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

(DESTRUCTION OF RECORD RULES, 1990)

CP 7/07 andn sheet 1st-1 to 4 **INDEX**  
CP is closed - 207, 2007

✓  
O.A./T.A No. 30/2007  
R.A./C.P No. 7/2007 (O.A 30/2007)  
E.P/M.A No. ....

1. Orders Sheet..... CA .....Pg. 1 .....to. X  
MP 16/2007 order sheet .....Pg. 1 .....to. Allowed 14.2.07
2. Judgment/Order dtd. 14.2.2007 .....Pg. 1 .....to. 2. 11.10
3. Judgment & Order dtd. ....Received from H.C/Supreme Court
4. O.A. .... 30/2007 .....Pg. 1 .....to. 28
5. E.P/M.P. .... 16/2007 .....Pg. 1 .....to. 4
6. R.A/C.P. .... 7/2007 .....Pg. 1 .....to. 21
7. W.S. affidavit in CP 7/2007 .....Pg. 1 .....to. 2
8. Rejoinder.....Pg. ....to. ....
9. Reply show-cause Reply .....Pg. 1 .....to. 11  
in CP 7/2007 R No-3 .....Pg. 1 .....to. 16
10. Any other Papers..... R No-4 .....Pg. 1 .....to. 2
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Dehita  
21.9.17

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 30 / 2007
2. Miscellaneous Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(s) P.K. Ghosh VS Union of India & Ors

Advocate for the Applicant(s) MR A.R. Sirdar, J.A. Baid  
K-M. Haloi

Advocate for the Respondent(s) Standing Counsel,  
Railway.

Notes of the Registry	Date	Order of the Tribunal
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	13.2.07	Post the matter on 14/2.07.
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Vice-Chairman

This application is in form  
is filed C.F. No. 286983944  
deposited Rs. 10/-  
Dated 22.1.07

Dy. Registrar

	14.2.2007	Present: Hon'ble Mr.K.V.Sachidanandan Vice-Chairman.
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Heard learned counsel for the parties. Order passed, kept in separate sheets.

The O.A. is disposed of at the admission stage itself in terms of the order. No costs. Copy of the order shall be furnished to the learned counsel for the parties.

Vice-Chairman

/bb/

Respondents copy has  
been filed for issuing  
to them.

NS  
6.2.07

22.2.07

Copy of the order  
has been sent to the  
Dy. Sec. for issuance  
in due to the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

O.A. No.30 of 2007

DATE OF DECISION: 14.02.2007

Prodip Kumar Ghosh

.....Applicant/s

Mr.A.R.Sikdar

..... Advocate for the  
Applicant/s

- Versus -

U.O.I & Others

.....Respondent/s

Dr.J.L.Sarkar, Railway Standing Counsel

.....Advocate for the  
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

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 to be forwarded for including in the Digest Being complied at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

  
Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 30 of 2007.

Date of Order: This, the 14th day of February, 2007.

THE HON'BLE SHRI. K.V.SACHIDANANDAN, VICE CHAIRMAN.

Prodip Kumar Ghosh  
Son of Late Mahesh Chandra Ghosh  
Resident of village: New Bongaigaon B.G.  
Colony Rly. Qtr. No.112/B Type-II  
P.O: New Bongaigaon  
P.S: Dhaligaon  
Dist: Bongaigaon, Assam.

...Applicant.

By Advocates S/Shri A.R.Sikdar, J.A.Azad K.M.Haloi.

- Versus -

1. The Union of India  
Represented through the Secretary  
Ministry of Railway  
Government of India  
New Delhi-110 001.
2. The Divisional Railway Manager (Personal)  
N.F.Railway, Rangia Division  
P.O: Rangia, Dist: Kamrup  
Assam.
3. The Divisional Personal Officer  
N.F.Railway, Rangia Division  
P.O: Rangia, Dist: Kamrup  
Assam.
4. The Area Manager  
N.F.Railway, New Bongaigaon  
P.O: New Bongaigaon  
Dist: Bongaigaon  
Assam.
5. Medical Superintendent  
Railway Hospital, New Bongaigaon  
P.O: New Bongaigaon



Dist: Bongaigaon  
Assam.

... Respondents.

By Dr.J.L.Sarkar. Railway Standing counsel.

O R D E R (ORAL)

SACHIDANANDAN. K.V.,(V.C.):

This Original Application has been filed by the Applicant contending that he has been rendering service in the Railway for about 16 years and due to some ailments he could not attend his office duties. According to him, sick memo has not been issued to him by the Respondents and the Doctor could not issue a certificate. The Applicant earlier approached this Tribunal by way of O.A. No. 202/2006 which was disposed of by this Tribunal at the admission stage vide order dated 24.8.2006 directing the Respondents to consider the representation filed by the Applicant. The Respondents vide order dated 30.10.2006 rejected the claim of the Applicant. Hence this Original Application seeking the following main reliefs:-

- "8.i) That this Hon'ble Tribunal may kindly be pleased to pass an order directing to the authority to issue sick Memo and if issued the applicant may be permitted to collect the same, so as to grant Medical leave w.e.f. 10.03.2006 till he recovered and avail the fitness certificate.
- 8.ii) To allow the Applicant to get his current salary in full and arrear salary in full granting his leave w.e.f. 10.03.06.



8.iii) To pass an order so that the applicant can get all the benefit along with total payments due as per norms and procedure of the Railway Authority."

2. Heard Mr.A.K.Sikdar, learned counsel for the Applicant and Dr.J.L.Sarkar, learned Standing counsel for the Railways. Mr.Sikdar submitted that since fitness certificate had not been issued by the Respondents the Applicant could not join his duty. However, contention of the Respondents is that sick Memo has already been issued to the Applicant but he did not collect the same. The issuance of the said memo was also intimated to the Applicant.

3. However, considering the issue involved and the Medical Superintendent being a party in this O.A. I direct the Applicant to report before the Medical Superintendent, Railway Hospital, New Bongaigaon i.e., the 5th Respondent, who or any other competent authority authorized by him, shall examine the Applicant and issue a fitness certificate if he is fit and the same shall be produced before the authority who shall permit the Applicant to join duty if he is otherwise eligible. The exercise will be completed at the earliest.

5. The O.A. is disposed of accordingly. There shall be no order as to costs.



(K.V.SACHIDANANDAN)  
VICE CHAIRMAN

13/2/07

6-2-07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH:  
GUWAHATI.

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

Title of the case OA No. 30/2007

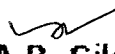
Sri Prodip Kumar Ghosh .... Applicant.

-Versus-

The Union of India & ors. ... Respondents.

**: SYNOPSIS:**

Applicant has been serving as a Head Train Clerk under the N.F. Railway, New Bongaigaon. He has been rendering service in the said Department for a period about 16 years. Now, for his ailment he needs Medical leave and in this connection issuance of sick Memo is necessary. He made representation for sick Memo to his immediate superior Officer and also served pleader Notice to the concerned authorities but they have not considered his claim. Being aggrieved filed O.A. 202/2006 before this Hon'ble Tribunal which was disposed by order dated 24.8.2006 with a direction to consider his representation dated 28.4.2006, but the authority rejected the same by order dated 30.10.2006 on a false plea that the applicant did not collected sick memo already issued on 11.3.2006, refused to grant full salary. The applicant prayed for allowing him to avail the sick memo but not considered. Hence the application.

Prepared by  
  
(A.R. Sikdar)

Advocate

Filed by the applicant  
Prodip Kr Ghosh.  
Sgt. A.R. Sikdar, Advocate

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI

BENCH: GUWAHATI.

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

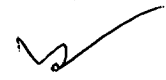
Title of the Case OA No. 30/2006

Sri Prodip Kumar Ghosh -Vs- The Union of India &amp; ors.

## LIST OF DATES WITH INDEX.

Sl.No.	Date	Particulars.	Annex.	Page
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2.	26.01.1990	Date of appointment.		
3.	28.04.06	Date of representation.		
4.	2.05.06	Date of receipt of acknowledged- ment of representation dated 28.04.06 by Sri Tapan Chatterjee.		
5.	11.03.06 & 10.04.06.	Dates of issuing prescription/ Medical Certificate.	1-series - 16-18	
6.	28.04.06.	Date of Representation to the..... Divisional Railway Manager(P) N.F. Railway Rangia Divn. & Area Manager N.F. Railway, New Bongigaon, & Date of receipt	2, 3 - 19-21	
7.	24.8.06	Order in O.A. No. 202/2006.	4	22-24
8.	30.10.06	Impugned order.	5	25
9.	8.11.06	Date of Pleader Notice.	6	26-28
10.	-	Vakalatnama.		

Filed by

  
Advocate.

Prodip Kr Ghosh.



BENCH: GUWAHATI.

Filed by me  
applicant,  
Pradip K. Gh  
Tugh  
A. S. Sileman

**Prodip Kumar Ghosh** ..... Applicant.

**The Union of India & ors. .... Respondents.**

**1. Name of the applicant  
& Address.**

**: Prodip Kumar Ghosh,  
S/O. Late Mahesh Chandra Gosh,  
R/O.Vill.- New Bongaigaon B.G.,  
Colony Rly. Qtr. No.112/B Type-II  
P.O.- New Bongaigaon,  
P.S.- Dhaligaon,  
Dist.-Bongaigaon, Assam.**

2. Designation. : Head Train Clerk.

3. Particulars of the Respondents. :1. The Union of India,  
Through the Secretary,  
Ministry of Railway,

Govt. of India.

New Delhi-110001.

2. The Divisional Railway,  
Manager ( Personal),  
N.F. Railway, Rangia,  
Division, P.O. Rangia,  
Dist.- Kamrup, Assam.

3. The Divisional Personal Officer,  
N.F. Railway, Rangia Division,  
P.O.- Rangia,  
Dist.- Kamrup, Assam.

4. The Area Manager,  
N.F. Railway, New Bongaigaon,  
P.O.- New Bongaigaon,  
Dist.- Bongaigaon, Assam.

As permitted by the  
Hon'ble Tribunal today  
Medical officer, MS/New  
Bongaigaon impleaded  
as respondent no. 5  
Hd on MP. 16/07  
(A.R. Sikdar)  
Advocate, 14.02.07.

6 Medical Superintendent  
MS/New Bongaigaon  
N.F. Railway, New Bongaigaon

PARTICULARS OF ORDER AGAINST WHICH THE APPLICATION IS

MADE:-

1. Against the impugned order vide No.ET/RN/PKG/ CAT/ 06 issued under the signature of Shri S. Chakraborty, D.P.O., N.F. Railway rejecting the prayer made in the representation dated 28.04.2006 giving wrong information alleging that sick memo although issued by CTNC/NBQ vide Memo No. Nil

Proddip Kr Ghosh."

dated 11.03.06 but the applicant did not collect the same and etc.

2. JURISDICTION OF THE TRIBUNAL:-

The applicant declares that the cause of action has arisen within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:-

The applicant declares that the application is filed before this Hon'ble Tribunal within the time limit prescribed under section - 21 of the Administrative Tribunal Act, 1985.

4. FACTS IF THE CASE:

4.1. That the applicant is a citizen of India being the permanent resident of New Bongaigaon, B.G. Colony, P.O. New Bongaigaon, District- Bongaigaon, Assam and as such he is entitled to the rights, privileges available to a citizen of India guaranteed by the Constitution and other settled Laws of the land.

4.2 That the applicant begs to state that having eligibility and requisite qualification he was appointed on 26.01.1990 under Railway Department and presently serving as a Head Train Clerk in the Office of the N.F. Railway, New Bongaigaon.

4.3. That the applicant begs to state that in the period of last 16 years of his service he is working sincerely, actively and up to

pro-ship Mr. Ghosh. 12

the highest satisfaction of the concern authority unfortunately the applicant has been suffering from Chronic Diabetic and it developed in severe form on 10<sup>th</sup> March, 2006 and he is taking medical treatment from New Bongaigaon Railway Hospital. Immediately after starting his treatment he informed the matter to his immediate superior authority, Mr. Tapan Chatterjee, TNC/BG/NBQ and he requested Mr. Cheterjee to issue a sick Memo to the concerned Medical authority but the said Official neither issued any sick Memo nor forwarded the same to the concerned Hospital. And as per advice of the concerned physician of New Bongaigaon Railway Hospital the applicant had to attend the Hospital on 11.03.06, 13.03.06, 16.03.06, 18.03.06, 21.03.06, 24.03.06, 30.03.06, 03.04.06, 10.04.06, 15.04.06, 16.04.06, 05.05.06 and 13.05.06 respectively and has been advised to continue medicines regularly taking rest for at least 1(one) month of which he is doing the same at home. The applicant was declared diabetic mellitus and under Medical treatment. The applicant craves the leave of this Hon'ble Court in not annexing all the Medical prescriptions except dated 11.03.06 and 10.04.06 and the rest may be produced at the time of hearing if so called for.

Photo copy of Medical prescription/  
certificate dated 11.03.06 & 10.04.06 are  
annexed as Annexure No.1 in series.

Prodyip M Ghosh. 13

- 4.4. That the applicant begs to state that finding no other alternative on 28.04.06 the applicant has sent a letter addressing Divisional Railway Manager (Personal), N.F. Railway, Rangia Division and Area Manager N.F. Railway, New Bongaigaon through proper channel for intervention and justice which has been duly acknowledged but neither any action has been taken yet nor any favourable direction was passed in favour of the applicant.

A copy of the representation dated 28.4.2006 is annexed as Annexure No.2.

Photo copy of acknowledge receipt of the representation are annexed as Annexure No.3.

- 4.5. That the applicant begs to state that it is very regretful that inspite of communication by representation dated 28.04.06 to his immediate Superior Officer no fruitful result has come out and the said Officer refused to issue sick Memo to the concerned Medical Authority in that regard and the reasons of not issuing the sick memo is not disclosed to this applicant. As a result the applicant has been deprived of availing himself of Medical leave. And due to non approval of the sick Memo by the said Mr. Tapan Chatterjee the gross pay of applicant has been diminished to Rs.8,346/- from the actual gross pay of Rs.15,052/- for the month of February, 2006 and Rs.3,723/- from its actual gross pay of Rs.10,194/- for the month of March, 2006 and finally for the month of April,

Prodip Mr. Ghosh. '3

2006. And now the salary is stopped and the petitioner could not attend his duty. Because for want of sick report the Doctor neither issue sick certificate nor can issue a fitness certificate without which the applicant cannot resume his duty. As result he is in hanging position.

- 4.6. The applicant begs to state that there is a provision of Medical leave which the applicant is seeking but the authority is denying it. For the fault of the concerned authority the applicant is paid small amount against his total salary for the period after 10.3.2006 when he is unable to move freely because of serious ailment and is to incur a huge financial expenditure though the provision of the said facility is readily available in the Railway Department to any employee who suffers such trouble. As a result the applicant and his family have been facing extreme hardship and difficulty to avail their livelihood.
- 4.7. That the applicant begs to state that a pleader Notice dated 22.05.06 have been served to the concerned authority for redressal of his grievances but neither any action has been taken nor any favourable direction has been passed in favour of the applicant.
- 4.8. That being aggrieved by and dissatisfied with the impugned callous and indifferent attitude towards the grievances of the applicant he earlier filed an O.A.No.202/2006 before this Hon'ble Tribunal seeking appropriate direction. The said case has been disposed of by an order dated 24.08.2006 with a direction to consider and dispose of the applicant's

Pradip Mr G. K. K.

representation dated 28.04.2006 with in a period of two months from the date of receipt of copy of said order.

A copy of the order dated 24.08.2006 in O.A. M. 202 of 2006 is annexed as Annexure No.4.

- 4.9. That the said order (Annexure-5) of this Tribunal was communicated to the respondent authority as well as placed by this Applicant enclosed with his prayer petition dated 19.9.2006. The Divisional Personal Officer took up the matter and rejected the prayer of the applicant by his order No.ET/RN/PKG/CAT/06 dated 30.10.2006. The said order was passed on a false plea that the side memo for which the applicant is suffering and prayed for has already been issued in his favour but the applicant did not collect the same. It was pleaded that since the doctor of Railway had not declared unfit and remain absent hence less payment of Salary is justified.

A photo copy of the impugned order dated 30.10.2006 is annexed as Annexure No.6.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

- I. For that the learned authority have not paid due consideration and shows extreme callous and vindictive attitude towards the prayer of the applicant in disposing of the representation dated 28.4.2006 and rejected the prayer giving false statement.

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Prody Kr Ghosh

giving false statement.

the representation dated 28.4.2006 and rejected the prayer attitude towards the prayer of the applicant in disposing of consideration and shows extreme callous and vindictive For that the learned authority have not paid due

2. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

30.10.2006 is annexed as Annexure No.6.

A photo copy of the impugned order dated

justified.

unfit and remain absent hence less payment of salary is pleaded that since the doctor of Railway had not declared in his favour but the applicant did not collect the same. It was applicant is suffering and prayed for has already been issued passed on a false plea that the side memo for which the No.ET/RN/PKG/CAT/06 dated 30.10.2006. The said order was and rejected the prayer of the applicant by his order 19.9.2006. The Divisional Personal Officer took up the matter by this. Applicant enclosed with his prayer petition dated communicated to the respondent authority as well as placed that the said order (Annexure-2) of this Tribunal was

Annexure No.4.

O.A. M. 202 of 2006 is annexed as A copy of the order dated 24.08.2006 in months from the date of receipt of copy of said order. representation dated 28.04.2006 with in a period of two



Pro-hip Mr. Ghosh. 17

- II. For that the applicant submits that the respondent authority by order dated 30.10.2006 rejected representation dated 28.4.2006 on plea that the sick memo was issued to the applicant but the same was not collected by the applicant. This stand of the authority is not justified because the applicant was not at all informed about the issuance of the sick memo. The applicant praying for the sick memo repeatedly pursuing the authority and question of not collecting the same does not arise. The applicant contacted the authority for the sick memo but in any point of time he was not informed about its issuance. Even after issuance of the order dated 30.10.2006 the applicant by visiting Office on 29.10.06 pursued the said authority to provide him the copy of the sick Memo but not given to him. The applicant in this connection served a pleaders notice dated 8.11.06 and also requested to allow him to collect the sick memo but denied the same. As such the plea of issuance of sick memo and not collecting by the applicant which are not bonafide and impugned rejection order dated 30.10.2006 is bad in law and liable to be set aside and quashed.

A copy of the pleaders notice dated 8.11.06

is annexed as Annexure No.7.

- III. For that the applicant states that under Rule-1 of the Medical Attendance & Medical Assistance Rules provides that Railway servants falling ill should report to the Railway Doctor with a 'Sick Certificate' issued by the branch concerned. The Railway

For that the applicant submits that the respondent authority by order dated 30.10.2006 rejected representation dated 08.11.2006 on plea that the sick memo was issued to the applicant but the same was not collected by the applicant. This stand of the authority is not justified because the applicant was not at all informed about the issuance of the sick memo. The applicant praying for the sick memo repeatedly pursuing the authority and question of not collecting the same does not arise. The applicant contacted the authority for the sick memo but in any point of time he was not informed about its issuance. Even after issuance of the order dated 30.10.2006 the applicant by visiting Office on 29.10.06 pursued the said authority to provide him the copy of the sick Memo but not given to him. The applicant in this connection served a pleaders notice dated 8.11.06 and also requested to allow him to collect the sick memo but denied the same. As such the plea of issuance of sick memo and not collecting by the applicant which are not bonafide and impugned rejection order dated 30.10.2006 is bad in law and liable to be set aside and quashed.

A copy of the pleaders notice dated 8.11.06

is annexed as Annexure No.3.

III. For that the applicant states that under Rule-1 of the Medical Attendance & Medical Assistance Rules provided that Railway servants falling ill should report to the Railway Doctor with a 'sick certificate' issued by the branch concerned. The Railway

Doctor on such report issued a sick Certificate as provided under Rule-2 of the said Rules. Rule-3 of the said Rules provides that submission of sick certificate shall tantamount to an application for leave on medical certificate but it shall not be held to carry with its permission to leave the station unless such permission is expressly given by the competent Railway Doctor. In the given case the applicant is all along available in Railway Quarter No.112(B) Type II.

- IV. For that the applicant begs to state, because of non issuance of sick report from the concerned authority, the Railway Doctor also could not issue sick certificate. As a result the applicant could neither avail the leave nor able to resume his duty after 10<sup>th</sup> March, 2006 and his salary has been stopped w.e.f. 10.03.2006 although he is very much available in the Station. The authority has passed the impugned order rejecting the prayer of the applicant saying that the applicant did not collect the sick report allegedly issued on 11.03.06. The plea of the authority of issuing sick report is not acceptable as because, the same is not serve upon him although he is available in Quarter. Moreover the issue of sick Memo bears no number. As such the plea of issuing the sick Memo is total false. The Railway Doctor cannot declare fit or unfit unless sick report is provided by the concern Officer in charge. The order has been passed on a medical report which has been obtained unlawfully under duress and introductory to earlier Medical report. As such he is in difficult situation.

For diary Mr Ghosh. 18

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Doctor on such report issued a sick Certificate as provided under Rule-2 of the said Rules. Rule-3 of the said Rules provides that submission of sick certificate shall tantamount to an application for leave on medical certificate but it shall not be held to carry with its permission to leave the station unless such permission is expressly given by the competent Railway Doctor. In the given case the applicant is all along available in Railway Quarter No.112(B) Type II.

IV. For that the applicant begs to state because of non issuance of sick report from the concerned authority, the Railway Doctor also could not issue sick certificate. As a result the applicant could neither avail the leave nor able to resume his duty after 10<sup>th</sup> March, 2006 and his salary has been stopped w.e.f. 10.03.2006 although he is very much available in the Station. The authority has passed the impugned order rejecting the prayer of the applicant saying that the applicant did not collect the sick report allegedly issued on 11.03.06. The plea of the authority of issuing sick report is not acceptable as because, the same is not serve upon him although he is available in Quarter. Moreover the issue of sick Memo bears no number. As such the plea of issuing the sick Memo is total false. The Railway Doctor cannot declare fit or unfit unless sick report is provided by the concern Officer in charge. The order has been passed on a medical report which has been obtained unlawfully under duress and introductory to earlier Medical report. As such he is in difficult situation.

The authority has illegally passed the order without looking into the relevant provisions of law and caused in justice to applicant.

- (V). For that his ailment is serious chronic diabetic and there <sup>was</sup> no scope to attend Office and he <sup>was</sup> under Medical treatment and at sick bed condition. Under this position of fact the respondent authority ought to have issued sick Memo enabling him to be granted Medical leave so as to receive salary without any deduction. This facility is being provided to the employee under the respondent authority and same being not extended to the applicant has amounted not only violation of right to survival guaranteed under Article-21 of the Constitution and also violated Article 14 of the Constitution.

- (VI) That under the All India Services (Special disability leave) Regulations, 1957 it is provided under Rule-3 that Special disability leave may be granted to a member of service who suffers a disability. Denial of this facility to the applicant in gross illegality, discriminatory action on the part of the respondents authority.

- VII. For that the action of the respondent authority is contemptuous for non compliance of order passed by this Hon'ble Tribunal and rejecting the prayer on a false plea but this applicant however have not filed any contempt and matter has been placed before this Hon'ble Court for fresh adjudication particularly to justify the legality in passing the impugned order dated 30.10.2006.

Prody in Ghosh.

impugned order dated 30.10.2006.

adjudication particularly to justify the legality in passing the matter has been placed before this Hon'ble Court for fresh consideration. This applicant however have not filed any contempt and Hon'ble Tribunal and rejecting the prayer on a false plea but contemptuous for non compliance of order passed by this VII. For that the action of the respondent authority is

respondents authority.

gross illegality, discriminatory action on the part of the suffers a disability. Denial of this facility to the applicant in disability leave may be granted to a member of service who Regulations, 1957 it is provided under Rule-3 that Special (VI) That under the All India Services (Special disability leave)

also violated Article 14 of the Constitution.

survival guaranteed under Article-21 of the Constitution and to the applicant has amounted not only violation of right to under the respondent authority and same being not extended deduction. This facility is being provided to the employee granted Medical leave so as to receive salary without any authority ought to have issued sick Memo enabling him to be sick bed condition. Under this position of fact the respondent score to attend Office and he under Medical treatment and at For that his ailment is serious chronic diabetic and there is no applicant.

The authority has illegally passed the order without looking into the relevant provisions of law and caused in justice to

Prody Mr Ghosh, 20

6. DETAILS OF REMEDIES EXHAUSTED:

The application of the applicant has been rejected by order dated 30.10.2006 illegally.

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

The applicant earlier filed O.A.No.202/06 and disposed of on 24.8.06 and no other case is pending before this Court.

8. RELIEF PRAYED FOR:

Under the above circumstances of the case stated above, the humble applicant most respectfully prays for following reliefs:-

- i) That this Hon'ble Tribunal may kindly be pleased to pass an order directing to the authority to issue sick Memo and if issued the applicant may be permitted to collect the same, so as to grant Medical leave w.e.f. 10.03.06 till he recovered and avail the fitness certificate.
- ii) To allow the applicant to get his current salary in full and arrear salary in full granting his leave w.e.f. 10.03.06.
- iii) To pass an order so that the applicant can get all the benefit along with total payments due as per norms and procedure of the Railway Authority.
- iv) To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal in the interest of justice.

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6. DETAILS OF REMEDIES EXHAUSTED:

The application of the applicant has been rejected

by order dated 30.10.2006 illegally.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY

OTHER COURT/ TRIBUNAL:

The applicant earlier filed O.A.No.202\06 and disposed of

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8. RELIEF PRAYED FOR:

Under the above circumstances of the case stated above, the humble applicant most respectfully prays for following

reliefs:-

i) That this Hon'ble Tribunal may kindly be pleased to pass an order directing to the authority to issue sick Memo and if issued the applicant may be permitted to collect the same, so as to grant Medical leave w.e.f. 10.03.06 till he recovered and avail the fitness certificate.

ii) To allow the applicant to get his current salary in full and arrest salary in full granting his leave w.e.f. 10.03.06.

iii) To pass an order so that the applicant can get all the benefit along with total payments due as per norms and procedure of

the Railway Authority.

iv) To pass any other order or orders as deem fit and proper by

the Hon'ble Tribunal in the interest of justice.



9. INTERIM

In the interim the applicant prays for a direction for issue a sick Memo for Medical leave and if already issued applicant may be permitted to collect the sick memo and full current salary.

Rodip K Ghosh,

10. DETAILS OF POSTAL ORDER-

Postal order No: 289 983944

Date of Issue : 22.11.07.

Issued from :

Payable at : Guwahati.

11. LIST OF PARTICULARS:

As per Index.

INTERIM

In the interim the applicant prays for a direction for issue  
a sick Memo for Medical leave and if already issued applicant  
may be permitted to collect the sick memo and full current  
salary.

10. DETAILS OF POSTAL ORDER-

Postal order No: \_\_\_\_\_  
Date of issue : \_\_\_\_\_  
Issued from : \_\_\_\_\_  
Payable at : Guwahati.

11. LIST OF PARTICULARS:

As per Index.

**: VERIFICATION:**

I, Sri Pradip Kumar Ghosh, S/O. Late Mahesh Chandra Ghosh, resident of New Bongaigaon B.G. Colony, P.O. New Bongaigaon, P.S. Dhaligaon, District- Bongaigaon, Assam do hereby verify that the contents in paragraphs.....1, 2, 3, 4.....and 5(I) to 5(V) are true to best of my knowledge and para 5(V) to 7 and .....are believed to be true as legal advice and I have not suppress any material fact.

And I sign this verification on this 31<sup>st</sup> day of January, 2007 at Guwahati.

Date: 31.1.07

Place - Guwahati.

Pradip Kr. Ghosh.

Ann 1 in Scruss

18

छोटा परिवार/Small Family Happy Family

पं. सी. १२३४/१२.३.४.५.६

पं. सी. १२३४/१२.३.४.५.६

पं. सी. १२३४/१२.३.४.५.६

चिकित्सा विभाग/Medical Department

पुस्तिका पत्रा, Prescription Memo

हस्पताल/Hospital  
दवाखाना/Dispensary

सं. नं./Sl. No. 20627

P. K. Ghosh

कर्मचारी का नाम पं. /Name of employee and department

पु/आर. १२३४/१२.३.४.५.६

कर्मचारी का कर्मचारी से सम्बन्ध/Relationship to employee is dependent

कर्मचारी का पेशा यदि हो/Occupation if any of dependent

कर्मचारी का पदनाम और विभाग/Designation of employee and department

HD. TNC/TFC/NBnc

पता विभाग रचना/Address (Loc.)

पेउम/Pay

निदान/Diagnosis

तारीख/Date	टिप्पणी और उपचार/Notes and Treatment	साक्षात्कार/Initial
24 MAR 2006	Severe carpal tunnel in oral hypopharynx P.O. 120/90 Rx. Ciprox 500mg x 6 10% betadine Rx. Penicillin 400mg x 6 16m	11/8/06

CHV

Poland Surgery

11/8/06

Attested by  
J. A. A200  
Adv

171

81673/1010

93 MAR 2006

76 MAR 2006

निष्कर्ष और प्रस्ताव/Notch and Treatment

५।१।७३/१०६२८

Urine of NE

1077

Actual sugar  $< \frac{PP}{T}$

T. 1000

2-29-9

15/10/6

Ry Jal Alam / 5m x 15  
1 bar clay

1 bar clouds

срло 500 м

12

Bornhus

100

He is a son of  
Sakabe Mellitus under  
the name

172

17.306

**SECRET**

Attested by  
J. A. Azad  
Atty.

- 18 -

- 14 -

Ann-1

छोटा परिवार सुरक्षी परिवार / SMALL FAMILY HAPPY FAMILY

रेलवे/N.E. Railway

आर.बी. मिडिलेरी  
पोस्टल/Post/N.E. M.G.

चिकित्सा विभाग / Medical Department

गुस्खा पर्ची / Prescription Memo

2717

अस्पताल/Hospital  
महानगर/Urban

क्रम सं०/Sl. No. (88)

R. K. Ghosh

कर्मचारी का नाम और विभाग/Name of employee and department

आयु/Age

लिंग/Sex

आश्रित का कर्मचारी से सम्बन्ध/Relationship to employee of dependent

आश्रित का पेशा, यदि हो/Occupation, if any of dependent

कर्मचारी का पदनाम और विभाग/Designation of employee and department

11.1.71 M.C. / 71.1.1.5

पता निवास स्थान/Address (Res.)

वेतन/Pay

तारीख/Date

राखित/Admission

निदान/Diagnosis

N.A.D.M.

तारीख/Date	लक्षण और उपचार/Notes and Treatment	आयुष्य/Initial
10 APR 2006	Onset comfortable On Hand book 10/4/06	Plan 87.5g 15
15 APR 2006	Patient is not on 17/4/06	
18 APR 2006	<p> FBS - 178 mg/dl  PPBS - 256.0 mg/dl  Urine Sugar - F - (+)  RP - (++)  Rx, (1) Tab. Dacort (5mg) - (15)  (2) Lip Zenit - (15)  1000 OD PC  Adv. Review after 2 weeks  18/4/06 </p>	

1. भूखपान निर्बंध 2. कड़ा कर्कट केवल कूड़ेदान में ही डालें 3. शक्तियोग नहीं

Attested by  
J. A. Anwar

- 19 -

Annex-2

26

Hon'ble Divisional Railway Manager(Personnel)  
N.F.Rly. Rangiya.

2. Hon'ble Area Manager  
N.F.Rly. New Bongaigaon.

(Through proper channel)

Dated Bongaigaon the 28th April, 2006.

Sub:- Prayer for intervention.

Petitioner :

Sri Pradip Kumar Ghosh

HD/TNC

N.F.Rly, New Bongaigaon.

Sir,

With due respect, I have the honour to submit the following few lines for your kind perusal and request to take immediate necessary intervention.

That Sir, I am serving under you for last 1/2 (stated) years as a Train Clerk.... upto the highest satisfaction of you. In my period of service, no insubordination or deficiency in service is found by anybody.

That Sir, unfortunately while I have been suffering from severe chronic diabetic for 10th March '06 last I have to take medical treatment and care from the concerned doctors of New Bongaigaon Rly. Hospital instantly and immediately after that I reported the matter to Mr. Tapan Chatterjee TNC/HD/HBO the immediate authority of me in black and white requesting him to issue a Sick Memo to the concerned medical authority.

That Sir, as per advice of the concerned physicians of New Bongaigaon Rly. Hospital, I had to attend the Hospital on 11.03.06, 13.03.06, 16.03.06, 18.03.06, 21.03.06, 24.03.06, 30.03.06, 03.04.06, 10.04.06, 15.04.06 & 18.04.06 respectively and has been advised to continue medicines regularly taking rest for at least 2(two) months of which I am taking the same at home.

Attested by  
G. A. Azad  
Adv

Contd.....P/2.

- 20 -

25

(Page - 2 )

That Sir, it is matter of great dismay that inspite of communicating the matter of my suffering to my said immediate authority, he refused to issue Sick Memo to the concerned Medical Authority in that regard uptil now the reasons best known to him. As a result, I have been deprived of official sick leave from the attending physician of the Hospital ~~of the~~ to approval of sick memo by said Mr. Chatterjee, my gross pay has been diminished to Rs. 8,346/- (Rupees Eight Thousand Three Hundred Forty Six) only from its actual gross pay of Rs. 15,052/- (Rupees Fifteen Thousand Fifty two) only for the month of February, 2006 and Rs. 3,723/- (Rupees Three Thousand seven Hundred Twenty Three) only from its actual gross pay of Rs. 10,194/- (Rupees Ten Thousand One Hundred Ninety Four) only respectively for no fault of me. All this act it is crystal clear that though I have no <sup>enmity</sup> animity with anybody but <sup>my</sup> rights have been curtailed.

That Sir, for this act as above I have become of victim of circumstances without getting any remedy from my immediate Authority. And I am getting very much shock as well as irreparable mental and pecuniary loss.

In view of the above, I pray for immediate sympathetic intervention to the matter further be pleased to issue necessary direction to the said TNC so that I can get full service benefit from the Authority after issuance of Sick Memo from his end and oblige thereby.

Thanking you Sir,

Yours faithfully,

P. K. Chakraborty

(PRADIP KR. GHOSH)  
HD/TNC, N.F. Railway,  
New Bongaigaon.

*Accepted by*  
*J. A. Azad*  
*Adv*



-21-  
-17-  
Annex 3

28

**ACKNOWLEDGEMENT**

(REGISTERED LETTER)

ADDRESS TO

R/L No.

4393

29/04/06

Name:- Sri. Tapan Chatterjee.

(ETNC/NB80).

Address:- c/o. Chief train office.

(New Bongaigaon, B.G. yard).

Pin:-

783381.

RO. New Bongaigaon, B.G. yard, Bongaigaon, Assam.

SIGNATURE OF ADDRESSEE

**ACKNOWLEDGEMENT**

(REGISTERED LETTER)

ADDRESS TO

R/L No.

4394

29/04/06

Name:-

Area Manager.

Address:-

N.F. Rly. New Bongaigaon.

P.O. New Bongaigaon.

Bongaigaon.

Assam.

SIGNATURE OF ADDRESSEE

**ACKNOWLEDGEMENT**

(REGISTERED LETTER)

ADDRESS TO

R/L No.

4392

29/04/06

Name:-

DRM(P)/Rly.

Address:-

N.F. Rly. Rangitola station.

P.O. Rangitola.

Pin:-

781365.

Assam.

Attested by  
D.D. Aza  
Atty

- 22 -

- 4

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 202 of 2006.

Date of Order : This the 24th day of August 2006.

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

Sri Pradip Kumar Ghosh  
S/o - Late Mahesh Ch. Ghosh  
R/o - Vill. - New Bongaigaon B.G. Colony  
Rly. Quarter No. 112/E  
P.O. - New Bongaigaon, P.S. - Dhaligaon  
Dist. - Bongaigaon, Assam.

... Applicant.

By Advocates Mr H. Das, Mr A. R. Sikdar, Mr J.A. Azad and Mr.  
S.A. Missafir.

- Versus -

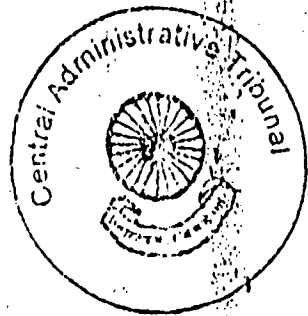
1. The Union of India, through the  
Secretary, Ministry of Railway,  
Government of India,  
New Delhi - 110 001.
2. The Divisional Railway Manager (Personal)  
N.F. Railway, Rangia Division,  
P.O. - Rangia,  
District - Kamrup, Assam.
3. The Divisional Personal Officer,  
N.F. Railway, Rangia Division  
P.O. - Rangia,  
District - Kamrup, Assam.
4. The Area Manager  
N.F. Railway, New Bongaigaon,  
P.O. - New Bongaigaon,  
District - Bongaigaon, Assam.

... Respondents.

By Advocate Dr. J.L. Sarkar, Railway Standing Counsel.

.....

Attested by  
J.A. Azad  
Adv.



23

2

30

ORDER (ORAL)

K.V. SACHIDANANDAN. (V.C.)

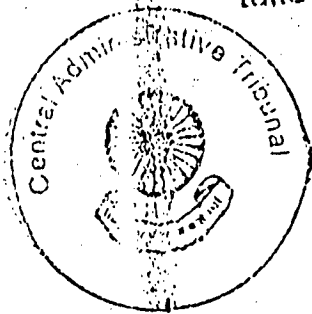
The Applicant, who is a Head Train Clerk, rendered service about 16 years in the N.E. Railway, New Bongaigaon. The Applicant claims that for his ailment, he needs medical leaves and therefore, issuance of sick memo is necessary. He made representation to the immediate superior officer and followed by lawyer notice to the concerned authorities. But they have not considered the same. Aggrieved by the said inaction of the Respondents, the Applicant has filed this Application seeking the following reliefs:-

- (i) That his Hon'ble Tribunal may kindly be pleased to pass an order directing to the authority to issue sick Memo so as to grant Medical leave w.e.f. 10.03.06 till he recovered and attain the fitness certificate.
- ii) To allow the applicant to get his current salary in full and arrear salary in full granting his leave w.e.f. 10.03.06.
- iii) To pass an order so that the applicant can get all the benefit along with total payments due as per norms and procedure of the Railway Authority."

2. Heard Mr A.R. Sikdar, learned Counsel for the Applicant and Dr. J.L. Sarkar, learned Standing Counsel for the Railways.

3. Mr A.R. Sikdar, learned Counsel for the Applicant submitted that he will be satisfied if a direction is given to the Respondent No. 2 to consider the dispose of the representation dated 28.04.2006 filed by the Applicant within a time frame. Dr. J.L. Sarkar, learned Standing Counsel for the Railways submitted that he has no objection if such a course is adopted.

✓



-24-  
3

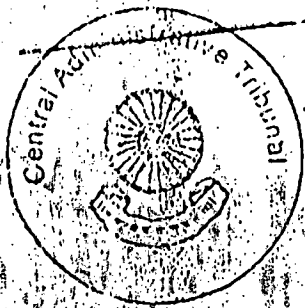
31

Accordingly, in the interest of justice this Tribunal directs that the Respondent No. 2 and/or any other Competent Authority shall consider and dispose of the representation dated 28.04.2006 within a period of two months from the date of receipt of copy of this order and pass appropriate order and communicate the same to the Applicant. Hereafter, the Applicant is also directed to send a copy of the O.A. as well as copy of the representation alongwith this order to the concerned authority forthwith to avoid any delay.

The O.A. is disposed of at the admission stage itself. No

order as to costs.

Sd/ VICE CHAIRMAN



Date of Application 12.9.06  
Date on which copy is ready 12.9.06  
Date on which copy is delivered 12.9.06  
Certified to be true copy

Section Officer (H. H.)  
C. A. T. Court Bench  
Gurgaon

Attested by  
A. A. Azad  
28/9/06

- 25 -  
- 5 -

32 ✓

N.F.Railway

Office of the  
DRM (P)/RNY  
Dated : 30.10.2006

No: ET/RN/PKG/CAT/06

To  
✓ Shri Pradip Kr. Ghosh,  
Hd.Trains Clerk under  
Area Manager  
New Bongaigaon

Sub: - O.A. No.202 of 2006 - ----- Shri Pradip Kr. Ghosh -  
Vs - UOI & Ors.

Ref: - Your representation dated 28.04.06

1. With reference to your above application it is to inform you that sick memo was issued by CTNC/NBQ vide Memo No.Nil dtd. 11.03.06 but you did not collect the same till 14.03.06. However on 17.04.06 AM/NBQ vide Memo No. Nil dated 17.04.06 informed the matter to MS/NBQ.

2. MS/NBQ Railway Hospital vide his letter No. H/186/1(Sick)/NBQ/63 dated 20.10.06 (Annexure- C) informed that you had attended NBQ Railway Hospital on 11.03.06 & thereafter and had taken medicines intermittently from different Rly Doctors for Diabetic Mellitus. No Railway Doctor had recommended you unfit as you were found physically fit to carry out your normal duties with medicine. It was also informed by MS/NBQ that you had never complained of severe illness which needed immediate hospitalization etc.

You were marked absent in the attendance register for absence from duty & as such you were paid less salary for the said period.

Enclos :- Annexure - c "

(S.Chakraborty)  
DPO/RNY  
For DRM(P)/RNY

30 :

N.F. RAILWAY

Attested by  
J. A. A200  
Adv.

- 26 -

- 6  
33

To,

The Divisional Personal Officer,  
N.P. Railway, Rangiya Division  
Rangiya,  
P.O. Rangiya,  
Dist. Kamrup, Assam.

Dated- Bongaigaon the 8th November, 2006.

Ref: Your letter vide No. ET/RN/PKG/CAT/06  
dtd. 30.10.2006.

Sub:- Reply.

Sir,

Being stunned to peruse your above-referred letter, I have the honour to intimate you the following lines for your further clarification from my side.

That you are well aware about the fact that the Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati has pleased to pass an order directing you to consider and dispose of the representation dtd. 28.4.2006 filed by me within 2(two) months from the date of receipt of the order. Unfortunately inspite of receiving the same in time you were seen to keep mum till 29.10.06.

Surprisingly on 30.10.06 by sending above referred letter you alleged me that sick Memo was issued by C.T.N.C NBQ vide Memo No. Nil dtd. 11.03.06 in my name but I did not collect the ~~xxx~~ same till 14.03.06. The allegation is wholly false, fabricated, fictitious and after thought having no legal force as such denied. In fact, no sick memo was issued in my name. If any sick memo would be issued in my name, then I am very much anxious to know that what prevented your concerned Sub-ordinate Officer to inform the same to me in black & white till 14.03.06. Moreover, instead of informing me in written manner they kept mum even after receiving of my representation dtd. 28.4.06 addressing to your Superior as well as Sub-ordinate Officials.

.....  
Contd.....P/2.

*Attested by*  
*J. A. Adr*

- 27 -

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(Page - 2 )

Thereafter, after waiting for more than 20(Twenty) days from the date of receiving the representations dtd. 28.4.06 while seeing no step had ever been taken by them against the said Tapan Chatterjee as well as no consideration was made to my case by issuing sick memo, I in a compelling circumstances am bound to serve a legal notice upon you through my lawyer Sri Hareswar Das. But I regret to say that inspite of receiving the said legal notice that time too, you did not pay any heed. Seeing no necessary steps for considering my matter after elapsing of the statutory period of 2(two) months from your end, finding no alternative I filed the application before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati the result of the case is well aware by your superior as well as Sub-ordinate offices. Even then, I had duly conveyed the Order of the case, through my letter dtd. 19.09.06 which was duly received by your office on the same date.

That, even after receiving the said letter and copy of the order of the Hon'ble Tribunal, you kept silent till 29.10.06 but on 30.10.06 you have served letter as aforesaid to me through your office personnel making a cock and bull story of issuance of sick memo on 11.3.06 which is not at all admitted by me. I presume you are misguided by your concerned Sub-ordinate officials. I think by providing wrong information you compelled to serve this above-referred letter to me.

It is concluded that the above referred letter is nothing but a trick for suppressing the real fact, though after 11.03.06 in several occasions I have visited the Office of the CTNC/NBQ and repeatedly made requests to Sri Tapan Chatterjee to issue sick memo by considering my physical condition which being a Railway Employee, I have the right to get sick memo but the said Tapan Chatterjee using his official capacity arbitrarily did not issue any sick memo inspite of my repeated request duly.

Contd.....P/3.

-28-

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(Page - 3 )

Further I humbly submit before you that if any sick memo was issued in time in that event what compelled me to face the present suffering mentally, physically and monetary unnecessarily at the tuff time while I alongwith my family have been living almost in starvation.

In view of the above, I once again, request you to comply with the direction of the Hon'ble Tribunal as passed within 15(fifteen) days from the date of receiving this letter else, your inaction will amounts to contempt of Court. ~~please~~. In that event all the consequences to be evolved from your such act shall exclusively ~~lie~~ lie upon you only. Please take note.

Thanking you,

Yours faithfully,

*Pradip Kr Ghosh*

( Pradip Kumar Ghosh )

C/O - Rly. Qtr. No. 112/B

Type II, B.G. Colony,  
New Bongaigaon,

District- Bongaigaon, Assam.

Copy to:

1. The Divisional Railway Manager(P)  
N.F. Railway, Rangiya Division,  
Rangiya.

--- for his kind information with a request to  
necessary action please.

*Sdf*

( Pradip Kr. Ghosh ).

*Filed by  
J. A200  
Adv.*