMO/APDJ is transferred in the same capacity and posted as Sr.DMO/NBQ against existing vacancy.

This issues with the approval of Competent Authority.

(P.K.SINGH)

Dy.Chief Personnel Officer/Gaz
For General Manager(P)

No. E/283/III/130/Pt.XII(O)

Maligaon, dated 16.12.2003

Copy for Information and necessary action to :-

1. CMD, CPO & CVO
2. MD/CH/MLG
3. DRM, DRM(P) & DFM/APDJ & RNY
4. Secretary to GM, CPRO & DGM(G)
5. PS to GM/MLG & ASY to AGM/MLG
6. OS/EO-BIII
7. Doctor concerned.
8. GS/NFRMU & NFREU

(P.K.SINGH)
For General Manager(P)

Attested
By
Advocate

NO. H/EO/2 (Gazetted)

OFFICE OF THE
Chief Medical Superintendent
Alipurduar JunctionTO:
The Chief Medical Director,
N.F. Railway, Maligaon.

Dated : 22-12-2003

Sub:- Appeal against sudden and unprecedented
transfer.

.....

Representation received from Dr. P.K. Deb, Sr. DMO/
Radiologist is forwarded herewith for perusal and
kind consideration please. As mentioned by Dr. Deb
in his application dated 18-12-03, I have not received
any allegation against him during my tenure at AMUJ.
This apart, his family problem as mentioned in his
application appears to be genuine.

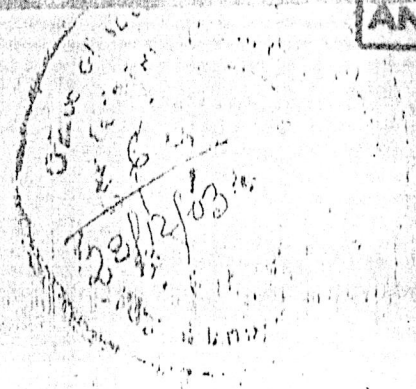
DA/as above.

Chief Medical Superintendent,
N.F. Railway, Alipurduar Junc.

.....

Alloked
Garo

The Chief Medical Officer
N. P. Railway Hospital



Handwritten signature or name, possibly 'S. S. S. S.' or similar, written vertically.

Sir,

With due respect, I beg to state that after receiving a sudden and unprecedented transfer order on the night of 15.12.03, I became so much distressed that my brain did not work and I could not decide what to do. I have an urgent work and other personal affairs. So, you are therefore requested to grant me 15 days leave from 23.12.03 and to sanction casual leaves for previous five days.

Yours faithfully,

S. S. S. S.
S. S. S. S.

23/12/03

35001

WATSON & GORDON

Date: 20/12/04

This is to certify that A.P.K. set
up a firm has been suffering from
and is suffering from
He is now being
advised to remain in bed.

Dr

Dr J. P. K.

Dr J. P. K.

M.B.S. (CANTONMENT)
Physician & Surgeon
Hospital Road, Bangalore

RECEIVED

(12)

Attested
Sd/-
Advocate

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH

ORDER SHEET

Original Application No: 295/03

Misc Petition No:

Contempt Petition No:

Review Application No:

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

Name of the Respondent(s): UOI & Ors.

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

Advocate for the Respondent: Rdy Counsel.

Notes of the Registry

date

Order of the Tribunal

30.12.03

Heard Mr. M.K. Mazumdar, learned
counsel for the applicant.

Issue notice on the respondents
to show cause as to why this petition
shall not be admitted, returnable
by four weeks.

List the case on 4.2.2004 for
admission.

In the meanwhile, respondents
are directed to keep the applicant's
transfer order passed by the D.R.M.
(P) dated 16.12.2003 in abeyance
till the end of the academic season
of the School.



Subscribed to be true for

Signature of the Officer

Section Officer (J)

Ch. P. GURCHANI, BANCH
Gurchani-78/003

Sd/ MEMBER, (Adm)

Attested
by
Advocate

N. F. Railway

Office of the
CMD/Maligaon.

Dated: 08.01.04.

No. 4/98/6

To
Dr. P.K. Deb,
Sr. DMO/Radiology,
N.F. Railway,
Alipurduar Jn. (on transfer to NBQ)

Sub: Appeal against sudden and
unprecedented transfer.

I have received your representation in connection with your transfer to New Bongaigaon hospital. This transfer is neither unethical nor malicious as mentioned in your representation dt. 18.12.03. This is a routine transfer. Your long experiences in Radiology will also help in developing the NBQ hospital, which is the main hospital of Rangiya Division.

(Dr. Kalyan Ghosh)
Chief Medical Director.

Received from
CMS/office on
15/1/04 (AM)

Recd.
15/1/04

Attested
Advocate

N.F.Railway,

ANNEXURE H

Office of the
Chief Medical Director
Guwahati - II.
Maligaon, Dated: 27.01.04.

No. H/SS/1/Pt.V

To
CMS/APDJ

Sub: Joining of Dr.P.K.Deb, Sr.DMO/APDJ.

Ref: Letter No. m dt.14.1.04 of Dr.P.K.Deb
Sr.DMO/APDJ & CAT/CHY Bench's order
against the original application No. 295/03.

In reference to the CAT/CHY Bench's above order, CMD
desires that Dr. P.K.Deb, Sr.DMO/APDJ under order of transfer to NBO
should be allowed to join duty at APDJ hospital.

Please take necessary action accordingly.

(Dr. N.C.Rabha)
Dy.C.M.D./T&A
for Chief Medical Director

Copy for information to :-

1. DRM/APDJ
2. Dy.CPO/Gaz/Maligaon
- ✓ 3. Dr.P.K.Deb, Sr. SMO/APDJ.

for Chief Medical Director

Alerted
Gazetted
Advocate

U.S. App. / Misc. Petn / Cont. Detn / Rev. App. 7/04

In A. 295/66

Respectfully, The Applicant(s): [Signature] 9-04-11

Name of the Respondent(s) Dr. Pauline M. D'U

Attorney for the Applicant: 12 C. Poolville, Odd, C. S.

Counsel for the Railway/ O.G.C.C. S.C. Bhatnagar M.K. Nayyar

PLC-107

DATE

ORDER OF THE TRIBUNAL

16.2.2004

Heard Mr. B. C. Pathak, learned addl. C.G.S.C. for the applicant, and also Mr. M. K. Mazumdar, learned counsel for the opposite party.

The interim order dated 30.12.03 passed in O.A.295/2003 stands vacated because this Tribunal cannot be an appropriate forum to intervene in the transfer matter of the administrative staff.

The respondents may consider giving the applicant accommodation as stated in the affidavit.

The M.P. stands dispose of.

Sd/MEMBER (ADM)

~~Arrested~~
~~Chang~~
~~Advocate~~

ANNEXURE G-1

E7

PROJ. No. 4
(SEE PAGE 12)

CENTRAL ADMINISTRATIVE TRIBUNAL
ORDINATE SHEET

ORDER SHEET

Original Application No:- 295/03

Revised Petition No: /

Contempt Petition No: /

Review Application No: /

Name of the Applicant(s): Mr. P.K. Das

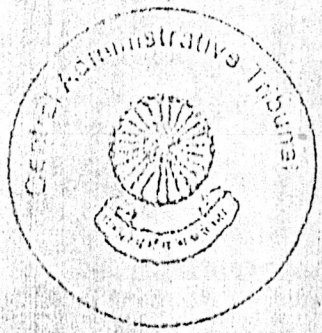
Name of the Respondent(s): CBI & Co.

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

Advocate for the Respondent:- Rly. Counsel

Notes of the Registry | Date | Order of the Tribunal

bb



20.2.2004 The learned counsel for the applicant prays for withdraw the application. Prayer is allowed. Accordingly, the O.A. is allowed on withdrawal.

Sd/MEMBER(ADM)

Memorandum No. 291

Dtd - 25/2/04

Copy for information and necessary action

1) Mr. M.K. Mazumdar, Advocate, Gandhi Court, Guwahati.

2) Mr. B.C. Patil, Rly. Standby Counsel, Guwahati.

Attended
Advocate

25/2/04

ANNEXURE - H-1

To

The Chief Medical Director,

M. F. Railway,

Maligaon,

Guwahati - II.

Sub: Sick report

Sir,

With due respect, I beg to state that I am suffering from 'Depression' and at present not in a position to perform all sorts of duties. Hence I am reporting sick. I am under treatment of a physician who advised me to perform only limited work and to remain attached with family.

So, you are, therefore, requested to keep me in your hospital till my recovery from this depressive phase. The certificate of my treating physician is dated 20.2.04 and is enclosed herewith.

Yours faithfully,

Dr. P. K. Das

Sr. DMO / Alipura
dine in in from
transfer to MCO.

23.02.04.

Affected
By
Advocate

Confidential

NORTHEAST FRONTIER RAILWAY

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

Date: 06.10.04

No.E/74/GAZ/466/CON

To
DRM/RNY,

Sub: DAR action on Major penalty against Dr. P.K. Deb, Sr.DMO/NBQ

One Major penalty charge sheet bearing No. E/74/GAZ/466/CON dated: 04/10/04, along with its imputations (viz. Annexure-I, II, III & IV) and relied upon documents (total 8 pages) is sent herewith which may kindly be served on Dr. P.K. Deb, Sr.DMO/NBQ under clear acknowledgement. To this effect a blank format of acknowledgement is attached herewith.

You are, requested to send back the acknowledgement to the undersigned after signature from Dr. Deb, for further necessary action please.

(Signature)
(P.K. SINGH)
DY.CPO/GAZ
for General Manager(P)

Copy to: -

CMD/MLG, for information please.

(P.K. SINGH)
DY.CPO/GAZ
for General Manager(P)

Received on
04.11.04

Affected
Stated
Advocate

STANDARD FORM NO.5 MEMORANDUM OF CHARGE SHEET UNDER
RULE 9 OF THE RS (D & A) RULES- 1968.

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-781011.

NO. E/74/Gaz./466/CON

DATE: 04-10-2004

MEMORANDUM

The undersigned propose(s) to hold an inquiry against Dr. P.K. Deb,
Sr. DMG/NBO under Rule 9 of the Railway Servants (Discipline and Appeal)
Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of
which the inquiry is proposed to be held, is set out in the enclosed statement of articles of
charge. (Annexure-I). A statement of imputations of misconduct or misbehaviour in
support of each articles of charge is enclosed (Annexure-II). A list of documents by which,
and a list of witnesses by whom, the articles of charge are proposed to be sustained are
also enclosed. (Annexure-III & IV).

2. Dr. P.K. Deb is hereby informed that if he so desires, he can
inspect and take extracts from the documents mentioned in the enclosed list of documents
(Annexure-III) at any time during office hours within ten days of receipt of this
Memorandum. For this purpose he should contact Dy. CPO/Gaz.,
N.F.Railway, maligaon, immediately on receipt of this Memorandum.

3. Dr. P.K. Deb is further informed that he may, if he so desires,
take the assistance of any other Railway servant (who satisfies the requirements of Rule
9(13) of the Railway servants (Discipline & Appeal) Rules, 1968 for inspecting the
documents and assisting him in presenting his case before the Inquiring Authority in the
event of an oral inquiry being held. For this purpose, he should nominate one or more
persons in order of preference. Before nominating the assisting Railway Servant(s),
Dr. P. K. Deb should obtain an undertaking from the nominee(s) that
he(they) is (are) willing to assist him during the disciplinary proceedings. The undertaking
should also contain the particulars of other cases if any, in which the nominee(s) had
already undertaken to assist and the undertaking should be furnished to the undersigned,
along with the nomination.

Contd to page -2.

(51)

4. Dr. P. K. Deb ⁽²⁾ is hereby directed to submit to the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents, if he desires to inspect documents, and also-

(a) to state whether he wishes to be heard in person; and

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

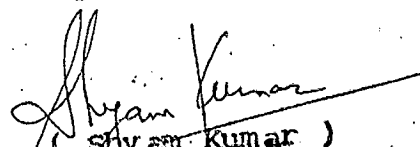
5. Dr. P. K. Deb is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

6. Dr. P. K. Deb is further informed that if he does not submit his written statement of defence within the period specified in para 4 or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway servants (Discipline & Appeal) Rules, 1968, or the order/ directions issued in pursuance of the said rule, the Inquiring Authority may hold in the Inquiry ex- parte.

7. The attention of Dr. P. K. Deb is invited to Rule 20 of the Railway services (conduct) Rules, 1966, under which no Railway Servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Dr. P. K. Deb is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

Encls:- Annexures- I, II, III, & IV.


(Shyam Kumar)
GENERAL MANAGER,
N.F. RAILWAY.

To
Shri/Smt. Dr. P. K. Deb

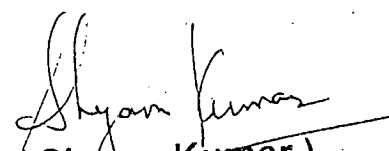
Sr. DMO/NBQ

(Through DRM/RNY).

Annexure-I

**Statement of Article of Charges framed against Dr. P. K. Deb,
Sr.DMO/NBQ(Designate)/N.F.Railway**

1. That the said Dr. P. K. Deb, Sr.DMO/NBQ(Designate)/N. F. Railway, is on unauthorized absence from duty with effect from 17-12-2003.
2. By the aforesaid act, the said Dr. P. K. Deb, Sr.DMO/NBQ(Designate)/N. F. Railway, exhibited lack of devotion to duty and acted in a manner which is unbecoming of a Railway servant and thereby violated the provisions of para 3(1) (ii) & (iii) of Railway Services (Conduct) Rules, 1966.


(Shyam Kumar)
General Manager
N. F. Railway

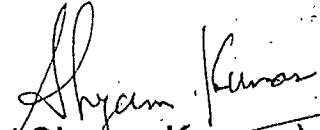
Annexure-II

**Statement of imputations of misconduct/misbehaviour
in support of Article of Charges framed against Dr. P. K. Deb,
Sr.DMO/NBQ(Designate)/N.F.Railway**

1. Dr. P. K. Deb, Sr.DMO/NBQ(Designate)/N.F.Railway, is remaining unauthorisedly absent with effect from 17-12-2003. That the said Dr. P. K. Deb was spared from APDJ on 16-12-2003 for joining at NBQ in terms of GM(P)/MLG's Office Order No.21/2003(Medical), circulated under No.E/283/III/130/Pt.XII(O) dated 16-12-2003. But instead of carrying out the order of transfer, he is remaining on unauthorized absence till date and has not reported to NBQ.

2. The said Dr. P. K. Deb, Sr.DMO/NBQ(Designate)/N.F.Railway was given another opportunity to join at NBQ vide GM(P)/ MLG's letter No.363E/I/583(O) dated 04-06-2004 advising him to report for duty within a period of one week from the date of issue of the letter but he has not reported for duty at NBQ Hospital till date.

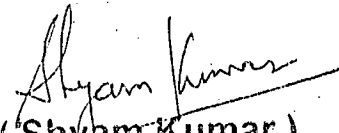
3. By the aforesaid act the said Dr. P. K. Deb, Sr.DMO/NBQ(Designate)/N.F.Railway, exhibited lack of devotion to duty and acted in a manner which is unbecoming of a Railway servant and thereby violated the provisions of para 3(1) (ii) & (iii) of Railway Services (Conduct) Rules, 1966.


(Shyam Kumar)
General Manager
N. F. Railway

Annexure-III

List of documents by which charges framed against
Dr. P. K. Deb, Sr.DMO/NBQ(Designate)/N. F. Railway are
proposed to be sustained

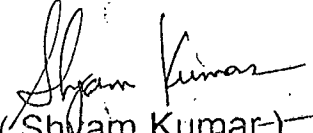
- 1) GM(P)/MLG's Office Order No.21/2003(Medical), circulated under No.E/283/III/130/Pt.XII(O) dated 16-12-2003.
- 2) GM(P)/MLG's letter No.363/I/583(O) dated 04-06-2004.
- 3) DRM(P)/APDJ's Office Order No.E/283/43(Med)AP/Pt.II dated 16-12-2003


(Shyam Kumar)
General Manager
N. F. Railway

Annexure-IV

List of witnesses by whom the article of charge framed
against Dr. P. K. Deb, Sr.DMO/NBQ(Designate)/N.F.Railway
are proposed to be sustained

N I L


(Shyam Kumar)
General Manager
N. F. Railway

-31-

(119) 97

(3)

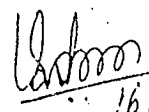
NORTHEAST FRONTIER RAILWAY

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

OFFICE ORDER

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

This has the approval of competent authority.


16/12/03
(S. Behera)
D.P.O/APDJ

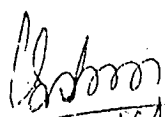
For Divl. Railway Manager(P),
N.F. Railway, Alipurduar Jn.

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

Dated: 16.12.2003.

Copy forwarded for information and necessary action to:-

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


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

Received
at 10-30 PM
12/12/03

12/12/03

3,2-
REGD-WITH-A/D
Northeast Frontier Railway

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

Dated: 04.06.2004

No. 363E/1/583(O)

To
Dr. P.K. Deb,
Sr.DMO/NBQ Hospital designate,
Bungalow No. 1224,
Hospital Colony,
Allpurduar Jn.,
Dist. Jalpaiguri.

Sub: Transfer to NBQ Railway Hospital.

Ref: GM(P)/MLG's office order No.21/2003 (Med) and
endorsement No.E/283/III/130/Pt.XII(O) dated 16.12.2003.

In terms of GM(P)/MLG's above-quoted office order, you are under order of transfer to NBQ Railway Hospital in the same capacity.

In spite of Hon'ble CAT/GHY's order dated 16.02.2004 in O.A. No.295/2003 and order dated 20.02.2004 in O.A.No. 295/2003, i.e. upholding your transfer order to NBQ Railway Hospital issued under GM(P)'s office order dated 16.12.2003, you have not yet reported for duty at NBQ Railway Hospital till date. Therefore, this act on your part tantamounts to your willful absence from duty unauthorisedly, leading to take up action against you under DAR rules.

You are, therefore, advised to report for duty at NBQ Railway Hospital within a period of one week from the date of issue of this letter, failing which action under DAR rule will be taken against you.

This issues with the approval of Competent Authority.

Please acknowledge receipt.

(P.K.Singh)
Dy.CPO(Gaz.)

for General Manager (Personnel).

Copy forwarded for information to:-

- 1) CMD/MLG.
- 2) DRM(P)/APDJ.
- 3) CMS/APDJ.
- 4) MS/IC/NBQ.

for General Manager (Personnel)

Attended
Advocate

Registered with acknowledgement due

Confidential

To

The General Manager,
North East Frontier Railway,
Maligaon, Guwahati - 11.

Through Dy CPO / GAZ / N.F.RLY / MLG (for kind
Attention of Mr P. K. Singh Dy CPO / GAZ)

Ref : your letter no. E / 74 / GAZ / 466 / CON dated
06.10.04 received by me on 04.11.04.

Respected Sir,

With utmost regard and humble submission I do hereunder submit the following few lines for your kind and sympathetic consideration please.

That sir, memorandum for major penalties has been issued against me bearing the no. quoted in reference.

I do hereunder firmly deny in totality, the charges and the imputations contained therein.

The charges and the imputations are far away from the factual position.

I am constrained to point out that, what wrong I have done after serving the railways for about eighteen years with extreme integrity, devotion to duty and rendering selfless service to the railways and the railway men, which has prompted the administration to serve the memorandum to my home address, that is Railway Bungalow no. 1224, Hospital Colony, Alipurduar Jn. while I am sick and this fact of my sickness and the type and intensity of my sickness, duly certified by a qualified doctor has already been sent to the railway administration vide letter dated 23.02.07. The fact of my sickness with proper medical certificate has also been sent to your kindself. This memorandum of charges received by me during my illness has come to me like a bolt from the blue and consequently aggravated my illness and have caused mental agony for my wife, my old mother and my child. In a nutshell, I never expected such treatment from my higher officials for whom so long I have extreme reverence and regard. In fact, I have done nothing wrong.

However sir, since I have denied the charges and the imputations thereto, I hope that you will kindly exonerate me from the charges so that I can serve the railways in peace and tranquility and without any let or hindrance.

If your honour deem otherwise, in that event I reserve the right to solicit seek, demand documents and evidences, witnesses as may be found necessary to prove my innocence.

Attested (✓)
Advocate

I do hereby nominate Sri Shyamal Kumar Chowdhury, Ex. OS under DRM (W) / APDJ (EX. General Secretary / N. F. Railway / Employees Union) as my defence assistant to help me if your honour order for a DAR enquiry. His consent letter in duplicate is also enclosed herewith. Facilities as provided in DAR rules may please be accorded to him.

Ultimately sir, I fervently conjure to your kindself to order for holding enquiry, if required, only after I am physically and mentally fit, as my disease as per certificate sent to you clearly state that my mental stage is not in perfect balance to undergo any ordeal of such enquiry. I also most humbly point out that till I am fit, holding any such enquiry with my present physical and mental condition will be contrary to the article 311 (II) of constitution of India, guiding concordance of such enquiries and may be ultravires and become null and void.

Thanking you sir, with extreme regards.

DA : one consent letter in duplicate.

P. K. Deb
(Dr P. K. Deb)

Dated, Alipurduar Jn.
The 10 th day of November, 2004.

Sr DMO / N. F. Railway /
Alipurduar Jn. (now under sicklist)

Attended
Advocate

To whom it may concern

I Sri Shyamal Kumar Chowdhury Ex. OS / DRM (W) / APDJ (Ex. General Secretary / N.F. Railway) do hereby accord my consent to act as defence assistant to Dr. P.K.Deb, Sr DMO / N.F. Railway in the ensuring DAR enquiry.

I also certify that I am not defending in any other case at present.

Shyamal Kumar Chowdhury
(Sri Shyamal Kumar Chowdhury)

Dated, Alipurduar the
8th November, 2004

Ex. OS / DRM (W) / APDJ

Ex. General Secretary / N.F.RLY.

Attested
[Signature]
Advocate

ANNEXURE K

STANDARD FORM NO. 7

STANDARD FORM OF ORDER RELATING TO APPOINTMENT OF INQUIRY
OFFICER/BOARD OF INQUIRY
(RULE 9(2) OF RS(D&A) RULES, 1968)

NO.
RAILWAY -
PLACE OF ISSUE -
DATE

E/74/GAZ/466/CON
NORTHEAST FRONTIER RAILWAY
MALIGAON
24-12-2004

ORDER

WHEREAS an inquiry under Rule 9 of the Railway Servants (Discipline and Appeal Rule, 1968) is being held against Dr. P.K. Deb, Sr. DMO/NBQ /N.F. Railway.

AND WHEREAS the undersigned considers that an inquiry officer should be appointed to enquire in the charges framed against him.

NOW THEREFORE the undersigned in exercise of powers conferred by the sub-rule (2) of the said Rule, hereby appoints Shri T. Rabha, CPRO/Maligaon/ N.F. Railway as an Inquiry Officer to enquire into the charges against the said Dr. P.K. Deb, Sr DMO/NBQ /N.F. Railway.

Signature

Name
(Designation of the Disciplinary Authority)

(A. K. SANWALKA)
GENERAL MANAGER
N.F. Railway

Copy forwarded for information and necessary action to:

- 1 CMD/MLG
- 2 Shri T. Rabha, CPRO/MLG/N.F. Railway
- ✓ Dr. P.K. Deb, Sr. DMO/NBQ (Hospital designate), Bungalow No. 1224, Hospital colony,
Alipurduar Jn., Dist-Jalpaiguri,

डा. म. कारिके. म. (सं.)
Dy. Chief Personnel Officer (G. Z.)
पु. सी. रेलवे, मालिगाव
N. F. Railway, Maligaon

Attested
By
Advocate

CONFIDENTIAL

NORTHEAST FRONTIER RAILWAY

Office of the
General Manager (P)
Mallgaon:Guwahati - 11

No.E/74/GAZ/466/CON

Date:20.12.04

To
Dr. P.K.Deb,
Sr.DMO/NBQ, (Hospital Designete)
Bungalow No.1224
Hospital Colony
Alipurduar Jn.
Dist - Jalpaiguri

Sub: Nomination of Defence counsel

Ref: Your Defence dated 10.11.04

In reference to above it is to intimate that Disciplinary Authority (GM) has approved the name of Shri Shyamal Kr. Chowdhury, Ex- OS/DRM(W)/APDJ (Ex-GS/NFREU) to act as Defence counsel in your DAR case. In this connection it is also mentioned that since DC has not mentioned his address for communication, his copy is also attached which may be communicated to him at your end please.

Ving
20/12/04
(P.K.SINGH)
Dy.CPO/GAZ
for General Manager (P)

Copy forwarded for information and necessary action to -

- 1) CMD/MLG
- 2) Shri Shyamal Kumar Chowdhury, Ex OS/DRM (W)/APDJ (Ex.GS/NFREU)

(P.K.SINGH)
Dy.CPO/GAZ
for General Manager (P)

Attested
[Signature]
Advocate

Annexure L
ANNEXURE L
92

NORTHEAST FRONTIER RAILWAY

Office of the
Chief Public Relations Officer,
N. F. Railway, Maligaon,
Guwahati - 781 011 (Assam)
Date: 30th March '05

No. PR/D/1/DAR (PKD)/CON

To,
Dr. P. K. Deb,
Sr. DMO/NBQ (*Designate*),
Bungalow No. 1224,
Hospital Colony,
Alipurduar Junction,
Dist. Jalpaiguri (West Bengal)

SUB.: Date for Conducting DAR Inquiry.

REF.: GM(P)/MLG's letter No. E/74/Gaz/466/CON dated 28-12-'04.

With reference to the orders of the General Manager, N. F. Railway nominating the undersigned as the Inquiry Officer to enquire into the charges brought against you vide memorandum No. E/74/Gaz/466/CON dated 04-10-'04, you are hereby informed that the inquiry has been fixed to be held at 09:30 hours on 13th April 2005 in the Office Chamber of the undersigned.

You are requested to attend the inquiry accordingly along with your defence counsel. (Please note that while fixing up this date, due cognisance has been taken of your letter dated 14-01-'05 informing the undersigned about your health condition then and therefore, in case you do not appear now for the inquiry on the said date, the inquiry may have to be held *ex parte*.)



(T. RABHA)

CPRO/NF RAILWAY & INQUIRY OFFICER

COPY FOR INFORMATION TO:-

1. Sri Shyamal Kumar Chowdhury, Babupara (Jamtala Road), P.O. Alipurduar, Jalpaiguri (West Bengal) PIN - 736 121 - Defence Counsel of Dr. P. K. Deb.
2. DRM/APDJ
3. CMD/MLG
4. DyCPO/Gaz/MLG

(T. RABHA)
INQUIRY OFFICER

Attended
Barua
(Advocate)

ANNEXURE - M

N.F. Railway (HQ),
Maligaon, Guwahati
Assam.

Date: 13-04-2005

To

Inquiry Officer
(CPRO N.F. Railway)
Maligaon, Guwahati.

Sub:- List of documents and witnesses solicited and to be taken into consideration.

As requested during the enquiry proceedings held in your chamber on date, this is to formally request you to please take into account for due consideration the documents as well as also call to bear witness the following officers as per list enclosed herewith in support of my defence against the charges brought out vide major memorandum No. U/74/Gaz/466/CON dated 04-10-2004.

It may be noted that I have already submitted photocopies of the five documents listed (item nos 1 to 5) personally to you on date for consideration.

DA: As above in two pages.

P. K. Deb
(Dr. P.K. Deb)

Attested
(Signature)
(Advocate)

-40-

N

NORTHEAST FRONTIER RAILWAY

OFFICE OF CPRO/MALIGAON

ANNEXURE N

ENQUIRY PROCEEDINGS

DATE: WEDNESDAY-13TH APRIL 2005

(Ref: Major Memorandum of charge sheet No. E/74/Gaz/466/CON dtd. 4-10-2004
issued by GM, N.F. Railway)

INQUIRY OFFICER: Trikalagya Rabha, CPRO, N. F. Railway (as nominated
by GM, N. F. Railway vide SF-7 No. E/74/Gaz/466/CON
dtd. 24-12-2004)

CHARGED OFFICER: Dr. P. K. Deb, Sr. DMO/NBQ (Designate)

DEFENCE COUNSEL: Shri Shyamal Kumar Chowdhury

1. 9:30 HRS. Reporting by Dr. P. K. Deb, Sr. DMO (Designate)/NBQ & Shri
Shyamal Kumar Chowdhury, his Defence Counsel.

2. 9:35 HRS. The above-named charged officer was asked to formally confirm
the receipt of the said major memorandum of charge-sheet along
with all the contents as well as the list of documents mentioned therein. He was also
asked to confirm whether he had any additional points or documents to submit in support
of his defence.

3. The list of questions and the answers as given by Dr. P. K. Deb are recorded below.

Q1. Dr. Deb do you confirm the receipt of major memorandum of charge sheet No.
E/74/Gaz/466/Con Dt. 4/10/2004 issued by GM N.F. Railway and are you also
aware of the articles of charges framed against you?

Ans. Yes

Q2. Dr. Deb, are you aware of the list of documents listed under Annexure-III of the
said charge sheet by which the charges framed against you are proposed to be
sustained?

Ans. Out of the three documents listed in Annexure-III of the charge-sheet, I had
received only item no. 3 (i.e., DRM(P)/APDJ's O.O. No. E/283/43(Med)/AP/Pt. II
dated 16-12-2003) in original and not the documents listed as nos. 1 & 2.
Subsequently, only photocopies of the documents listed as items no. 1 & 2
(viz., GM.(P)/MLG's O.O. No. 21/2003 (Medical) vide No. E/283/III/130/PL
XII(O) dated 16-12-2003 and GM(P)/MLG's letter No. 363/I/583(O) dated
4/6/2004), were also received but along with the charge sheet only.

P. K. Deb
13/4/05
(Dr. P. K. Deb)
Sr DMO/NBQ (Designate)

13/4/05
(Trikalagya Rabha)
CPRO & IO

Attested
By
Advocate

Q3. Dr. Deb, do you accept the charge that you are on unauthorised absence from duty w.e.f. 17/12/2003 and that thereby you have violated the provisions of para 3(1)(ii) & (iii) of the Railway Services (Conduct) Rules, 1966?

Ans. No, I deny the charge. I am sick and when I shall be fit I shall resume my duty.

Q4. Dr. Deb, since when have you reported sick?

Ans. I have been under sickness since 20/02/2004 as per private medical certificate issued by the then Medical Officer, Govt. of West Bengal, Alipurduar Civil Hospital - Dr. S.P. Ghosh, Hospital Road, Alipurduar, Dist. Jalpaiguri. I am hereby submitting a photocopy of the said medical certificate dated 20/02/2004 to you. I had also intimated this to CMD/MLG vide my letter dated 23/02/2004. I am hereby submitting a photocopy of this letter also.

Q5. Dr. Deb, what is the basis on which you deny the charge as brought out in the said charge sheet?

Ans. I have already explained in reply to your earlier questions that I am not at all unauthorisedly absent but have been bound by Registered Medical Practitioner's certificate to remain in sick list and I am residing in Railway Bungalow situated at Alipurduar Jn. Thus the charge of unauthorised absence is totally wrong and erroneous.

Further, in order to support my basis, I request for the consideration of certain other documents also as well as the attendance of DyCPO/Gaz/MLG and DPO/APDJ as court witnesses fixing a final date of inquiry ensuring availability of documents and witnesses to clarify all the points. I am submitting a formal letter of request to this effect today to you listing out the documents and witnesses that also need to be considered.

Q6. Dr. Deb, is there any other point that you would like to add finally to what has already been stated by you?

Ans. I only seek and solicit justice.

4. Having received the formal request for consideration of additional documents and the request for the presence of DyCPO/Gaz/MLG and DPO/APDJ, the enquiry proceedings were concluded. The additional documents as provided to I.O. will be perused and if necessary, further enquiry will be held.

(Dr. P. K. Deb)

(Shri S.K. Chowdhury)

(Trikalagya Rabha)
CPO & IO

Sr DMO/NBQ (Designate)

D.C.

LIST OF DOCUMENTS AND WITNESSES SOLICITED AND TO BE TAKEN INTO CONSIDERATION

Documents produced at the enquiry from the side of the defendant.

- 1) Sick certificate issued by Dr.S.P. Ghosh, MD certifying the sickness of the defendant.
- 2) Sick report send by Dr.P.K.Deb to CMD / MLG dated 23-02-04.
- 3) CMD / N.F.Railway, MLG's Letter No- H / SS / 1 / Pt- V Dated 16-01-04 to Dr. P. K. Deb asking him to join as Sr.DMO / N.F.Rly / APDJ which has not been complied with the Railway administration. Enquiry should be made by calling officials for fact finding while this order was not carried out by the Railway administration.
- 4) No- H / SS / 1 / Pt-V Dated 27-01-04 conveying CMD's order for posting of Dr. P.K.Deb as Sr. DMO / APDJ, the reason and papers may please be produced at the inquiry why HOD's order was not carried out. As such for all intent, content, meaning of the rule Dr.P.K.Deb is Sr.DMO / APDJ as per order of CMD / MLG as this order has not been contradicted by issuing any other subsequent transfer order and the memorandum mentioning him as Sr.DMO / NBO (Designate) is wrong. Since further order after CMD's posting order him at APDJ has not been contradicted by issuing further posting order from anybody.
- 5) CMS / APDJ vide letter no- H / EG / 2 (Gazetted) dated 22-12-03 to CMD requesting for posting of Dr.P.K.Deb, Sr. DMO may please be seen wherein his good work as Sr.DMO / APDJ as well as his personal problems has been mentioned and recommendation had been made for posting at APDJ.
- 6) Dy. CPO/ Gaz / MLG may be called at the inquiry with papers to understand the circumstances how CMD's letter no- H / SS / 1 / PT-V dated 27-01-04 could not be complied by the personal branch.
- 7) Dy CPO/G as well as DPO / APDJ may please be called in the inquiry as Court witnesses to ascertain fact which led to the non compliance of CMD's and CAT / GHY's orders as well as ascertain the causes and reasons for non-sending the documents listed as prosecution documents No- 2 & 3 to the defendant. Regarding letter PD (3), the letter has been signed by senior grade official transferring a J. Grade officer only mentioning this has the approval of competent authority without furnishing the original copy of the order. He may also be called in inquiry to ascertain the fact.

f.u. 006

Co.

Dr. P. K. Deb

The above documents will amply prove that I am only on sick list and not in unauthorized absence as mentioned in the memorandum and on production of the said documents and witnesses the case will be crystal clear to your kind self. The charge brought against me are far away from the factual position and I am innocent in all respect.

P. u. ved
CO 13/4/08

Defence Assistant

A Hester
Stamp
Advocate

NORTHEAST FRONTIER RAILWAY
OFFICE OF CPRO/MALIGAON

ENQUIRY PROCEEDINGS (FINAL)

DATE: WEDNESDAY 04TH MAY 2005

(Ref: Major Memorandum of charge sheet No. E/74/Gaz/466/CON dtd. 4-10-2004
issued by GM, N.F. Railway)

9:30 HRS.

Reporting by Dr. P. K. Deb, Sr. DMO (Designate)/NBQ & Shri
Shyamal Kumar Chowdhury, his Defence Counsel.

Q1. Dr. Deb whereas you have been charged for unauthorised absence since 17-12-03, you have yourself admitted to reporting sick only w.e.f 20-02-04. How do you explain the period of absence from 17-12-03 to 20-02-04?

Ans. With the transfer order as per normal procedure I should have been given 10 (ten) days joining time. Unfortunately I was not intimated about the same. Moreover, due to the sudden transfer I was mentally broken down as my octogenarian mother who stays with me has been suffering from old age related 'Parkinsonism' requiring my daily medical check-up and medication. Moreover, I was also concerned about the fate of my wife who is serving as a doctor at the Birpara State General Hospital, under the Govt. of West Bengal and my daughter who is studying in Stepping Stone Model School, Alipurduar - requiring escort to and from the school. Under these compelling circumstances I applied for leave for 5 (five) days of casual leave as due to me w.e.f 17-12-03 and 15 (fifteen) days of LAP w.e.f 23-12-03. My application for this was received by CMS/APDJ's Office under signature and seal. This transfer order was so hard on me that I felt sick myself due to extreme mental and emotional stress. In the meantime I also moved the matter in the Central Administrative Tribunal/Guwahati in a puzzled mood who very kindly put a stay order on my transfer on 30-12-03 keeping the transfer order issued by DRM/P/APDJ dt. 16-12-03 in abeyance till the end of the academic session of my daughter's school, i.e., 31-3-04. Moreover, Sir on the advice of the then GM, Mr. Vipin Nanda I did withdraw the case by applying to CAT/GHY and the case was withdrawn by me w.e.f 20-02-04. The then GM had promised me that I would be posted as Sr. DMO/APDJ on withdrawal of the case.

From the side of the Railway Administration CMD issued orders for my posting as Sr. DMO/APDJ but unfortunately CMD's order has still not been implemented by the Administration.

Q2. Dr. Deb, did the Railway Administration sanction any of the leaves applied by you officially?

Ans. No. No correspondence in this regard was received by me.

(Dr. P. K. Deb)

Sr DMO/NBQ (Designate)

(Trikalagya Rabha)
CPRO & IO

Attested
Advocate

Q3. Dr. Deb, as a Railway Medical Officer yourself, I am sure you know that a railway employee has to observe certain formal procedures in order to undergo medical treatment or be declared 'sick'. But in your case you have not produced any RMC and have only produced non-railway medical certificate. Why?

Ans. Sir, for this please allow me to explain the circumstances under which I was handed over the transfer order. On the evening of 16-12-03, after office hours I was called from my residence by DPO/APDJ to the chamber of CMS/APDJ and I was given the transfer order issued by DRM(P)/APDJ and not the original transfer orders from GM(P)/MLG - although it was a routine transfer order as stated by CMD/MLG. (I am submitting a copy of CMD's said letter to me.) The next morning ADRM/APDJ sent one staff to my residence to collect the keys of my chambers in the Railway Hospital, APDJ. I was not given any scope to hand over the charge of the Radiology Department nor the Stores Department which I was looking after at that time. I was not even allowed to enter my chambers to collect my personal books and journals. On 18-12-03, I appealed to CMD/MLG through proper channel for my retention at APDJ. Under these circumstances I had no scope to be treated by Railway doctors and even though I was sick, they were not in a position to declare me sick. So I had to get my treatment from the State Government doctor.

Q3. Dr. Deb, is there any other point that you would like to add finally to what has already been stated by you?

Ans. I wish to explain that I was mentally extremely depressed and felt sick. That is why I had to resort to certain acts which normally I would have never resorted to if I was physically fit and mentally alert. Although it was said to have been a routine and a normal transfer, the manner in which I was forcibly handed the order at odd hours without giving me any scope to hand over my charge or avail joining-time, shows otherwise. I therefore humbly request the Administration to be fair and just to me.

Having ascertained from the CO - Dr P. K. Deb - that he had no other point to raise in support of his cause, the enquiry proceedings are hereby concluded.

P. K. Deb
(Dr. P. K. Deb)
Sr DMO/NBQ (Designate)

S. K. Chowdhury
(Shri S.K. Chowdhury)
Defence Counsel 24/5/2005

T. K. R. R.
04/5/05
(Trikalya Raha)
CPRO & IO

A. Heston
Advocate

N. F. Railway

ANNEXURE - P

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

CONFIDENTIAL
No.E/74/GAZ/466/CON

19 MAY 2005

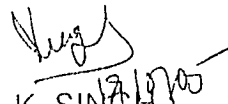
To
Dr. P. K. Deb,
Sr.DMO/NBQ(Hospital Designate),
Bungalow No.1224,
Hospital Colony,
Alipurduar Jn.,
Dist. Jalpaiguri.

Sub:- Final Defence on Inquiry Report.

A copy of Inquiry Report received from Shri T. Rabha, Chief Public Relations Officer, N. F. Railway, Maligaon, (Inquiry Officer in your case) is enclosed herewith. A blank format of acknowledgement is also sent herewith which may please be acknowledged and send to the undersigned for record please.

2 In this connection, it is mentioned here that if you like to submit your final defence against the Inquiry Report, you may submit the same within fifteen days of receipt of this letter, failing which it will be presumed that you have no comment to offer on it and action will be taken as deemed fit.

DA:- As above


(P. K. SINGH)
Dy.Chief Personnel Officer(Gaz)
For General Manager (P)

*Allocated
B. and
Advocate*

ACKNOWLEDGEMENT

Received one confidential letter bearing No.E/74/GAZ/466/CON dated 19.05.05 with a copy of Inquiry Report from GM(P)/Maligaon.

Signature _____

Name (in full) _____

Designation _____

Date _____

NORTHEAST FRONTIER RAILWAY

INQUIRY REPORT of MAJOR DAR PROCEEDINGS against Dr. P. K. Deb, Sr.DMO/NBQ(Designate)

1.0 PREAMBLE:

- 1.1 In terms of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, the undersigned was appointed as the Inquiry Officer (IO) by GM, N. F. Railway (vide SF-7 No.E/74/Gaz/466/CON dtd. 24-12-2004) to enquire into the major charges framed against Dr. P. K. Deb, Sr.DMO/NBQ (*Designate*), herein after referred to as the Charged Official (CO).
- 1.2 The major penalty charge-sheet bearing no. E/74/GAZ/466/CON dated 04-10-2004 issued by GM/N. F. Railway along with the annexures and copies of relied upon documents was received by the CO on 04-11-2004.
- 1.3 The CO, thereafter vide his letter dated 10th November 2004, nominated Shri Shyamal Kumar Deb, ex-OS under DRM(W)/APDJ & ex-Gen. Secy./NFREU as his Defence Counsel (DC).
- 1.4 The Preliminary Enquiry was fixed on 13th April 2005 at 09:30 hours in the chamber of the IO at Maligaon. The CO was advised accordingly vide IO's letter No. PR/D/I/DAR (PKD)/CON dated 30th March 2005 and both the CO and his DC attended the enquiry.
- 1.5 The Final Enquiry was subsequently held on 04th May 2005 at 09:30 hours in the chamber of the IO at Maligaon. The CO was advised accordingly vide IO's letter No. PR/D/I/DAR (PKD)/CON dated 26th April 2005 and both the CO and his DC attended the enquiry.

2.0 CHARGES & IMPUTATIONS: -

- 2.1 In terms of Article-1 of the charge-sheet, Dr. P. K. Deb, Sr. DMO/NBQ (*Designate*) has been charged for unauthorised absence from duty w.e.f. 17/12/2003.
- 2.2 As per the statement of imputations of misconduct, the Charged Official (CO) was spared on 16-12-2003 to carry out his transfer from APDJ to NBQ {as per GM(P)/MLG's O.O. No. 21/2003(Medical) circulated under No.

E/283/III/130/Pt. XII(O) dated 16-12-2003} but has not carried out the said order till date.

- 2.3 Further, the CO was given another opportunity to join at NBQ vide GM(P)/MLG's letter No. 363E/I/583(O) dated 04-6-2004 advising him to report for duty within one week but he has not done so till date.
- 2.4 In terms of Article-2 of the charge-sheet, by his above-mentioned acts the CO has thereby exhibited lack of devotion to duty and acted in a manner unbecoming of a railway servant.
- 2.5 He has been therefore charged for violation of rules 3(1) (ii) & (iii) of the Railway Services (Conduct) Rules, 1966.

3.0 THE ENQUIRY:-

- 3.1 The preliminary enquiry was held on 13-4-2005 and the final enquiry was held on 04-5-2005 in the chamber of CPRO, MLG. The CO and his Defence Counsel (DC) were present on both the days. The Railway Administration had not appointed any Presenting Officer and therefore the charge-sheet was read out and explained to the CO by the IO.
- 3.2 The enquiry proceedings of both the above-mentioned days have been recorded in writing under the clear signatures of the CO, the DC and the IO. *(These have been enclosed as Annexures - A & B.)*
- 3.3 CONFIRMATION of RECEIPT of CHARGE-SHEET: During the preliminary enquiry, the CO formally confirmed the receipt of the charge-sheet, out of the three documents listed in Annexure-III of the charge-sheet (by which the charges framed are proposed to be sustained), the CO **admitted to having received only item no. 3** i.e., DRM(P)/APDJ's O.O. No. E/283/43(Med)AP/Pt.II dated 16-12-2003 - sparing him from APDJ to carry out his transfer to NBQ. The CO however, **denied having received items no. 1 & 2 in original** i.e., GM(P)/MLG's O.O. of transfer dated 16-12-2003 and DyCPO/Gaz's letter dated 04-6-2004 advising him to report for duty at NBQ Railway Hospital within one week.

3.4 Besides the three relied upon documents of the Administration (as listed in Annexure-III of the charge-sheet), the CO further submitted a written request to the IO to consider five additional documents and two witnesses (viz., DyCPO/Gaz & DPO/APDJ) for examination - in support of his stand. (*Request letter enclosed as Annexure - C.*)

3.5 Apart from the three relied upon documents listed under Annexure-III of the charge-sheet the following documents were also taken into account for the enquiry:

- i) Private Medical Certificate issued by Dr. S. P. Ghosh, Physician & Cardiologist, Hospital Road, Alipurduar. (*Annexure - D*)
- ii) CO's letter dated 23-02-2004 to CMD/MLG informing him about reporting sick. (*Annexure - E*)
- iii) CMD/MLG's letter No. H/SS/1/Pt-V dtd. 16th January, 2004 to CO. (*Annexure - F*)
- iv) DyCMD/T&A's letter No. H/SS/1/Pt.V dated 27-01-2004 to CMS/APDJ. (*Annexure - G*)
- v) CMS/APDJ's letter No. H/EG/2(Gazetted) dtd 22-12-'03 (*Annexure - H*)
- vi) CMD/MLG's letter No. H/98/G dated 08-01-2004 to the CO against his representation dated 18-12-2003 against transfer to NBQ. (*Annexure - I*)
- vii) CAT/GHY's order on OA-295/03 dated 30-12-2003. (*Annexure - J*)
- viii) CAT/GHY's order on OA-295/03 dated 16-02-2004. (*Annexure - K*)
- ix) CAT/GHY's order on OA-295/03 dated 20-02-2004. (*Annexure - L*)
- x) CO's letter to CMD/MLG dated 23-12-2003 seeking fifteen days LAP w.e.f. 23-12-2003. (*Annexure - M*)

4.0 CASE OF DEFENDANT (CO):

4.1 The CO has denied the charge that he is on unauthorised absence. He has claimed that he has reported sick under a non-railway medical authority w.e.f. 20-02-2004. He would resume duty once he is medically fit. Moreover, as he is residing in a railway bungalow at APDJ, the CO claims that he is not on unauthorised absence.

4.2 The CO has also denied the receipt in original of the following two relied upon documents as listed under Annexure-III of the charge-sheet at the material time:

Item no. 1 {i.e., GM(P)/MLG's O.O. No. 21/2003 (Medical) vide No.E/283/III/130/Pt. XII (O) dated 16-12-2003 – the transfer order issued by GM(P)/MLG}

&

Item no. 2 {i.e., GM(P)/MLG's letter No. 363/I/583(O) dated 4/6/2004 – advising the CO to join duty within one week of its issue. }

4.3 The CO submitted a request for taking into consideration five documents (*copies given during the enquiry*) as well as for calling DyCPO/Gaz and DPO/APDJ as witnesses.

4.4 The CO has stated that after receiving the office order issued by DRM(P)/APDJ sparing him from APDJ on 16-12-2003, he applied for leave for 5 (five) days of casual leave as due to him w.e.f. 17-12-03 and 15 (fifteen) days of LAP w.e.f. 23-12-03.

5.0 ASSESSMENT OF EVIDENCE:

5.1 The CO – Dr. P. K. Deb, while serving as SrDMO/APDJ was transferred to NBQ in his existing capacity in terms of GM (P)/MLG's O.O. No. 21/2003 (Medical) circulated vide No. E/283/III/130/Pt. XII(O) dated 16-12-2003 and spared on the same day from APDJ to carry out the order vide DRM(P)/APDJ's O.O. No. E/283/43(Med)AP/Pt.II dated 16-12-2003.

5.2 As per the CO's request, I have carefully examined the need to call DyCPO/Gaz and DPO/APDJ to bear witness. However, since there was no additional information which these officers could have provided apart from what was already available and relevant to this case I found no reason to call them.

5.3 Moreover, the CO's reasoning that the non-receipt of two of the relied upon documents at the material time (referred to afore in para 4.2) has been considered carefully. Owing to the fact that the sparing orders issued by DRM(P)/APDJ were based on the very order issued by GM(P)/MLG, I do not find this as a strong enough reason for challenging the sparing orders of DRM(P)/APDJ or affecting the CO adversely. Secondly, while the CO was supposed to comply with his transfer orders in time, not having received

GM(P)/MLG's subsequent letter {No. 363/1/583(O) dated 4/6/2004} - advising him to join duty within one week of its issue - cannot in any way justify the reason for not joining duty - as the CO still claims to be under private medical treatment.

- 5.4 I have however, considered the request of the CO to take into account five additional documents submitted by him (during the preliminary enquiry) in support of his defence as well as those submitted later on by him & the Administration during the final enquiry.

6.0 FINDINGS:

- 6.1 After careful consideration of all documentary evidence, available records, the circumstances of the case as well as the statements of the CO - Dr. P. K. Deb, I find that he has not been able to prove his defence. Hence, I find that both the charges of being on unauthorised absence w.e.f. 17-12-2003 till date as well as that of acting in a manner unbecoming of a railway servant, as brought out against the CO, have been established.

7.0 REASONS FOR FINDINGS:

- 7.1 The CO - Dr. P. K. Deb has been on unauthorised absence w.e.f. 17-12-2003 because he has not been able to produce any letter sanctioning him leave of any nature after his sparing and nor has he submitted any proper medical certificate issued by a competent Railway Medical Authority covering the period immediately after 16-12-2003 - in order to support his defence.
- 7.2 After he was spared from APDJ on 16-12-2003 to carry out his transfer to NBQ, the CO did not do so on grounds of being sick by his own admission but instead of following the correct procedure of reporting to the nearest railway medical establishment, i.e., Divisional Railway Hospital, APDJ for treatment, he produced a medical certificate from a non-railway medical practitioner dated 20-02-2004 much later - i.e., after more than two months of having been spared. Even if seeking treatment from a non-railway medical practitioner like Dr. S. P. Ghosh of APDJ was required, as per extant rules the CO should have approached him only through a proper railway medical reference.

GM(P)/MLG's subsequent letter {No. 363/I/583(O) dated 4/6/2004} – advising him to join duty within one week of its issue – cannot in any way justify the reason for not joining duty – as the CO still claims to be under private medical treatment.

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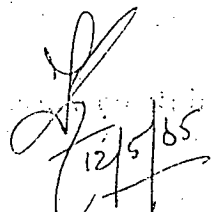
- 7.3 Moreover, the CO's explanation for seeking non-railway medical treatment instead of railway medical facilities is also not based on any concrete evidence. He has presumed that he would have been denied medical treatment at APDJ Railway Hospital but he has not submitted any evidence to prove that he had approached the railway medical authorities for the treatment of his sickness.
- 7.4 Thus, despite being a fairly experienced and senior railway employee the CO has neither followed the rules for proceeding on leave nor the correct procedure for reporting sick which he is very well aware of as an experienced Railway Medical Officer.
- 7.5 I have also taken into account all the documents submitted for consideration by the CO as well as the Administration. I have however seen that the documents submitted by the CO do not prove that he is not on unauthorised absence. Apart from the private medical certificate and the CO's letters, the various orders of CAT/GHY (OA-295/03) are only indications of his efforts at trying to get the order of transfer to NBQ cancelled/stayed. (In fact even the petition filed by him before Hon'ble CAT/GHY against his transfer to NBQ vide OA no. 295/03 has been disposed off in favour of the Railway Administration vide its order dated 16-02-2004.)

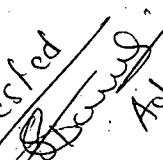
Therefore, in view of the above both the charges (*of unauthorised absence w.e.f. 17-12-2003 and of acting in a manner unbecoming of a railway servant*) against Dr. P. K. Deb, SrDMO/NBQ (*Designate*) as brought out in the major charge-sheet No. E/74/Gaz/466/CON dtd. 04-10-2004 issued by GM, N.F. Railway, are established beyond doubt.

Maligaon

Date: 12-5-2005

s/c


(Trikalagya Rabha)
CPRO & IO

Attested

Advocate

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

CONFIDENTIAL

(Through Dy CPO / GAZ / MLG)

Sir,

Sub : Final defence on the report submitted by
Sri T. Rabha, CPRO / MLG and I/O in this case.

Ref : No. E/74/GAZ/466/CON dated 19/05/2005.

With humble submission I beg to state that the inquiry report submitted by I/O is far away from the factual position, as in the memorandum of charges it has been alleged that I have violated article 3(i), (ii) and (iii) of railway service conduct rule 1966 by remaining unauthorizedly absent whereas at 3.5 at page 2 of the report details ten papers which clearly proves that I was in correspondence with the railway administration and CAT / Guwahati and I was residing in railway bungalow no 1224, Hospital Colony, Alipurduar Jn. Thus I was not unauthorizedly absent at all.

I fell sick and was under treatment of a renowned doctor who was attached with civil hospital, Alipurduar and who is also sometimes called at Alipurduar Jn. railway hospital as a consulting physician for the treatment of critically ill patients. I was certified sick by him and the sick report with the certificate was submitted to the railway administration. Thus question of unauthorized absence does not arise at all. I was present in my bungalow and was under medical treatment and was in correspondence with the railway administration, thus the whole allegation is wrong and erroneous. Moreover I was not asked by the administration at any stage to obtain railway medical certificate. Getting treatment from a doctor on whom confidence of the patient is reposed can not be questioned by anybody nor there is any bar in the constitution of the country specially under article 311 (ii) is there. Thus my action to get medicare from Dr S. P. Ghosh, MD can not be questioned.

The I/O has come to the conclusion that I should have got my treatment from railway hospital and sick certificate should have been from a railway doctor as opined by him at para 7.4 of his report but neither it is in the memorandum of charges nor in his report he has mentioned any railway rule by which I was bound to take railway treatment only. On the contrary my sickness and treatment is being undergone under the guidance supervision of a doctor much more experienced than anybody available at the Alipurduar railway hospital.

Devoid of any stipulated rule whereby it was bounded to get my treatment from railway doctor I was and is free to get proper medicare from any doctor who is

Attended
(Advocate)

considered more efficient and having more expertise in the field and in absence of any rule being cited in the memorandum or in the I/O's report treating me being unauthorized absent fully knowing that I was sick and is even now sick and under treatment is contrary to the rules as well as the I/O has come to conclusion that I was unauthorizedly absent since I did not get treatment under railway doctor but without any such rule in vogue or being quoted in the memorandum of charges on the report, this is absolutely far away from rules or the cannon of natural justice. As such the case against me has not been proved at all and I deserve exoneration from the charges.

Thanking you with regard,

Yours faithfully,

P. K. Deb

(Dr P. K. Deb)

Sr DMO / APDJ.

15. 06. 2005.

*Accepted
D. K. Deb
(Advocate)*

Dr. P. K. Deb, Sr.DMO/NBQ (designate)
Bungalow NO. 1224,
Hospital Colony, Alipurdwar Junction
Dist - Jalpaiguri (West Bengal)

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ANNEXURE - R

NORTHEAST FRONTIER RAILWAY

MEMORANDUM

In terms of Railway Board's order No.E(0)F-2005/PU-2/NF/58 dtd. 01.05.06 Dr.P.K. Deb,(IRMS) Sr.DMO/NBQ(designate)/N.F.Railway is dismissed from service w.e.f. 01.05.06 (i.e. from the date of issue of Board's order).

(P.K. SINGH)
Dy. CPO/GAZ
for General Manager (P)

No.E/74/GAZ/466/CON.

Dated.12.05.06

Copy forwarded for information and necessary action to:

1. CMD/MLG
2. FA & CAO/EGA/MLG
3. FA & CAO/PF & Pension /MLG
4. DRM/APDJ
5. DRM(P)/APDJ & DFM/APDJ
6. HC(E)/FS/EO Section/MLG
7. Chief OS/EO Section
8. Dr. P.K. Deb, Sr.DMO/NBQ(designate), Bungalow No.1224,Hospital colony, Alipurdwar Junction, Dist-Jalpaiguri (West Bengal).

(P.K. SINGH)
Dy. CPO/GAZ
for General Manager(P)

Affected
Bans
Advocate

- 58 -

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GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(O)I-2005/PU-2/NF/58

New Delhi, dated 11-05-2006

ORDER

Whereas Disciplinary Proceedings for Major Penalty under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 were initiated against Dr. P.K. Deb, IRMS, Sr. DMO/NBQ(Designate), N.F. Railway by the General Manager, N.F. Railway by way of issuing a Charge Memorandum No. E/74/GAZ/466/CON dated 4-10-2004 for the following :-

"Dr. P.K. Deb, Sr. DMO/NBQ(Designate)/N.F. Railway, is remaining unauthorisedly absent with effect from 17-12-2003. That the said Dr. P.K. Deb was spared from APDJ on 16-12-2003 for joining at NBQ in terms of GM(P)/MLG's Office Order No. 21/2003(Medical), circulated under No. E/283/III/130/Pt. XII(O) dated 16-12-2003. But instead of carrying out the order of transfer, he is remaining on unauthorised absence till date and has not reported to NBQ.

The said Dr. P.K. Deb, Sr. DMO/NBQ(Designate), was given another opportunity to join at NBQ vide GM(P)/MLG's letter No. 363E/II/583(O) dated 4-6-2004 advising him to report for duty within a period of one week from the date of issue of the letter but he has not reported for duty at NBQ Hospital till date.

By the aforesaid act the said Dr. P.K. Deb, Sr. DMO/NBQ(Designate)/ N.F. Railway, exhibited lack of devotion to duty and acted in a manner which is unbecoming of a Railway servant and thereby violated the provisions of para 3(1) (ii) & (iii) of Railway Services (Conduct) Rules, 1966".

2. Whereas after considering the defence statement dated 10-11-2004 submitted by the said Dr. P.K. Deb, the case was remitted to inquiry by the General Manager, N.F. Railway, appointing Shri Trikalagya Rabha, CPRO, N.F. Railway as the Inquiry Officer.

3. Whereas in the inquiry report dated 12-5-2005 submitted by Shri Rabha, the Inquiry Officer, both the Articles of Charge against Dr. Deb were held as proved beyond doubt. Further, following the extant procedure, a copy of the IO's report was sent to Dr. P.K. Deb to enable him to make a representation thereagainst, if any. Dr. Deb submitted his representation dated 15-6-2005 denying both the Articles of Charge.

4. And whereas, after going through the proceedings of the case, the General Manager, N.F. Railway had opined that the offence is serious enough

contd...../-

- 5 -

warranting imposition of a Major Penalty and therefore recommended to forward the case to Railway Board for taking further necessary action, as imposition of Major Penalty on a Group 'A' officer is not within the competence of the General Managers of the Zonal Railways.

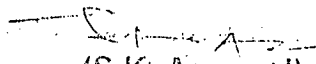
5. Now, therefore, the President, after carefully considering the Charge Memorandum, proceedings of the inquiry, the inquiry report, Dr. P.K. Deb's representation thereagainst as also other records/aspects relevant to the case, in due consultation with the Union Public Service Commission (UPSC), an statutory body, has observed/concluded that for the detailed reasons given in the Commission's advice communicated vide their letter No. F.3/335/05/SI dated 3/7-3-2005 (copy enclosed) the charges against Dr. P.K. Deb are proved and also indicative of commission of grave misconduct on his part and therefore, ends of justice would be met if the penalty of "Dismissal from Service" is imposed on the said Dr. P.K. Deb.

6. Accordingly, the penalty of 'Dismissal from Service' is hereby imposed on the said Dr. P.K. Deb.

7. The said Dr. P.K. Deb is required to acknowledge receipt of this order in writing.

BY ORDER AND IN THE NAME OF THE PRESIDENT.

DA: As above.


(S.K. Agarwal)
Deputy Secretary/E(O)I
Railway Board.

Dr. P.K. Deb, IRMS
Sr. DMO/NBQ(Designate)
Northeast Frontier Railway
Maligaon
Guwahati.

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CONFIDENTIAL



ADVICE OF
UNION PUBLIC SERVICE COMMISSION
IN THE
DISCIPLINARY PROCEEDINGS
AGAINST
DR. P.K. DEB, IRMS.
MINISTRY OF RAILWAYS.

संघ लोक सेवा आयोग
धीलपुर हाउस, शाहजहाँ रोड
UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD

Recd 3/3/05

The Secretary,
Ministry of Railways,
(Railway Board),
New Delhi.

(Attention: Shri K.K. Sharma, J.S.(E&P)

(Subject: - Major penalty action against Dr.P.K. Deb, IRMS, Sr. DMO/NBQ
(Designate), N.F. Railway.

Sir,

I am directed to refer to your letter No. E(O)I-2005/PU-NF/58 dated 27.09.2005 on the above mentioned subject and to convey the advice of the Union Public Service Commission as follows.

2. The Commission note that vide memorandum NO.E/74/Gaz./466/CON dated-04-10-2004 issued under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 to Dr.P.k.Deb,Sr.DMO/NBQ and he was called upon to answer the following article of charge:

Article-I

That the said Dr.P.K.Deb, Sr.DMO/NBQ(Designate)/N.F. Railway is on unauthorized absence from duty with effect from 17.12.2003.

By the aforesaid act, the said Dr.P.K.Deb, Sr. DMO/NBQ (Designate)/N.F. Railway, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby violated the

K. V. Rao

provisions of para 3(1) (ii) & (iii) of Railway Services (Conduct) Rules, 1966.

2.1 The Commission note that a statement of imputations of misconduct/misbehaviour in support of Article of Charge framed was annexed to the charge memo. The CO denied the charge and DA after considering the defence statement 10.11.2004 of the CO, remitted the case to the inquiry. The IO submitted his report dated 12.5.2005 and held the charge as proved beyond doubt. A copy of the IO's report was sent to the CO to enable him to make a representation there against, if any. The CO submitted his representation dated 15.6.2005. After considering the IO's report, CO's representation and all other records relevant to the case, the DA came to the conclusion that the charge was clearly proved and therefore, decided to impose a major penalty on the CO. All the case records have now been forwarded to the Commission for tendering their advice in the matter.

3. Records of the case have been examined carefully by the Commission and the evidence on record brings out the following facts:-

(1) The CO was serving as Sr. DMO/Alipurduar Jn. (APDJ).

(2) Vide Office Order No. GM(P)MLG's Office Order No.21/2003 (Medical) circulated under no. E/283/43(Med)AP/Pt.II dated 16.12.2003, he was transferred to New Bongaigaon as Sr.DMO/BNQ and was relieved on the same date from his place of posting.

(3) The CO failed to report to his new place of posting and sent a representation requesting that he be allowed to stay at the same place.

(4) The CO also submitted a Medical Certificate from a non-Railway doctor regarding his illness.

(5) The main defence of the CO is that he was sick and receiving treatment from a qualified doctor who was attached with the Civil Hospital, Alipurduar. He further states that it was not incumbent upon him to get treatment from the Railway Hospital or a Medical Certificate from the Railway Hospital.

(6) The representation of the CO was considered by the Chief Medical Director and rejected. He was again directed to join at the new place of posting failing which disciplinary action would be taken against him.

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(7) The CO also moved the CAT, Guwahati and obtained a stay which was vacated later on.

(8) The CO has not reported for duty even so far.

(9) At no stage of his absence has the CO been granted leave of any kind by the competent authority. The CO has also failed to bring in any evidence regarding this.

(10) The CO being a doctor himself should have known that he had to present himself at the Railway Hospital (there was a Divisional Hospital at his place of posting) and even if he was to be treated by a non-Railway doctor, the reference had to be made by the Railway Medical Authority.

(11) The attempts made by the CO to approach the Senior Authorities and CAT to get his transfer cancelled clearly show his intentions.

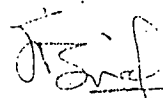
4. The Commission, on the basis of the above analysis, observe that the CO has remained unauthorisedly absent from duty w.e.f. 17.12.2003 and has thus exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby violated the provisions of para 3(i) (ii) & (iii) of Railway Services (Conduct) Rules, 1966.

5. In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission are of the view that the ends of justice would be met in this case if the penalty of dismissal from service is imposed on Dr. P.K. Deb. They advise accordingly.

6. A copy of the order passed by the Ministry in this case may be sent to this office for information/records.

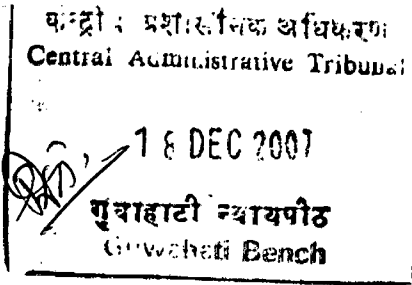
7. The case records as per list attached are returned herewith; receipt of which may kindly be acknowledged.

Yours faithfully,


(S.B. SINHA)
Deputy Secretary
TEL: 3385038

Encls:

1. Two spare copies of this letter
2. Case records as per list attached



In the Central Administrative Tribunal

Guwahati Bench : Guwahati

O. A. No. 103/2007

Dr. P. K. Deb

VS

Union of India & Others

Written statement on behalf of the respondent Nos. 1, 3, 4 and 6.

The respondent Nos. 1, 3, 4 and 6 respectfully beg to state as under :

1. The above respondents have gone through the Original Application and understood the contents thereof.
2. The respondents state that they do not admit anything not supported by records.

Filed by the respondents
Through Dr. J. L. Sarker
Advocate. 18/12/07

Pradyumn Singh
Dy. Chief Clerk
Office L9A2-5

3. Before giving parawise remarks, the Respondents crave leave of this Hon'ble Tribunal to place on record the preliminary submission/objections for better appreciation of the case and in the interests of justice.

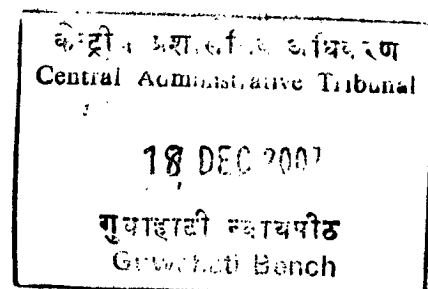
Preliminary Submission

4. Disciplinary proceedings under Rule-9 of the Railway Servants (Discipline & Appeals) Rules, 1968 for major penalty were initiated against Dr. P.K. Deb, IRMS, Sr. DMO/NBQ (Designate)/NF Rly by the General Manager/Northeast Frontier Railway, under Charge memorandum No. E/74/Gaz/466/CON dated 4.10.2004 on the charge of unauthorized absence from duty w.e.f 07.12.03. The imputations of misconduct/misbehaviour against the applicant were as under :

"1. Dr. P.K. Deb, Sr. DMO/NBQ (Designate)/NF Rly is remaining unauthorisedly absent with effect from 17-12-2003. That the said Dr. P.K. Deb was spared from APDJ on 16-12-2003 for joining at NBQ in terms of GM(P)/MLG's Office Order No.21/2003(Medical), circulated under No.E/283/III/130/Pt.XII(O) date 16-12-2003. But instead of carrying out the order of transfer, he is remaining on unauthorized absence till date and has not reported to NBQ.

2. The Said Dr. P.K. Deb, Sr. DMO/NBQ(Designate)/N/F/ Railway was given another opportunity to join at NBQ vide GM(P)/MLG's letter No. 363E/I/583(O) dated 04-06-2004 advising him to report for duty within a period of one week from the date of issue of the letter but he has not reported for duty at NBQ Hospital till date.

3. By the aforesaid act Dr. P.K. Deb, Sr. DMO/NBQ (Designate)/N.F. Railway, exhibited lack of devotion to duty and acted in a manner which is



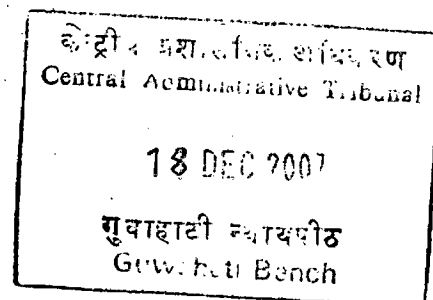
Pradeep Kumar Singh
Chief Personnel Officer (QA2)
N.F. Railway, Maligaon
Guwahati-11

unbecoming of a Railway servant and thereby violated the provisions of para 3(i) (ii) & (iii) of Railway Services (Con duct) Rules, 1966."

5. After considering the defence statement dated 10.11.2004 received from the applicant, the case was remitted to inquiry by the General Manager, N.F. Rly, appointing Shri Trikalagya Rabha, CPRO, N.F. Rly as the Inquiry Officer who submitted his Report on 12.05.2005 holding the Article of Charge against the applicant as proved.

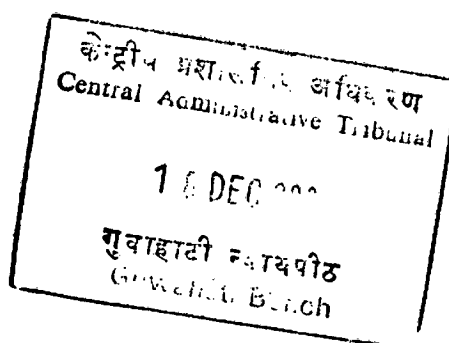
Incidentally, it may be mentioned here that the Applicant had filed an O.A. No. 295/03 in CAT/GHY in his efforts for trying to get the order of transfer to ^{New Bongaichon} ~~NBQ~~ cancelled and the Tribunal granted him an interim stay vide their order dt. 30.12.03. However the stay was vacated by the ~~trib~~ ^{tribunal} Tribunal vide their order dt. 16.2.04 in M.P. No. 7/04 wherein they disposed of the matter by observing that this Tribunal can not be an appellate forum to intervene in the transfer matter of the administration.

6. As per extant rules, after considering the I.O's report, Applicant's representation thereagainst and all other records relevant to the case the GM/NF Rly opined that the offence was serious enough warranting imposition of a major penalty and therefore referred the case to Railway Board for taking further necessary action in the matter as per rules as imposition of major penalty on a Group A officer is not within the competence of the General manager of the Zonal Railways.
7. The President (Disciplinary Authority), in consultation with UPSC, after taking into account all the aspects/records of the case including inquiry report, proceedings of the inquiry, the applicant's representation on the inquiry report and all other factors relevant to the case imposed a penalty of 'dismissal from service' on the applicant vide order No. E(O)I-2005/PU-2/NF/58 dated 1.05.2006.



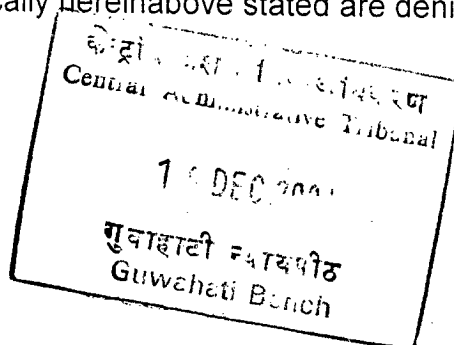
pradeep kumar Singh
by, Chief Personnel Officer (QA2)
N.F. Railway, Maligaon
Guwahati-781001

8. The Respondents submit that this application is not maintainable in law as the Applicant is requesting the Hon'ble Tribunal of re-assess the evidence. This is not permissible in law as this Hon'ble Tribunal has in its power of judicial review only to envisage whether the procedure is properly followed in holding the inquiry and the principles of natural justice have been duly followed.
9. The Respondents submit that this Hon'ble Tribunal has no jurisdiction to go into the truthfulness and correctness of the charges and the findings as held by the Hon'ble Supreme Court in the case of Transport Commissioner-Vs- K. Ramamurthy and in the case of Registrar High Court of Bombay-Vs- S.S. Patil and Other cases.
10. It is further humbly submitted that the Hon'ble Tribunal cannot be urged upon to extend their powers of judicial review to sitting in appeal over the orders passed in the departmental proceedings by the competent disciplinary authority such as to arrive at a conclusion different from that of the aforesaid competent disciplinary authority. Besides, other argument and citations sought to be relied upon at the time of arguments, reliance is sought to be placed on the following judgments of Apex Court in regard to judicial intervention in the orders of the quasi judicial authority, i.e., disciplinary authority imposing penalty in accordance with the procedure laid down by Law:
- a) **Kuldeep Singh Vs Commissioner of Police & Others (1999) 2SCC, 10,** in Para 10 it was held by Apex Court that "A broad distinction has, therefore, to be maintained between the decision which are perverse and those which are not. If a decision is arrived at on no evidence or evidence, which is thoroughly unreliable and no reliable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, however,



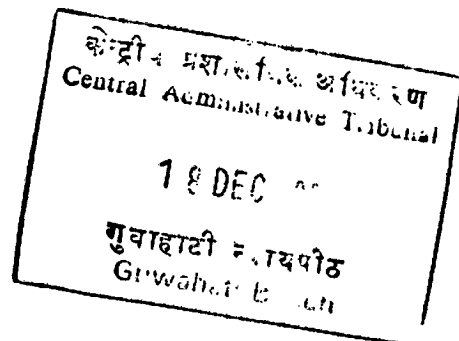
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- b) That the Hon'ble Supreme Court in their judgment dated 17.12.2004. in **Damoh Panna Sagar RRB Vs Munna Lal in Civil Appeal No. 8258 of 2004** has held that the interference is not permissible unless the order is contrary to law or the relevant factors were not considered or the irrelevant factors were considered or the decision would not have been taken by a reasonable person.
- c) That the Hon'ble Supreme Court in **Government of Tamil Nadu & Other Vs A. Rajapandian AIR 1995 SC 561** held "it has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material, Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings....."
11. That it is further submitted that this application is bad for mis-joinder of parties as the UPSC is not a necessary party. UPSC is only an advisory body, and their advice is sought in the case in accordance with the requirement of consultation with them as laid down in Article 320(3) of the Constitution of India read with regulation 5(1) of the UPSC (Consultation) Regulations, 1958. The Commission have been impleaded in this case unnecessarily. Hence this application is liable to be dismissed.
12. That it is submitted that all the material averments stated in the Original Application, which are not specifically hereinabove stated are denied.



Parawise Comments

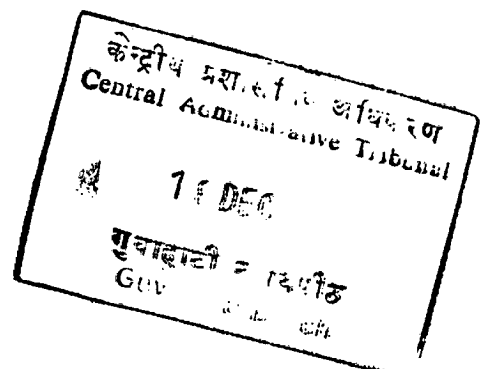
13. With reference to para 1 of the O.A., it is submitted that the contents thereof are a matter of record. It is further submitted that this application is devoid of a cause of action warranting intervention by this hon'ble Tribunal as the impugned orders have been passed by complying with the statutory rules and by observing the mandate of the principles of natural justice.
14. With reference to para 2 and 3, it is submitted that no comments on the part of the respondents are called for.
15. With reference to para 4.1, it is submitted that no comments on the part of the respondents are called for.
16. With reference to para 4.2 and para 4.3, it is submitted that the contents thereof are not denied to the extent they are borne out by records. Rest of the contents are denied.
17. With reference to para 4.4, it is submitted that the claim of Applicant that he became the victim of acute pressure and psychiatric disease and was undergoing treatment of the specialist doctors both at Alipurduar and Kolkata is not acceptable. In terms of Rules 547(3) of Indian Railway Medical Manual "There is no provision of Private medical Certificate in case of Gazetted Railway employees. If an officer has been forwarded to the Authorized Medical Officer with a Private Medical Certificate a generally worded fit certificate on a plain paper should be issued. The fit certificate meant for Gazetted employees reporting sick with Railway doctor should not be used in these cases. A gazetted Railway employee reporting sick with the Railway doctor outside his headquarter, should be transferred to his headquarter with a 'fit to travel certificate' to report to his authorized medical officer."



Pradeep Kumar Singh
 Dy. Chief Personnel Officer
 N.F. Railway Maligaon
 Guwahati-781001

The Applicant being a senior medical officer was supposed to guide all such officers for reporting for treatment under a railway doctor and not under a private doctor under this rule. Instead, he has himself violated the rule by producing certificates issued by private doctors & not reporting to the Railway Hospital for treatment as required under the rules. Being a doctor himself and a senior one at that, he would be well aware that he had to present himself at the Railway Hospital and even if he was to be treated by a non-Railway doctor, the reference had to be made by the competent Railway Medical Authority. Despite this, he has absented himself from duty without any leave being sanctioned to him and without following the correct procedure for reporting sick.

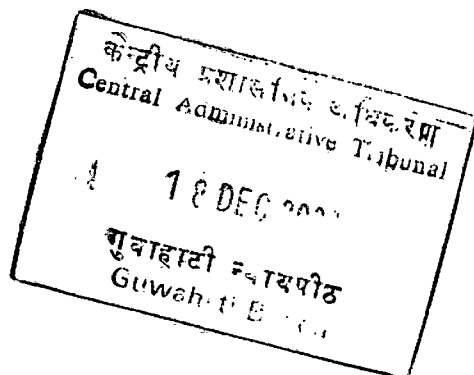
18. With reference to para 4.5, it is submitted that the contents thereof are not denied being a matter of record.
19. With reference to para 4.6, it is submitted that the applicant was posted at Alipurduar Division in January 1988 and was transferred and spared from Alipurduar division on 16.12.03 i.e. nearly after 15 years of stay at Alipurduar. Transfer is an administrative action and the transfer was done to strengthen and equip the newly created Rangiya Division. Alipurduar Divisional Hospital was catering to the medical need and treatment of the employees of Alipurduar including employees belonging to Rangiya division which was created w.e.f. 01.04.03. Transfer of officers of all departments including transfer of doctors was done to man and equip Rangiya division as per policy decision and in the process the applicant was also transferred.
20. With reference to para 4.7, it is submitted that New Bongaigaon Railway hospital all along was suffering from the need of a Radiologist and Ultrasonography expert. After creation of Rangiya division, New Bongaigaon hospital was also to be upgraded step by step to make it a



Pradip Kumar Singh
 Chief Personnel Officer
 N.F. Railway, Maligaon
 Guwahati-781 001

divisional Railway hospital in order to cater to the need of Railway employees of Rangiya division. In the process, one Senior Administrative Grade (SAG) officer has also been posted there, now. The applicant was also transferred and posted at New Bongaigaon in order to utilize his expert services for the employees of Rangiya division. The applicant made a representation to the General Manager vide his application dated 19.02.04 clearly mentioning the difficulty in carrying out the transfer order due to academic session of his children being upto 1st week of August. He also pointed out in the application that he would carryout transfer order thereafter but the fact is that he did not join his new place of posting subsequently either. It is further submitted that the Hon'ble Tribunal vide order dated 16.02.04 in M.P. No. 7/04 vacated the interim order dated 30.12.03 and passed a clear order stating that the Tribunal cannot be an appellate forum to intervene in transfer matter of administration.

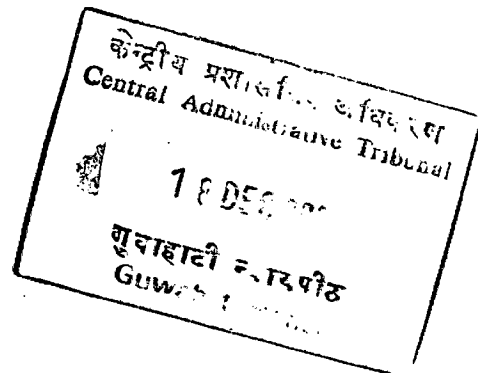
21. With reference to para 4.8, it is submitted that the transfer order was as per the need of administration to support newly created Rangiya division and the transfer of not only the Applicant but many other officers were also done from other departments.
22. With reference to para 4.9, it is submitted that since the Applicant had already been spared from Alipurduar division w.e.f. 16.12.03, the question of allowing him to join at Alipurduar did not arise.
23. With reference to para 4.10, it is submitted that the Applicant being a senior Railway doctor was supposed to follow the rules and regulations mentioned in the IRMM, as already stated in para 17 hereinabove which stipulates that "*There is no provision of Private medical Certificate in case of Gazetted Railway employees.*" The relevant para of Medical Manual is annexed (Annexure *RI*). It is further submitted that it is a fact that the Applicant met General Manager with his application dated 19.02.04 and



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Pradip Kumar Singh
Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11

General Manager was considerate enough to give him a hearing. It is however not a fact that the case was withdrawn by the Applicant as per request made by General Manger. In fact, the Hon'ble Tribunal vide order dated 16.02.04 disposed of M.P. No.7/04 filed by the UOI & Ors praying for vacation of the interim stay granted by the Tribunal holding that the Tribunal can not be an appellate forum to intervene in transfer matters of administration. It was only after this order of Hon'ble Tribunal that the Applicant withdrew the O.A. which was communicated by order dated 20..02.04 (Annexure 2).

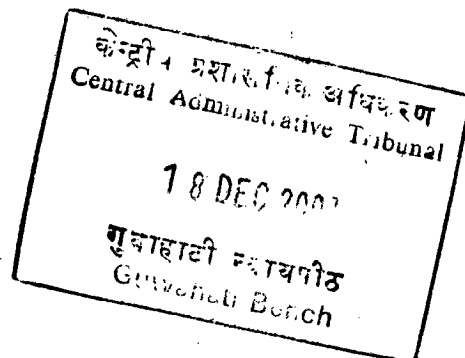
24. With reference to para 4.11, it is submitted that as already stated in para 17 , a gazetted officer is required to report sick to a Railway Medical Authority in terms of Rule 547(3) of IRMM. It is further submitted that Hon'ble Supreme Court has repeatedly emphasized that when an employee is transferred from one place to another and if there are some personal difficulties arising because of transfer, such personal and family difficulties and inconvenience are to be taken up by the employees with the competent authority of the administration for redressal by way of representation because administration is the best judge to know about the genuineness and truth of such difficulties of an employee and as to whether such difficulties are to be considered or not. The applicant was served with a copy of transfer order which was to be carried out with immediate effect. The applicant, however instead of reporting for duty and taking up charge at New Bongaigaon approached the Hon'ble Tribunal and the Hon'ble Tribunal vide this order dated 16.02.04 in M.P. No. 7/04 vacated the interim stay on the transfer order granted by them and held that they cannot be an appellate forum to intervene in transfer matters of the administration.
25. With reference to para 4.12, it is submitted that the contents thereof are not denied to the extent they are borne out by records. Rest of the



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Pradeep Kumar Singh
Dy. Chief Personnel Officer/G002
N.F. Railway, Maligaon
Guwahati-11

contents are all denied. It is further submitted that the applicant was issued a major penalty charge sheet vide office Memorandum no. E/74/GA2/466/CON dated 04.10.04 for unauthorized absence. The argument of the applicant that no railway doctor was deputed to examine him has no relevance. It is further submitted that the question of intimation of cancellation of his sick leave to him by the Administration does not arise since he has not been granted any such leave during his absence. Being an experienced Railway Medical Officer he would be well aware of the procedure of reporting sick to a Railway Medical Authority and should have acted accordingly. Even if he was to be treated by a non-Railway doctor, he should have sought reference from the competent railway Medical Authority. It is further submitted that he was given ample opportunity to present his case alongwith defence counsel before the Inquiry officer. The charge against him was held to be proved by the inquiry officer. The competent authority after taking all factors into account has also held the charge as proved and imposed commensurate punishment of 'dismissal from service' on him for misconduct on his part. However, in order to justify his unauthorized absence from duty he has been making all kind of misleading statements in the O.A. in an attempt to mislead this Id. Tribunal which is unacceptable.

26. With reference to para 4.13, it is submitted that the inquiry was conducted as per statutory rules i.e. Railway Servants (Discipline & Appeals) Rules, 1968 and the laid down procedure was followed meticulously in the proceedings. There has been no violation of rules in conducting the inquiry.
27. With reference to para 4.14, it is submitted that the contents thereof are a matter of record.

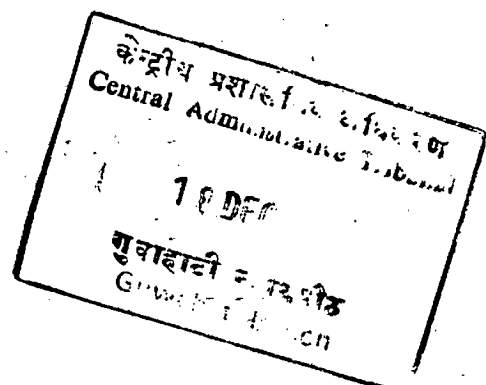


Pradeep Kumar Singh
Chief Personnel Officer 1992
N.F. Railway, Maligaon
Guwahati-11
125

V 28. With reference to para 4.15, the contents thereof are not denied to the extent they are borne out by records. It is further submitted that the inquiry was conducted in accordance with the rules & observing the principles of natural justice. Furthermore, the averments of the applicant are a reiteration of the points he had raised during the inquiry and which were duly considered by the IO in reaching his findings and which have also been considered by the Disciplinary Authority before imposition of the penalty. Furthermore, it is submitted that since no leave had been sanctioned to the applicant for the period of absence, he could not have presumed sanction of leave in the absence of any evidence. No Government employee is supposed to remain on unauthorized absence or leave office/place of work without proper sanctioning of leave. It is the duty of the employee to ensure that the leave is sanctioned to him.

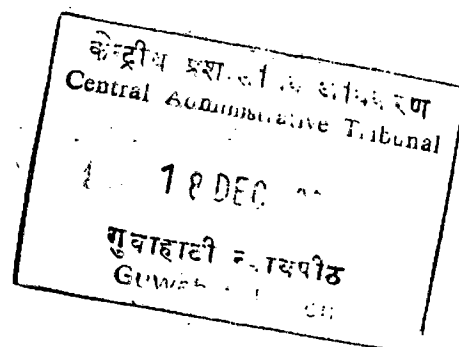
29. With reference to para 4.16, it is submitted that the inquiry officer conducted the inquiry taking all factors into account and submitted his report as per rules. The applicant's averment that a Railway medical officer should have been deputed to the residence of the applicant is unacceptable. It is submitted in this regard that the applicant should have reported sick under Railway Medical Certificate as per established procedure, which he would have been very well aware of, being an experienced railway medical officer. The applicant could not have expected a railway doctor to be deputed to his residence, more so, when he had already been spared from Alipurduar division to Rangiya division. It is also submitted in this respect that the applicant attended the inquiry at Maligaon without any apparent problem.

30. With reference to para 4.17, it is submitted that the contents thereof are not denied, being a matter of record.



Pradeep Kumar Singh
 Dy. Chief Personnel Officer / 1002
 N F. Railway, Maligaon
 Guwahati-11

31. With reference to para 4.18, it is submitted that the contents thereof are denied, being false. It is further submitted that the averments of the applicant regarding the functioning of the I.O. are vague and totally baseless. The inquiry has been conducted as per rules by the I.O. and the applicant has not been able to point out any procedural violation in the inquiry.
32. With reference to para 4.19, it is submitted that the contents thereof are denied, being false. It is further submitted that the charge of unauthorized absence and acting in a manner unbecoming of a Railway Servant has been established in the inquiry. The inquiry officer has given detailed reasons for his findings after holding the inquiry in accordance with the law.
33. With reference to para 4.20, it is submitted that the contents of the para hereinabove are reiterated. It is further submitted that the inquiry officer has taken all facts and circumstances into account as is evident from a perusal of the inquiry officer's report.
34. With reference to para 4.21, it is submitted that as already submitted in the paras hereinabove the inquiry was conducted as per rules and in the inquiry report it has clearly been pointed out that for gazetted officers private medical certificate is not permitted as per IRMM para 547(3) quoted above. The applicant being a senior medical officer was supposed to know the rules of Medical Manual and his statement that there is no rule that the applicant is bound to take treatment of Railway doctor, is not correct. It is further submitted that the applicant's explanation for seeking non-railway medical treatment is also not based on any concrete evidence as held in the I.O's report. The applicant has presumed that he would have been denied medical treatment at APDJ Railway Hospital but he has not submitted any evidence to prove that he had approached the railway



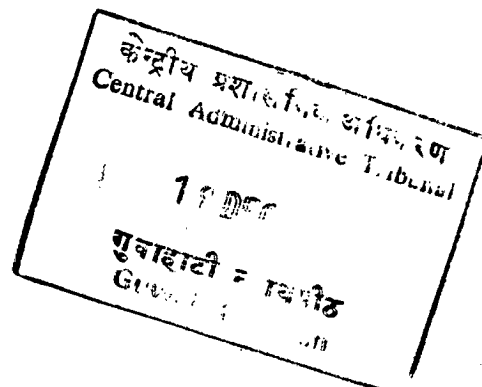
Pradip Kumar Singh
Dy. Chief Personnel Officer, 19A2
N.F. Railway, Maligaon
Guwahati-781001

medical authorities for the treatment of his sickness. Furthermore even if treatment was to be taken from a non-Railway doctor, the matter should have been got referred through the competent Railway Medical Authority.

35. With reference to para 4.22, it is submitted that the contents thereof are not denied to the extent they are borne out by records. As regards penalty order is concerned the same has been imposed after following due process of law and the penalty is commensurate with the guilt leaving no cause of action before this Hon'ble Tribunal. In view of the facts and the legal position enumerated in the preceding paragraphs upheld by the highest court of the country, the subject O.A. deserves to be dismissed.

Reply to Grounds

36. With reference to para 5(i), it is submitted that leave has not been sanctioned to the applicant at any point of time during the period of his unauthorized absence and he has violated rule 547(3) of the Indian Railway Medical Manual by not reporting to the railway medical authorities as per laid down procedure. This averment is baseless and does not constitute a ground to sustain the present O.A.
37. With reference to para 5(ii) & (iii), it is submitted that the inquiry officer in his report has held the charge against the applicant as proved based on reasoned findings. The applicant's averments in this matter are baseless and entirely bereft of substance.
38. With reference to para 5(iv), it is submitted that the penalty has been imposed upon the applicant after following the due process of law and in consultation with UPSC, an independent constitutional authority. The penalty imposed is commensurate with the gravity of the charge established against the applicant.



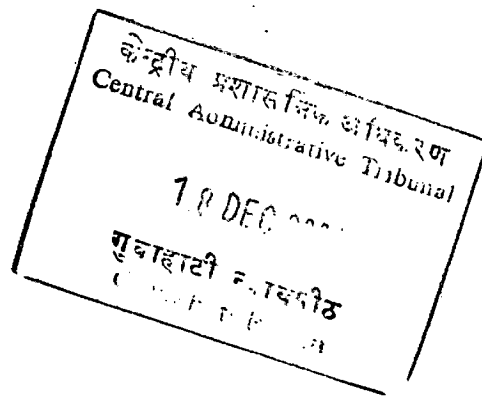
1
Pradeep Kumar Singh
DY, Chief Personnel Officer / 9A2
N F, Railway, Maligaon / 20
Guwahati-11

39. With reference to para 5(v), it is submitted that the applicant's averments are quite baseless. The inquiry officer and the disciplinary authority have reached their findings after due consideration of the defence presented by the applicant. The applicant has not been able to give any satisfactory explanation as to why he did not approach the Railway Medical Authorities, as per procedure and instead chose to take private treatment without making any attempt to get himself referred through the concerned Railway Medical Authority and the charge of unauthorized absence against him has been proved.

40. With reference to para 5(vi) of the grounds, it is submitted that the applicant's averments are baseless and devoid of any substance. The applicant despite being an experienced railway doctor himself did not present himself at the railway hospital (there was a Divisional Hospital at his place of posting) as per procedure and remained absent from duty although no leave had been sanctioned to him. The averments of the applicant in this para, therefore do not constitute any ground to sustain the present O.A.

41. With reference to para 6 & 7, no comments on the part of the respondents are called for.

42. With reference to para 8 of the O.A., it is submitted that the applicant has failed to make out any grounds for grant of any relief. In the facts and circumstances of the case, the respondents submit that this application is misconceived and not maintainable in law. It does not disclose any cause of action and even otherwise the Applicant has failed to make out any ground for any grant of any relief. This application is therefore liable to be dismissed.

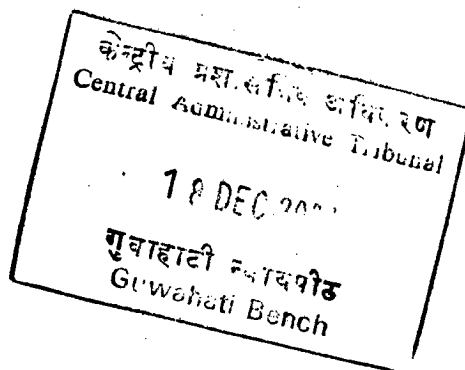


Pradeep Kumar Singh
Chief Personnel Officer / SA2
N.F. Railway, Maligaon
Guwahati-781001

Verification

I Sri Pradeep Kumar Singh , aged
about 42 years, Son of
..... Sri Bhuplal Singh , presently
working as Dy. Chief Personnel Officer / GAZ. do hereby say
that I am conversant with the facts of the case and have
been authorized by the respondent Nos. 1, 3, 4 and 6 to verify
and Sign this written statement and accordingly I verify that the
statements made in Paragraphs 1 to 42 and true to my knowledge
and that I have not suppressed any material facts.

I Sign this verification this 23rd day
of NOV 2007 at Guwahati



✓
Pradeep Kumar Singh
Signature
Dy. Chief Personnel Officer / GAZ
N F. Railway, Maligaon
Guwahati-11

-16-

ANNEXURE-R

(केवल सरकारी उपयोग हेतु)
(For official use only)



भारत सरकार
GOVERNMENT OF INDIA

रेल मंत्रालय
MINISTRY OF RAILWAYS

(रेलवे बोर्ड)
(RAILWAY BOARD)

भारतीय रेल चिकित्सा नियमावली

भाग-I

तृतीय संस्करण-2000

30-9-1999 तक संशोधित

INDIAN RAILWAY MEDICAL MANUAL

VOLUME - I

Third Edition-2000

Corrected upto 30-9-99

केन्द्रीय प्रशासकीय प्रकाशन
Central Administrative Publications

गुवाहाटी प्रकाशनी
Gowahati Press

Attached
Vijay

उप. म. बोर्ड
Chief P. Board
रेलवे
Railway

certificate of recommendation for leave for change of air or recuperation:-

Asst. Divl. Medical Officer

Nil.

Divl. Medical Officer

Up to two months.

S.A.G./J.A.G. Medical Officer

Beyond two months and up to nine months

(d) C.M.D (PHOD)

Beyond 9 months.

-17-

132

(Railway Bd.'s letter No. 90/H/5/14 dt. 18/06/1991, No. 90/H/5/14 dt. 15/10/92)

545. General Instructions:-

- (1) When a Railway employee who is under the treatment of a Railway medical officer leaves the station where he had reported sick without the consent of the authorised medical officer or subsequently absents himself or fails to intimate the medical officer that he/she is bed-ridden and unable to attend the health unit, the medical officer shall discharge him/her from the sick list and endorse on the fit certificate - "Discharged for non attendance".
- (2) A Railway doctor may be required by his superior authority to visit a Railway employee who has reported sick for the purpose of examining him/her and issuing a sick certificate. In exercising this authority, the Railway doctor should see that he complies with the directives in respect of the medical ethics by giving the employee an opportunity to have his own medical attendant present at the time of examination.
- (3) During medical examination of an employee or candidate where the medical officer finds that the person is not fully fit for duty, he may be given an opportunity to come again after a lapse of some time. A written memo should be given to the person concerned advising him the reason for asking him to come again for the examination. A copy of this memo should be retained by the Medical Officer.
- (4) The signature or the L.T.I. of the employee reporting sick should, as far as possible, be taken at the time of reporting sick; failing which in any case at the time of issuing the fit certificate.

In addition, the Identity card No. of the employee may also be got entered in the sick/Fit certificates and also on the counter-foils.

Sub-Section 2- Gazetted Employees.

546. Definition:-

- (1) The "authorised medical officer" means the CMS/MS in-charge of the division within whose jurisdiction the gazetted officer is headquartered.
- (2) The "competent railway doctor" means the CMS/MS in-charge of the division authorised to issue the medical certificates.

Note: ADMOS/DMOs/Sr.DMOs in independent charge will however, continue to be authorised medical officers for the gazetted Railway employees stationed at places other than the Divisional head quarters.

547. Sick certificate or recommendation for leave or extension of leave on medical grounds:-

- (1) When a gazetted Railway employee reports that he/she is unable to attend duty by reason of sickness, the authorised medical officer, after careful examination of the gazetted Railway employee, will issue a medical certificate in triplicate in the prescribed form as given in annexure XVI, one copy of which will be retained by the gazetted Railway employee. The form prescribed should be adhered to as closely as possible and should be filled in after the signature of the applicant has been taken. The certifying officer is not at liberty to certify that the applicant requires a change from or to a particular locality or that he/she is not fit to proceed to particular locality.
- (2) when a gazetted Railway employee, head quartered at a station where there is no C.M.S/M.S I/C, reports that he is unable to attend to duty by reason of sickness, the A.D.M.O/D.M.O/Sr.D.M.Os of the station where the gazetted Railway employee has reported sick, can issue the necessary certificate and will immediately intimate the CMS/MS in-charge of the division.
- (3) There is no provision of Private Medical Certificate in case of Gazetted Railway employees. If an Officer has been forwarded to the Authorised Medical Officer with a Private Medical Certificate a generally worded fit certificate on a plain paper should be issued. The fit certificate meant for Gazetted employees reporting sick with Railway doctor should not be used in these cases. A gazetted Railway employee reporting sick with the Railway doctor outside his headquarter, should be transferred to his head quarter with a 'fit to travel certificate' to report to his authorised medical officer.

(Railway Bd.'s Letter No. 90/H/5/14 dt. 30/12/1994)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

18 DEC

मुद्राहारी नं. 143018

G. S. Ch.

Attested

व्यक्ति (रज)
Officer (GZ)
अधिकारी

ORDER SHEET

Civ App/ Misc. Petn/Cont. Petn/ Rev. Appl.

7/04

In O.A. 295/03

Name of the Applicant(s) H.O.I. Pors.Name of the Respondent(s) Dr. P. S. K. K. DebAdvocate for the Applicant B. C. Pathak, Addl. caseCounsel for the Railway/ C.G.S.C. S. C. Biswas, M.K. Mazumdar

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

16.2.2004

Heard Mr. B.C. Pathak, learned

Addl. C.G.S.C. for the applicant and
also Mr. M.K. Mazumdar, learned counsel
for the opposite party.

The interim order dated 30.12.03
passed in O.A. 295/2003 stands vacated
because this Tribunal cannot be an
^{appropriate} forum to intervene in the
transfer matter of the administration.

The respondents may consider
giving the applicant accommodation as
stated in the affidavit.

The M.P. stands dispose of.

Sd/MEMBER(ADM)

Affected
Vijay

2	10
Central	10
10	10
10	10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH,
GUWAHATI.

134
Filed by the applicant
through U. Dutta, advocate
on 11/01/08

O. A. No. 103/2007

Dr. P.K. Deb

... Applicant

- Vs -

U. O. I & Ors.

... Respondents

Rejoinder by the applicant in reply to the written
statement by the Respondent No. 1, 3, 4 and 6.

The applicant most respectfully begs to state as
under :

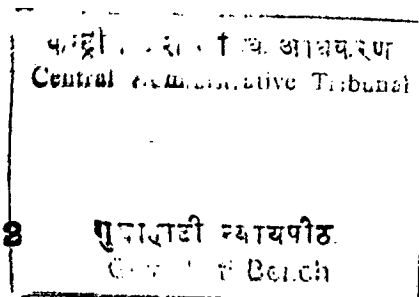
1. That the applicant has gone through the W.S. filed
by the respondents 1, 3, 4 and 6 and understood the contents
thereof.

2. That in reply to the preliminary submissions in para
4, 5, 6 and 7 the applicant humbly states that respondents
have brought allegations and in the matter of his transfer
which was subject matter of O.A. No. 295/03 before CAT,
Guwahati Bench. The applicant most humbly states the said case
has no relevance regarding the present matter. The applicant
has unfortunately become victim of mental disease and respondents
kept in mind his earlier O.A. no. 295/03 and being influenced
heavily by the said transfer overlooked the realities of sickness

Contd.....2/-

Prabir Kumar Deb

Received
on 11/01/08
for Railway SC.
D. N. Mondal
Advocate
Tamluk



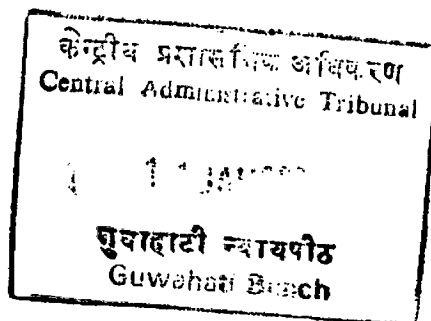
of the applicant and requirement of medical aid as admissible under the rules in the Railways.

3. That in reply to statements in para 8, 9, 10, 10B in particular it is denied that the applicant is requesting reassess evidence nor it is an appeal against the order of the respondents. The applicant humbly submits that the findings and orders of the respondents are perverse, the relevant rules and procedures as regards treatment of Railway employees have been totally ignored and the penalty has been imposed for irrelevant factors and irrelevant considerations.

4. That in reply to statements in paragraphs 13, 16 and 17 it is stated that the applicant as a mental patient was receiving treatment of expert non railway doctors for mental diseases. The applicant admits that in his mental condition he was not fully conscious of rules and procedures because of his mental ailment but with the assistance of members of his family and well wishers including doctors of the Railway he informed the authorities of the position of his sickness enclosing certificate from the doctors and informing that he was not in a position to perform duties. The applicant respectfully states that the rule 547(3) of the Indian Railway Medical Manual quoted in para 17 of the W.S. does not prohibit private medical treatment by Gazetted Officers. This is a rule of procedure and doesnot prohibit treatment under private doctors. The case of the applicant during his serious illness has not been dealt with following pratice and procedure in the Railways not to speak of dealing with sympathy. The respondents were acting with annoyance havily weighed by the

Contd....3/-

Pravin Kumar Deb.



transfer matter.

The applicant humbly states that the rule 547(3) IRMM as quoted by the respondents mandates that on receipt of the private medical certificate a fit certificate on a plain paper should be issued. The fit certificate meant for Gazetted employees reporting sick with Railway doctor should not be issued in this cases. In the case of non-Gazetted employee the practice and rule is that the competent authority may accept the private certificate, and in case of doubt refer the case to the Railway medical officer. Certificate in case of non-Gazetted employee shall be in prescribed form, where as in case of Gazetted Officer certificate on a plain paper should be issued. The Railway respondents have on receipt of the private doctors certificate and the letter reporting sick have neglected to apply their mind and deal the case on medical considerations. The fact is that they found that the applicant was seriously suffering from mental disease and the fit certificate on a plain paper as contemplated under the said rule 547(3) was not issued, but at the same time to cover up the negligence of rendering treatment to the ailing applicant started the departmental proceeding against the applicant. They were working with annoyance caused due to filing of O.A. No. 295/03 before the CAT Guwahati Bench.

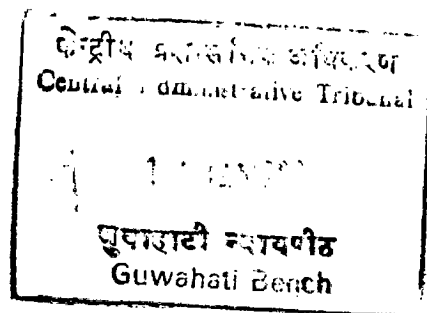
The respondents deliberately neglected the mandate of Rule 547(1) and the Railway Medical Officer have neglected to examine the applicant and issue certificate of sickness in prescribed form and has not taken any step for his treatment.

'Treatment' in Railways includes amongs others -

- (a) Specialist consultation
- (b) Shifting the patient for treatment/

Prabir Kumar Deb.

Contd....4/-



examination from residence to hospital or from one hospital to another hospital.

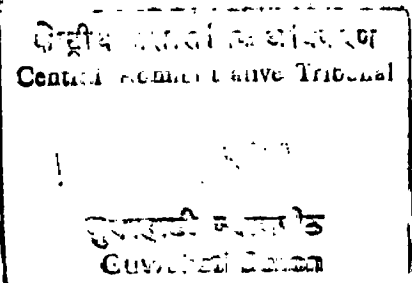
It is stated that the applicant was in his residence during his mental sickness and it is very unfortunate that the applicant was denied medical attendance and treatment, though medical attendance includes attendance on a railway employee at his residence.

It is further stated that after he got some relief from the mental disease under treatment of the specialist doctor he came to know that respondents were scared for his mental sickness and even afraid of getting him admitted in hospital because there was no mental expert doctor in Alipurduar Hospital competent to deal with the cases for mental instability for which there is a specific/prescribed information sheet. They neither look care to treat the applicant nor consult expert doctors nor made any arrangement for any hospital treatment the Railway Doctors were also afraid to give fit certificate/fit to travel certificate, because of his mental ailment being aware of the potential medico-legal case and didnot give such fit certificates. Deliberate negligence and malic in fact and malic in law is clear in the instant case.

5. That in reply to statements in paragraphs 19,20,21,22, 23,24 and 25 the applicant reiterates the statements made in the preceeding paras. It is unfortunate that when the applicant in his serious mental ailment informed the department stating his illeness nothing was done to arrange for his treatment as per pratice and procedure in the Railways

Contd....5/-

Prabir Kumar Das



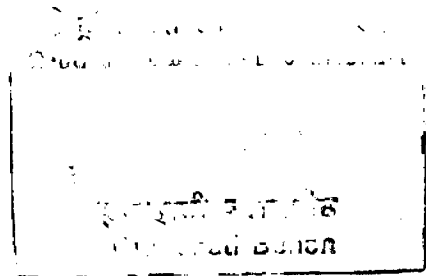
nor even any doctor was formally sent to his residence for his treatment/arranging treatment by the respondents. Humane approach was given a total good bye in this case. This is due to malice towards the applicant.

6. That in reply to the statements in para 26 it is stated that the inquiry was conducted with preconceived notion that the applicant was unauthorisedly absenting without taking to consideration the factual position of his sickness and examining the procedure in such cases and the procedures in the Indian Railway Medical Manual. The finding of the proceedings is therefore perverse and the penalty imposed thereupon and the appellate order is illegal and bad in law.

7. That in reply to the statements in para 28,29,31,32,33, 34 and 35 the applicant reiterates the statements made in the above paragraphs. It is stated that the applicant was sick. Under the Railway practice, procedure and railway rules, the respondents did not work bonafide and make arrangement for his treatment and neglected his case due to animosity towards him. His case is not a case of unauthorised absence but utter negligence during sickness of an employee in total disregard of humane approach, neglect of procedures and rules. The respondents are now misinterpreting and misconstruing the rule 547(3) and have referred to the same in isolation to confuse the Hon'ble Tribunal. The total object of the IRMM and spirit of the said manual have been neglected only to coverup the failures of the respondents during the serious sickness of the applicant under treatment of expert medical doctor. In the circumstances, applicant humbly prays that the O.A. deserves to be allowed with costs.

Contd....6/-

Prabir Kumar Deb.



VERIFICATION.

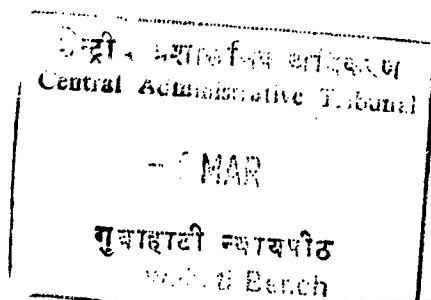
I Shri Prabir Kumar Deb, aged about 47 years, son of Late Asit Boron Deb, resident of Alipurduar, Dist.

Jalpaiguri, do hereby verify that the statements made in paragraphs 1 to 7 are true to my knowledge and that I have not suppressed any material facts.

AND I sign this verification this *.6th* day of *January* 2008, at *Alipurduar*.

Prabir Kumar Deb.

Signature.



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

OA No. 103 OF 2007

**Dr. P.K. Deb
-Vs-
U.O.I. & Ors**

Reply to the Rejoinder of the Applicant:

The respondents No.s 1, 3, 4 and 6 most respectfully beg to state as under:

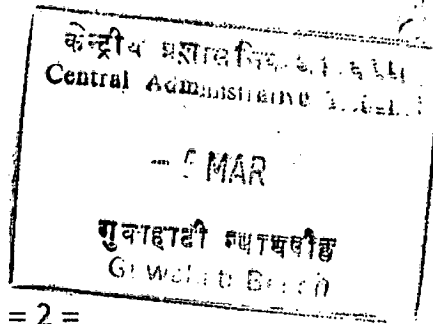
1. That, the above respondents have gone through the rejoinder filed by the applicant and understood the contents thereof.
2. That, in reply to the statements in para 2 of the rejoinder it is stated that the applicant filed an OA No.295/03 in Hon'ble CAT/Guwahati for cancellation of the order for his transfer to New Bongaigaon and the Tribunal granted him interim stay vide order dt 30.12.2003. The stay was subsequently vacated vide order dt 16.02.2004 in MP No.7/04 wherein the Hon'ble Tribunal disposed of the matter observing that the Tribunal cannot be an appellate forum to intervene in the transfer matter of the Administration. So the applicants averment is baseless and does not constitute a ground to sustain the OA.
3. That, in reply to the statements in para-3, it is stated that the applicant's plea in this paragraph is baseless. The respondents submitted before the Hon'ble CAT/GHY to dismiss the case on the basis of the laws laid down by the Hon'ble Supreme Court in different cases.
4. That, in reply to the statements in para 4 and 5 to the rejoinder, the respondents reaffirm the statements in the WS.
5. That, the reply to the statements made in the para-6 of the rejoinder it is stated that the inquiry was conducted as per the Railway Servants (Discipline & Appeal) Rules, 1968 and no violation has been done.

.....contd-P/2

Pradeep Kumar Singh
by Chaitanya Chatterjee
N.B. he is a Bongaigaon
Guwahati-11

Filed by respondents
J.L. Banerjee
SC/Rep. 3/3/08

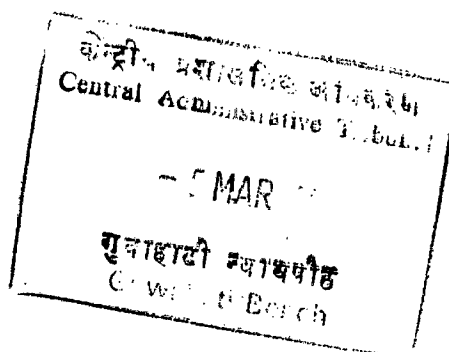
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Pradeep Kumar Singh
Dr. Chief Personnel Officer/Geny
N.F. Railway, Maligaon
Guwahati-11

6. That, in reply to the statements in para-7 of the rejoinder it is stated that the facts which has been stated in the WS are on the basis of rules and regulations of the Railway Board.

7. That, in the circumstances explained in the WS and this reply the OA deserves to be dismissed with cost.



VERIFICATION

I... Pradeep Kumar Singh... aged about 43... years, working as Dy. CPO/GA2..., Northeast Frontier Railway, do hereby say that I am conversant with the facts of the case, and have been authorised by the respondents to verify and sign this verification which I do accordingly. I also say that I have not suppressed any material facts.

I sign this verification on this day of February 2008 at Guwahati.

Pradeep Kumar Singh
Signature

Dy. Chief Personnel Officer (GA2)
N.F. Railway, Maligaon
Guwahati-11

- 1 APR 2008

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH
GUWAHATI.

Filed by the applicant
through M. Dutta, advocate
on 01.03.08

O. A. No. 103/2007

Dr. P.K. Deb

Vs.

U. O. I & Ors.

Additional rejoinder of the applicant.

The applicant most respectfully beg to state as under :

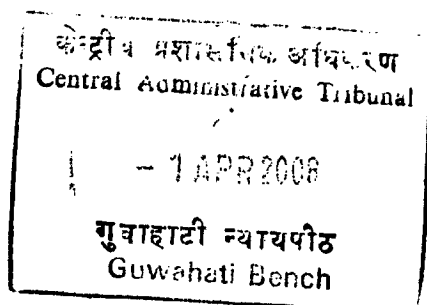
1. That the applicant has gone through the reply to the rejoinder and understood the contents of the same.
2. That in reply to statements in para 2 of the reply it is stated that the factual position is that O.A. No. 295/2003 filed by the applicant has been clearly explained in the present O.A. and the rejoinder. The said O.A. No. 295/2003 was withdrawn by the applicant as already stated. (Annexure G-1 of O.A.)

The respondents are deliberately suppressing the fact that the Chief Medical Director, N. F. Railway, Maligaon had already given due consideration in the matter of Transfer and Posting of the applicant and by letter dated 16.1.2004 decided for joining of applicant as Sr. DMO/ Alipurduar Junction. The same decision was reiterated by letter dated 27.1.2004 (Annexure-H) deciding and directing that the applicant should be allowed to join as Sr. DMO/APDJ.

Contd..... 2

Prabir Kumar Deb.

Recd.
J.D. Deb
1.4.2008.



These decisions were not complied with by the respondents, and the entire matter has been dealt with by the respondents as if the applicant continued to be under order of posting at New Bongaigaon. These were placed before the Enquiry Officer (Annexure-N, Page 42) but remained unconsidered.

3. That in reply to the statements in para 5 of the respondents' reply it is stated that the enquiry was conducted without following procedure in the said rules, 1968, and without following principles of natural justice, and neglecting the principle of reasonable opportunity as comprehended by Article 311 of the Constitution. Letter dated 13.4.2005 (Annexure-M) and documents produced (Annexure-N, page 42-43) has not been considered at any level.

Prayer for calling Dy. CPO/Gaz/Maligaon, and DPO/Alipurduar, though reported by E.O., the said officers were not asked to be present denying scope of Examination/Cross examination as witnesses.

Applicant has not received the documents No. 1 and 2 of Annexure-III of charge sheet earlier, but only with the charge sheet. (Annexure-N, page-40) These aspects have not been considered.

The report of Enquiry Officer is perverse. Finding in para 5.2 is arbitrary. The Dy. CPO/Gaz, and DPO/AFDJ are the officers who could explain and depose on the fact as to

Contd....3

Prabin Kumar Deb.

1 APR 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

3

why Chief Medical Director, Maligaons decision in letters' dated 16.1.2004 and 27.1.2004 have been suppressed and not acted upon.

It is humbly submitted that all the above made the entire proceedings perverse.

Prabir Kumar Deb

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

I Shri Prabir Kumar Deb, aged about 46 years, son of Late Asit Baran Deb, a resident of Alipurduar, do hereby verify that the statements made in para 1 to 3 are true to my knowledge and belief and I have not suppressed any material facts.

AND I sign this verification on this 30th day of March, 2008 at Guwahati.

Prabir Kumar Deb
Signature

26 AUG 2008

গুৱাহাটী কেন্দ্রীয়
Guwahati

Reply to the additional Rejoinder filed by the applicant.

The respondents No.1, 3,4 & 6 most respectfully beg to state as under: -

1. That the above respondents have gone through the additional Rejoinder filed by the applicant and understood the contents thereof.
2. That in reply to averments made in the para-2 of the additional Rejoinder the respondents beg to clarify the following that the letters dtd 16/1/04 and 27/1/04 were issued from the office of Chief Medical Director/MLG not from the personnel branch. The letter dated 16/1/04 was issued by the CMD/MLG addressed to Dr.P.K Deb in reference to the letter of Dr. P.K Deb dtd 14/1/04 as well in reference to interim order dtd 30/12/03 in O.A No.295/03 in which Dr. Deb was informed of that his transfer matter was forwarded to CMS/APDJ for taking further necessary action.

Secondly, the letter dated 27/1/04 was written by Dy.CMD/MLG for CMD/MLG, addressed to CMS/APDJ with a proposal / advice that Dr. P.K Deb, Sr.DMO, under transfer to NBQ may be allowed to join at APDJ Hospital with a copy of the same for information to DRM/APDJ and Dy.CPO/Gaz/MLG and also a copy of which Dr.Deb received. Regarding deliberately suppressing the letters of CMD/MLG as alleged in the additional.

Contd.....

Filed by the respondent
Through Dr. J. L. Sankar
Rashmoy S. C.

Pradeep Kumar Singh
Dy. Chief Personnel Officer/942
N.E. Railway, Maligaon
Guwahati-11

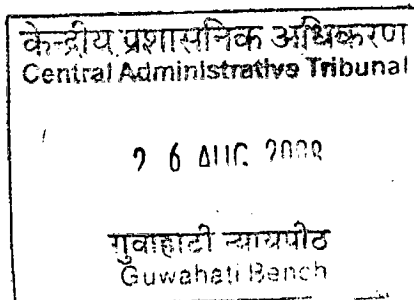
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rejoinder is totally baseless and has no evidential proof. That all the administrative order/decisions which are required to be communicated from the personnel branch has been communicated, except those which are not required for communicating from Personnel Branch. More so, the administrative order of transfer of Dr. Deb to NBQ was in force during the period and was not cancelled till his dismissal from service.

In this regard, the fact may be clarified further for better appreciation of the Hon'ble Tribunal that, vide order dated 31/12/03 in O.A No.295/03, the transfer order dated 16/1/03 of Dr. Deb to New Bongaigaon was kept in abeyance till the end of Academic session of the school. And then stay was vacated vide order dated 16/2/04 in Misc. Petition No. 7/04 in O.A No.295/03. The Hon'ble Tribunal while passing the order has observed that the Tribunal cannot be appellate forum to intervene in the transfer of the administration. The O.A was finally dismissed as withdrawal on 20.2.04 by the Hon'ble Tribunal and under the circumstance the implementation of the said letters i.e 16/1/04 at the point of time from the personnel branch did not arise and had no relevancy.

3. That in regard to averments made in para-3, the additional rejoinder, it has repeatedly been stated from the respondents in their written statement and reply to the rejoinder that the DAR proceeding was held and concluded as per procedure and by rules.

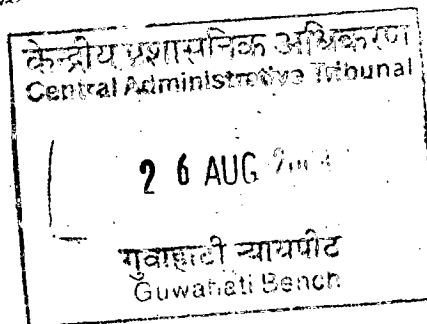
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Pradeep Kumar Singh
Chief Personnel Officer / 9A2
N F. Railway, Maligaon
Guwahati-781001

The request for calling Dy.CPO/Gaz and DPO/APDJ for defendant witness was heard by the E.O but rejected the same on the ground that the informations required to be heard from the said officials was already available before E.O and on records. As allegation of violation of natural justice under ART-311 of the Constitution of India is not sustainable as because any disfavourable result of a DAR proceeding against the delinquent will not vitiate the DAR proceeding and its conclusion, wherein the charged official had fully participated in the proceeding as per procedures laid down.

4. That in the circumstances explained above in the WS rejoinder and this additional rejoinder, the O.A deserves to be dismissed with cost.



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Pradeep Kumar Singh
Dy. Chief Personnel Officer / 982
N.F. Railway, Maligaon
Guwahati-11

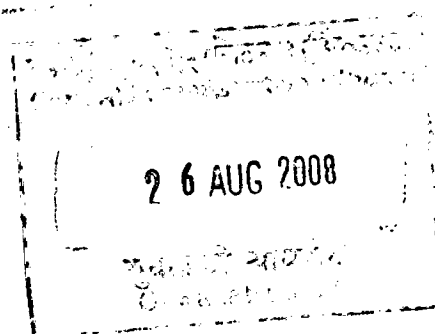
VERIFICATION

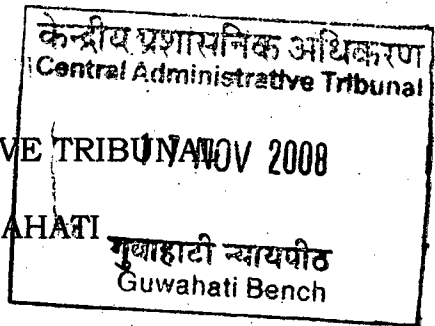
I Pradeep Kumar Singh aged about 43 years, working as DY. CPO / 9A2 in Northeast Frontier Railway, do hereby say that I am conversant with the facts of the case and have been authorised by the respondents to verify and sign this verification which I do accordingly. I also say that I have not suppressed any material facts.

I sign this verification on this day..... 28th of April 2008 at Guwahati.

Pradeep Kumar Singh
Signature and designation

DY. Chief Personnel Officer / 9A2
N F. Railway, Maligaon
Guwahati-11





O.A.No. 103/2007

Dr P.K.Deb

-v-

U.O.I.&Ors

Reply to the additional statements of the applicant.

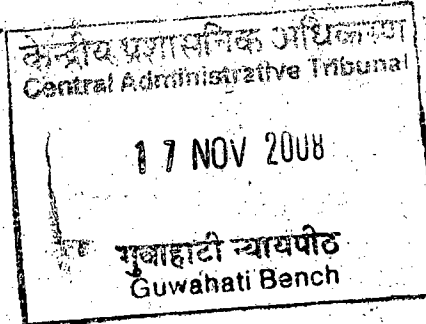
The respondents most respectfully beg to state as under.

1. That the respondents have gone through the statements of the applicant in the additional statements filed before the Hon'ble Tribunal and understood the contents there of.
2. That in reply to statements in para 1 of the additional statements the respondents beg to state that the same are matters of records and that necessary actions have been taken on the basis of the rules and regulations of Railway Board.
3. That in reply to statements in para 2 of the said additional statement respondents humbly beg to reiterate the statements in the W.S. It is also stated necessary actions in the matter had been taken following rules which have been explained in the WS, and are matters of records. It is also stated that the procedures laid down in the Railway Servants (Discipline & Appeal) Rules-1968 have been followed and GM is competent to issue charge sheet to the applicant and as such it has been done without violation of rules. In the circumstances explained above the O.A. deserves to be dismissed with cost.

Filed by us respondents
Jhal D.L. Banerjee
S.C. Bhas. 17/11/08

Pradeep Kumar Singh
Chief Personnel Officer / 9A2
N.F. Railway, Mailgaon
Guwahati-11

Reviewed
Bang.
17/11/08



VERIFICATION

I Shri Pradeep Kumar Singh, aged about 43 years, Son of Bhup Lal Singh, presently working as Dy. CPO/GA2, NF Railway, Maligaon, Guwahati 11, in the state of Assam, hereby verify that the statements made in paragraphs 1,2&3 are true to my knowledge and I have not suppressed any material facts.

AND I sign this verification on this 14th day of Nov, 2008 at Guwahati.

Place Guwahati

Date 14/11/2008.

Pradeep Kumar Singh

Signature

Dy. Chief Personnel Officer/ GA2
N F. Railway, Maligaon
Guwahati-11