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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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B.D. 08.07.2015
SECTION OFFICER (JUDL.)

6.7.2015

(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No: 34 /2009

2. Misc Petition No 1

3. Contempt Petition No 1

4. Review Application No 1

Applicant(s) Gopu Kanta Das

Respondent(s) M. C. I. Gons

Advocate for the Applicant(s): D. K. Sarma, M. M. Das

Mr. S. K. Das

Advocate for the Respondent(s): 6 Railway advocate

Notes of the Registry	Date	Order of the Tribunal
1. This application is in form is filed/C. P. for Rs. 50/- and posited via IPCDTE No. 396/398264 Dated 18.2.09 Dy. Registrar 25/2/09	26.02.2009 160/	For the reasons recorded separately, this case stands disposed of.
2. Steps taken with envelops. Copy served		
3. 17.3.09 Copy of the order 34/26.2.09 alongwith copy of the application send to the office for issue the same to the Respond No. 1 to 5, and copy of the same to the Applicant by post and copy to the 1/Adv for the parties.		


(M.R.Mohanty)
Vice-Chairman

3

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.34 of 2009

DATE OF DECISION: 26,02,2009

Shri Gopikanta Das Applicant/s.
Mr. D.K. Sarmah, Mr. K. Das & Ms. Usha Das Advocate for the
..... Applicant/s.

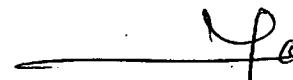
- Versus -
U.O.I. & Ors Respondent/s
Dr. J.L.Sarkar, Railway Standing counsel Advocate for the
..... Respondents

CORAM

THE HON'BLE MR.MANORANJAN MOHANTY, 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 their Lordships wish to see the fair copy of the Judgment? Yes/No

Judgment delivered by


Vice-Chairman

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.34 of 2009

Date of Order: This, the 26th Day of February, 2009

HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

Sri Gopikanta Das
s/o Late Sandhyaram Das
Resident of Patliadoha Haspara
P.S: Manikpur
Bongaigaon, Assam.

Applicant.

By Advocates: Mr. D.K.Sarmah, Mr.K. Das & Ms.Usha Das.

- VERSUS -

1. The Union of India represented by
the General Manager
N.F.Railway, Maligaon
Guwahati-781 011.
2. The Divisional Railway Manager
N.F.Railway, Rangiya Division
Rangiya.
3. The Divisional Railway Manager (Works)
N.F.Railway
Rangiya.
4. The Divisional Railway Manager (Personnel)
N.F.Railway, Rangiya.
5. The Sr.Section Engineer(P-Way)
Barpeta Road, N.F.Railway, Barpeta.

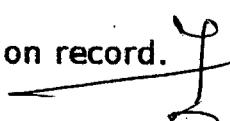
...Respondents.

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

O.A. 34 of 2009
ORDER (ORAL)
26.02.2009

MANORANJAN MOHANTY, (V.C.) :

Heard Ms.U.Das, learned counsel appearing for the Applicant, and Dr.J.L.Sarkar, learned Standing counsel for the Railways (on whom a copy of this Original Application has already been served) and perused the materials placed on record.



2. Applicant has alleged in the present Original Application (filed under section 19 of the Administrative Tribunals Act, 1985) that he was forced to remain absent (for his colour-blindness, pointed out the Railway Doctor) and that, only upon being found fit medically, he was allowed to resume duty and that, in the said process, he (Applicant) was deprived of his salaries etc. for almost one year i.e. from August 2003 to August 2004. etc.

3. Applicant has alleged, further, that nothing was paid to him (during the aforesaid period) for his sustenance and that no heed has yet been paid (by the Respondents) to his successive representations. Stating so, the Applicant has prayed, as under, in this Original Application:-

- "8.1 To direct the Respondents to release the arrear salaries of the Applicant forthwith.
- 8.2 To direct the Respondents to pay an interest @ 21% p.a on the delayed settlement of such arrear dues and with further direction to release the interest.
- 8.3 To direct the Respondents to pay adequate compensation for the delayed settlement of his arrear dues in addition to the penal interest as claimed above.
- 8.4 Cost of the application
- 8.5 Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case as deemed fit and proper."

4. Existence of a grievance is not enough to rush to this Tribunal. One must approach the authorities for redressal of his grievances and only in the event of refusal of the claim (or negligence to redress the grievance) one need approach this Tribunal.

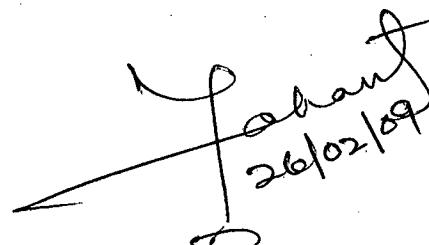
5. In the present case, the Applicant has made bald statements (without any supporting material) to the effect that he submitted several representations (after his reinstatement in the year 2004) to the Respondents (for redressal of his present grievances) and that he got no affirmative response from the Respondents.

6. 'Redressal of grievances of the employees at the earliest opportunity' being a healthy personnel management; the Respondents, being a model employer, should examine the grievances of the Applicant and pass a reasoned order expeditiously.

7. In the above premises, without any waste of time, this matter is remitted to the Respondents with direction to treat the copy of the present Original Application to be a representation of the Applicant (addressed to the Respondents); to consider the same and grant necessary relief to the Applicant (as due and admissible, under the Rules, in the facts and circumstances of the case) by a reasoned order, within a period of 120 days from the date of receipt of a copy of this order.

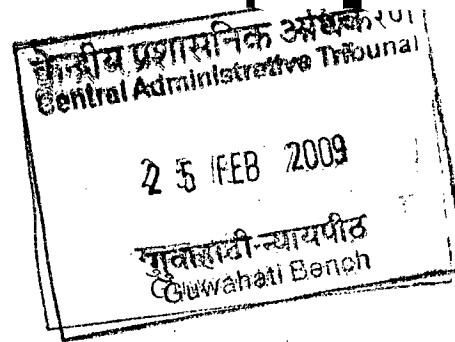
8. With the above observations and directions, this case stands disposed of at admission stage.

9. Send copies of this order to the Respondents (together with the copies of the present Original Application) in the address given in the O.A. and free copies of this order be sent to the Applicant and Advocates for both the parties.



26/02/09

(MANORANJAN MOHANTY)
VICE-CHAIRMAN



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

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

OA No. 34 / 2009

Sri Gopikanta Das

..... Applicant

-versus-

Union of India & Ors

..... Respondents

I N D E X

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*Recd on 25/2/09
S. Das
25/2/09*

Filed by:

Gopikanta Das
Advocate 25/2/2009

25 FEB 2009

गुवाहाटी बैठक
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

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

OA No. 34 / 2009

Sri Gopikanta Das

....Applicant

-versus-

Union of India & Ors

....Respondents

SYNOPSIS

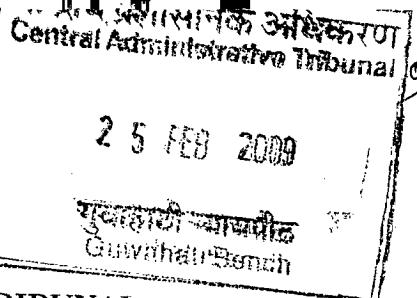
This application has been made against the action on the part of the Respondents in not releasing the arrear salaries for one year i.e. w.e.f 19.8.2003 to 4.8.2004 and consequent incremental benefits of the Applicant who was compelled to go on compulsory leave following color blindness and found medically unfit for the job before being reinstated in service.

The Applicant was initially appointed as Gangman NF Railway, Bongaigaon way back in the year 1980 before being promoted as Chabiwala (Keyman) in 2002 and was posted in Gang No. 42 (PTLD) under SSE/P-way/ BPRD in Barpeta district. After the 2003 Gaiswal incident in the year, most of the employees of NF Railway were subjected to medical examination. The applicant was also subjected to medical examination and precisely on 21.8.2003 the DMO/NBQ namely Dr SN Brahma who examined the applicant, declared him to be suffering from colour blind and recommended to keep him in sick list from 22.8.2003 and referred his case to Sr DMO/SME.

Thereafter the applicant was re-examined by the Medical Director and ultimately got fit certificate and was allowed to resume his duties almost after one year at his earlier place of posting. He was reinstated precisely on 4.8.2004. Since then the Applicant has been running from pillar to post to get his legitimate arrear salaries and other incremental dues w.e.f 15.9.2003 to 3.8.2004.

That since representations submitted before the Respondent authorities have failed to evoke any response he has come before this Hon'ble Court praying for a direction to release his due arrear salaries along with adequate interest and compensation for such delayed settlement.

Gopikanta Das *****



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

OA No. 34 / 2009

Sri Gopikanta Das

.....Applicant
-versus-

Union of India & Ors

.....Respondents

LIST OF DATES

1980: Applicant was initially appointed as Gangman NF Railway, Bongaigaon

2002: Applicant promoted as Chabiwala (Keyman) and posted in Gang No.42 (PTLD) under SSE/P-way/ BPRD in Barpeta district.

2003: After the famous Gaiswal incident, most of the employees of NF Railway were subjected to medical examination.

21.08.2003: The applicant was subjected to medical examination by DMO/NBQ and declared him to be suffering from colour blind.

22.08.2003: DMO/NBQ namely Dr SN Brahma recommended to keep him in sick list from and referred his case to Sr DMO/SME. (Annexure-1, Page-9).

20.11.2003: Applicant submits representation before Divisional Railway manager, NFR, Rangia praying for 90 days leave wef 30.8.2003 to 13.10.2003. (Annexure-2, Page-10).

04.8.2004: Applicant reinstated in service after found medically fit by the Medical Director.

Gopikanta Das *****

25 FEB 2009

गुवाहाटी बैठक
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

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

Title of the case :

OA No. 34 / 2009

Filed by
the applicant through
Gopikanta Das
Advocate
25/2/2009

BETWEEN

Sri Gopikanta Das

S/o Late Sandhyaram Das

Resident of Patliadoba Haspara, P.S: Manikpur

Bongaigaon, Assam.

....Applicant

-versus-

1. Union of India, Represented by the General Manager, NF Railway, Maigaon, Guwahati-11
2. The Divisional Railway Manager, NF Railway, Rangia Division, Rangia.
3. The Divisional Railway Manager (Works), NF Railway, Rangia.
4. The Divisional Railway Manager (Personal), NF Railway, Rangia
5. The Senior Section Engineer (P-way), Barpeta Road, NF Railway, Barpeta.

....Respondents

DETAILS OF THE APPLICATION

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

This application is not directed against any particular order but has been made against the action on the part of the Respondents in not releasing the arrear salaries for one year i.e. w.e.f 19.8.2003 to 4.8.2004 and consequent incremental benefits of

Gopikanta Das

25.10.2009

the Applicant who was compelled to go on compulsory leave following ~~color~~ blindness and found medically unfit for the job before being reinstated in service. This application is also made praying for adequate compensation and interest for such delayed settlement of arrear salaries to the Applicant.

2. LIMITATION:

The Applicant declares that the instant application has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The Applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1 That the Applicant is a citizen of India and as such, he is entitled to all the rights and privileges guaranteed under the Constitution of India and laws framed there under.

4.2 That the Applicant was initially appointed as Gangman NF Railway, Bongaigaon way back in the year 1980 before being promoted as Chabiwala (Keyman) in 2002 and was posted in Gang No. 42 (PTLD) under SSE/P-way/ BPRD in Barpeta district. After the well-known Gaiswali incident in the year 2003, most of the employees of NF Railway were subjected to medical examination. The applicant was also subjected to medical examination in the year 2003 and precisely on 21.8.2003 the DMO/NBQ namely Dr SN Brahma declared that the applicant is suffering from colour blind. In the prescription memo said Brahma further recommended to keep him in sick list from 22.8.2003 and referred his case to Sr DMO/SME.

A copy of the prescription memo declaring the applicant as colour blind is annexed herewith and marked as Annexure-1

4.3 That two months after the aforesaid state of affairs and not releasing his salaries, the applicant prayed before the Divisional Railway Manager, NFR, Rangia for granting him 90 days leave w.e.f 30.8.2003 to 13.10.2003 so as to enable him to draw salary for his survival.

Gopan Kumar Das

25 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

A copy of the representation dated 20.11.2003 is annexed herewith and marked as Annexure-2.

4.4 That the applicant states that the Respondents did not act upon his application and he was made to suffer.

4.5 That the applicant was re-examined by the Medical Director and ultimately got fit certificate and was allowed to resume his duties almost after one year at his earlier place of posting. He was reinstated precisely on 4.8.2004. Since then the Applicant has been running from pillar to post to get his legitimate arrear salaries and other incremental dues w.e.f 15.9.2003 to 3.8.2004.

4.6 That the Applicant has raised a grievances against non-payment of arrear dues till date as there was a delay as many as 4 years since he has been reinstated in service in his original post. The same is entirely due to official lapses on the part of the Respondents. The Applicant has now come before the protective hands of this Hon'ble Court for an appropriate direction to the authorities for release of the arrear dues forthwith, which is a legitimate claim of the Applicant along with an interest for such delayed settlement.

4.7 That the Applicant begs to state that he met the concerned authorities several times but sans any result. The delay in settlement of arrear dues has caused immense hardship to the Applicant and having no other alternative he started requesting the authorities to release his dues but same yielded no result in positive. The Respondents on petty issues making official communication kept on dragging the matter from one department to another without any cogent reason.

4.8 That the Applicant who was compelled to keep out of employment for almost one year kept on requesting the authority for release of his arrear dues but as on date nothing has been done so far in this matter. The Applicant situated thus made a demand to release of his arrear dues along with an interest @ 21% on such delayed settlement.

4.9 That the Applicant has submitted several representations before the Respondents, but with no affirmative response. Regardless of the fact that the petitioner was reinstated after subject to treatment and medically fit, but till date the authorities sit idle on the matter.

Gepl Kart Das

25 FEB 2009

Guwahati Bench

4.10 That the Applicant states that it is an admitted position that he has been reinstated by the same authorities so there is no reason to withhold his due arrear salaries. The period of absence from duty may easily be adjusted by granting extra-ordinary leave as the applicant was not asked to work in any alternative post during the period of sick.

4.11 That the Applicant begs to state that he is entitled to receive arrears salaries for the aforementioned period but in the instant case such payment is yet to be released. In view of that the Applicant has accrued a right to claim interest at the rate of 21% per annum for such delayed settlement in accordance with the service Rules which is very much reasonable and justified.

4.12 That the Applicant begs to state that since his reinstatement in his original place of posting, the Respondent authorities have chosen not to release his arrear dues without citing any reason and the Applicant through this application categorically prays before this Hon'ble Court for an appropriate direction for release of his arrear dues with a normal interest @ 21% on the delayed settlement of such dues. As stated above the Applicant kept on pursuing the authority concerned for release of his arrear salaries time and again but same yielded no result in positive. Infact, the Applicant submitted several representations to release his dues but as on date nothing positive has been communicated to him causing undue hardship to him and now as a last resort the Applicant has come under the protective hands of this Hon'ble Tribunal seeking appropriate remedy.

5. GROUNDS FOR RELIEFS WITH LEGAL PROVISION:

5.1 For that the action/inaction on the part of the Respondents in not releasing the arrear salaries is bad and as such same is not sustainable and liable to be set aside.

5.2 For that there are various guidelines and Rules, which provides amount of interest on delayed payment of arrear dues and in terms of the said Rules the Applicant is entitled to adequate interest and compensation for delayed settlement of arrear salaries, as the applicant has no fault on his part.

5.3 For that the Respondents acted contrary to the Rules and guidelines holding the field and with some ulterior motive have delayed the payment of arrear dues and other incremental benefits which has adversely effected the Applicant and as such inaction on the part of the Respondents is liable to be set aside and quashed with an

Gopal Kanti Das

25 FEB 2009

Guwahati Bench

appropriate direction. It is pertinent to mention here that during the aforesaid period of sick, the Respondents did not offer any alternative engagement to the applicant in any other suitable post though it was mandatory under the factual circumstances of the case.

5.4 For that the Applicant begs to state that apart from other dues, delay in releasing the arrear dues have occurred due to laches of the Respondents. That on this score alone the claim of the Applicant in support of interest @ 21% per annum is not only legitimate but also justified.

5.5 For that the Applicant submits that it is an admitted fact that he has been reinstated in service w.e.f 4.8.2004. Even during the intermittent period w.e.f 15.9.2003 to 3.8.2004, the Applicant is entitled for subsistence allowance but that was also not paid. Nevertheless such payment was withheld till date, the claim of 21% interest per annum is very much legitimate and justified and the Applicant is on the record entitled for the benefit.

5.6 For that the Applicant submits that the Respondent authorities having failed to release arrear salaries to him from the date of keeping him in sick list is very much accountable to pay interest at the rate of 21% per annum due to such undue delay.

5.7 For that in any view of the matter the impugned actions of the Respondents are not sustainable in the eye of law and liable to set aside and quashed.

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the Applicant declares that he has exhausted all the remedies available to him and there is no alternative remedy available to him

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

The Applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

Gopal Kant Das

25 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

8. RELIEF (S) SOUGHT FOR:

Under the facts and circumstances stated above, the Applicant most respectfully prayed that the instant application be admitted, records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the Applicant:

- 8.1 To direct the Respondents to release the arrear salaries of the Applicant forthwith.
- 8.2 To direct the Respondents to pay an interest @ 21% p.a on the delayed settlement of such arrear dues and with further direction to release the interest.
- 8.3 To direct the Respondents to pay adequate compensation for the delayed settlement of his arrear dues in addition to the penal interest as claimed above.
- 8.4 *Cost of the application.*
- 8.5 Any other relief / reliefs to which the Applicant is entitled to under the facts and circumstances of the case as deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the Applicant prays for an interim order directing the Respondents to pay basic pay and other emoluments of the Applicant for the aforesaid period.

Gopal Kant Das

10. PARTICULARS OF THE I.P.O:

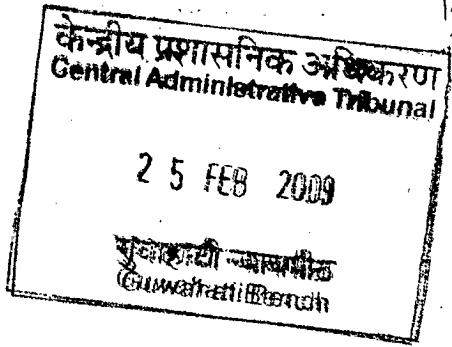
1. I.P.O No. : 396 398264
2. Date : 18/2/2009
3. Payable at : Guwahati

11. LIST OF ENCLOSURES:

As stated in the index

7-

VERIFICATION



I, Sri Gopikanta Das, Keyman, NF Railway aged about 52 years, resident of Patliadoba Haspara, District Bongaigaon, P.S: Manikpur, P.O: Patliadoba, Guwahati-36 in the district of Kamrup, Assam do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 9 are true to my knowledge and those made in paragraphs _____ are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the verification on this the 20 day of February of 2009

GOPIKANTA DAS

Signature

ANNEXURE-1

लहा संघार सुखी परिवार / SMALL FAMILY HAPPY FAMILY
क्षेत्र रेलवे / N. E. Railway

बार ० बी० म० / R. B. MED/F ६
५० बी० ए० / R. F. M ६

20/9/03 चिकित्सा विभाग / Medical department
पुस्तक पर्ची / Prescription Memo

केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

25 FEB 2009

गुवाहाटी न्यायपालिका
Guwahati Bench

मालिक सं०/S.No. 14008 / NOSR

वस्त्रालूप / Apparel
दस्तावेज / Document

Gopu Kanta Das

कर्मचारी का नाम और विभाग / Name of employee and Department

उमेर / Age _____ सेना / Sex _____

वासित का कर्मचारी से सम्बन्ध / Relationship to employee if dependent

वासित का पेशा वर्ति हो / Occupation if pay of Dependent

कर्मचारी का पदनाम और विभाग / Designation of Employee and department
K. M. D - CUCY / P.D. / PWD

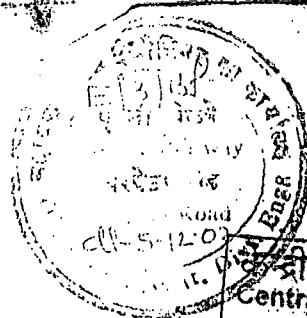
स्था निवास स्थान / Address (Rue)

दिन/Date _____ वार्षिकी / Administration

निहार / Diagnosis

दारीद्र्य/Date	टिप्पणी ओर उपचार / Notes and Treatment	आधारपत्र / Initial
TO Sr. DMO/S.M.E.	<p>The above named pt. has attended for PM E on 21/2/03. He is suffering from Cerebral Glioma. To keep in sick list from 22/2/03.</p> <p>Deputation process is going on here.</p> <p>He has to attend at PMU and off and on.</p> <p><i>(Signature)</i> Dr. S.N. Deka Sr. DMO/DOF</p>	<p>(Signature) S.M.E.</p>

Attended
G. D. D.
Advocate
25/2/2009



dt. 20-11-2003

90.

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

Thru:- Proper channel.

Sub:- Prayer for Sanction of 90 days leave not due
from 30/8/03 to 13/10/03.

Respected Sir,

Most respectfully I beg to lay the following few lines for your kind sympathetic and favourable consideration please.

That Sir, I have been working as a key man of gang no. 42 (PTLD) under SSE/P-way/BPRD since long with complete satisfaction to my superiors. That Sir, I was attended M/SIC/NBA hospital on 21.8.03 for periodical examination. As per Dr. DMO/ENBQ, I have been suffering from colour blind and kept me on RMC sick list and till now I am on RMC sick. Due to non availability of leave due in my credit, I am not getting salary since last two months.

Therefore, I request your honour kindly sanction the 90 days leave not due in my favour from 30/8/03 to 13/10/03 so that I can draw my salary and my family members can survive with this little help. In this connection necessary service particulars are appended below for your perusal, please.

1. Name:- SRI GOPI KANTA DAS.

yours faithfully,

2. Design: Key man.

Key man of Gang no.
42 (PTLD) under
SSE/P-way/BPRD.

3. D.O.A = 01-01-84

4. D.O.Birth = 06-02-57

5. Rate of Pay = Rs. 3660/-

6. Scale of Pay = Rs. 3030 - 45% of

7. working Place: Gang no. 42 (PTLD)

8. working under: SSE/P-way/BPRD.

Endo: one.

Attested
Gopinath Das
Advocate
25/2/2009