

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

RA NO. 5 197 (OA 75/95)

Sov. A. K. Mittal

Applicant(s)

-Versus-

Union of India & Ors

Respondent(s)

Mr. J. M. Persson

Advocates for Applicant(s)

Mr. B. K. Sharma

Advocates for Respondent(s)

Office Notes

Date

Court's Order

This Review application is filed by Mr A. K. Mittal, who appears imperson, against The order dated 2-8-95 passed in OA 75/95 in The Court of The Hon'ble vice chairman and Hon'ble Member (Admin).

30.6.97

Mr B.J. Talukdar, learned counsel, is requested to appear amicus curiae in this case. The case is adjourned for admission till 16.7.97.

The applicant shall furnish a copy of the application to the counsel.

Member

Vice-Chairman

The final order was communicated on-11-10-95 date of receipt of the order by the applicant could not be ascertained since the A/D is not available. The R.A. is filed on 16-5-97

nkm

16.7.97

Mr B.J. Talukdar, learned counsel for the applicant is present and makes his submission. Meanwhile the applicant has prayed that he may be allowed to withdraw the Review Application to enable him to file a fresh original application against the order of dismissal passed in the appeal by the respondents. Prayer allowed.

Hence This application is not in time and in this regard an application (MP/158/97) for condonation of delay has been filed.

Prayer allowed for consideration of admission

The Review Application stands dismissed on withdrawal.

Deputy Registrar (A)  
Central Administrative Tribunal  
Guwahati

Member

Vice-Chairman

nkm

Court.

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT GAUHATI.

( Under Rule of 49 of C.A.T. Rule of practice, 1993 )

REVIEW PETITION NO 5 OF 1997.

Ajendra Kumar Mittal, aged 52 Yrs,  
S/O of Late Narain Das, DY.C.O.S., N.F.Railway,  
R/O Banglow No. R-8 34, Railway Colony  
New Bongaigaon (Pin Code:- 783381 ) ..... Appellant and  
original petitioner.

*Submitted*  
*(Petitioner-in-person)*

Central Administrative Tribunal  
16 MAY 1997  
Gauhati Bench

V E R S U S

Central Administrative Tribunal  
UNION OF INDIA AND OTHERS ..... Respondents.

I N D E X

861  
16 MAY 1997  
S.N.  
Gauhati Bench  
1

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Re-submitted  
on 16-5-97.  
16-5-97.

15.597

Place : New Bongaigaon

Date : 6-8-96

*Ajendra Kumar Mittal*  
6.8.96  
(AJENDRA KUMAR MITTAL)

APPELLANT

FILED IN PERSON

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT GAUHATI.

(Under Rule 49 of C.A.T. Rules of Practice, 1993)

REVIEW PETITION NO. \_\_\_\_\_ OF \_\_\_\_\_

Ajendra Kumar Mittal, Aged 52 Yrs.  
Son of Late Narain Das, DY.C.O.S.  
N.F.Railway, Resident of Banglow  
No.R-34, Railway Colony,  
New Bongaigaon, Assam.  
( Pin Code: 763381 ) ..... Appellant and  
original petitioner.

V E R S U S

UNION OF INDIA, through:

- 1) The Secretary,  
Ministry of Railways  
Railway Board, Rail Bhawan  
New Delhi.
- 2) Mr. Amitabh Dutta,  
Chief Material Manager,  
Eastern Railway, Fairlie Place,  
Calcutta.
- 3) Mr. I. Illangovan,  
Chief Material Manager,  
C.L.W., Chittaranjan,  
West Bengal ..... Respondents.

IN THE MATTER OF

i) REVIEW of the judgement/order  
passed by the Hon'ble C.A.T.  
Gauhati on 02.08.95 in  
Writ Petition - O.A. No. 75  
of 1995 filed in Hon'ble.C.A.T.  
Gauhati

and

ii) Under Rule 49 of C.A.T. Rules  
of Practice, 1993.

The appellant most respectfully sheweth that:-

*Ajendra Kumar Mittal*

1.0 FACTS OF THE CASE

1.1 That, the petitioner approached the Hon'ble Tribunal through writ petition - O.A.No. 75 of 1995. In this petition the transfer from N.E.Railway and posting on N.F. Railway was challenged.

1.2 That, the Hon'ble Tribunal issued direction on 10.4.95 to the respondents to file their show-cause replies. These directions were reiterated on 12.7.95 by the Hon'ble Tribunal when the case was fixed for next hearing on 02.08.95.

1.3 That, the respondents did not submit show-cause-reply when the case was heard and decided (at admission stage) on 02.08.95.

1.4. That, the decision of the Hon'ble Tribunal, dated 02.08.95 include direction to the respondent to decide petitioner's appeal dated 21.4.94 (annexure A-4)(of O-A.) on merit and as expeditiously as possible. The writ petition/application was however rejected. Copy of order/judgement <sup>is here</sup> annexed as RV-I.

1.5 That, the petitioner's appeal dated 21.4.94 was not decided by the respondent even in three month's time. The petitioner, there after again approached the Hon'ble Tribunal who reiterated the direction on 10.1.96 for compliance within a period of two months from the date of receipt of the copy of this order dated 10.1.96.

1.6 However, in the meantime a copy of the decision on appeal, from Railway Board has been received on 12.1.96 and the same is placed as an annexure RV-2 to this Review-petition.

1.7 That, the contents of the annexure R.V-2 try to justify the petitioner's transfer to N.F.Railway on the grounds:

(1) The Rly, Bd. reserve right to transfer to any other Zonal Railway/Project in and out of India.

(ii) The transfer to N.F.Railway has been done in administrative interest.

*A. Senthil*

- 1.8 That, the Railway Board have not disputed the following facts mentioned in the appeal dated 21.4.94. As such the respondents accept that :-
- (i) Officers allotted to N.F.Railway escape out of N.F.Railway on the sweet-will of the respondents.
  - (ii) Yes, there is an officer allotted to N.F.Railway, but he never served on N.F.Railway during his entire service period (19 years).
  - (iii) Officers like the petitioner are picked up, without any criteria and posted to N.F.Railway by way of punishment.
  - (iv) A large number of transfer and posting orders to N.F.Railway get cancelled showing favour to these officers at the sweet-will of the respondents.
- 1.9 In the back ground of decision on appeal, from the respondents, it is clear that transfer of petitioner and posting on N.F.Railway is full of malafides on the part of respondents, and also malafide intention of the respondents are openly accepted by respondents.

## 2.0 GROUNDS FOR REVIEW

The applicant with respect and honour before the Hon'ble Tribunal humbly submits that decision given on 02.08.95 could not appreciate the following points. :-

### 2.1 Mistake of Law - legal Points.

- 2.1.1 Because, the Hon'ble Tribunal was satisfied with the contents of the writ-petition when it was heard at admission stage on 10.4.95 and accordingly notices were issued to the respondents for submitting their show-cause reply. But, without show-cause reply being filed the case was heard and the decision was given on 02.08.95. The Hon'ble Tribunal's decision that "we do not think that this is a matter of which we can take cognizance so as to require the reply to be filed" seems to be unfair. On the basis of same application show-cause reply was considered necessary at one stage and not considered necessary at other stage. The decision does not seem to be on merit and further delayed the relief to the petitioner.
- Asmitel*

2.12

Because, the Hon'ble Tribunal at the time of decision on 02.08.95 had no source/agency/record/document to challenge or disprove the facts put forward by the petitioner in the writ-petition. But, to the misfortune of the petitioner the case was decided ex-parte against the petitioner when the respondents were neither present nor required to be present. However mala-fide intention of the respondents has since become clear.

2.13

Because, the petition is based on large number of facts, and principle of natural justice demands decision on merit of all these facts. Unfortunately no decision is given on the points mentioned in para 1.8 of the review petition. Further, there was no vacancy when the petitioner joined on N.F. Railway. This point also escaped decision.

2.14

Because, the Hon'ble Tribunal gave directions to the respondents without any specific time frame to decide the petitioner's appeal, dated 21.4.94. The respondent cared least for this decision and interpreted it in their own way and took more than three month's time to decide the appeal. Thus the respondents was at liberty to delay the matter against the interest of justice and the petitioner.

2.15

Because, the petitioner's appeal dated 21.4.94 was not decided originally by the respondents, and accordingly the petitioner approached the Hon'ble Tribunal after ex-hausting departmental channel. The petitioner's approach was in accordance with the laiddown time-schedule. The Hon'ble Tribunal gave decision on 02.08.95 and asked the respondents to decide the petitioner's appeal dated 21.4.94. Thus the appeal which should have been decided by the respondents as per legal provision within a maximum period of six month's (i.e. up to 20.10.94) was authorised by the Hon'ble Tribunal to be decided even after 02.08.95. This ~~after 02.08.95~~ decision probably served no cause of justice but delayed it against the interest of the petitioner.

*A. Senthil*

2.2 Mistake of facts.

2.2.1 Because, the allotment of Zonal Railway was given to the petitioner in the appointment letter so that the petitioner may know the Zonal Railway where he would serve. N.E. Railway was according to the liking of the petitioner and accordingly he joined the Railway service. The president's power has been applied on petitioner's transfer to N.F. Railway in discriminatory way and without merit.

2.2.2 Because, allotment of Zonal Railways is made on the basis of merit in UPSC Exams.-Cum-Vacancy. A Officer junior to the petitioner and allotted to N.F. Railway soon after the joining got his transfer permanently to Northern Railway's. Northern Railway was the first choice also of the ~~petitioner's~~ petitioner's. Thus the junior got Railway of his choice in preference the petitioner's not on the basis of merit but under the umbrella of "Presidential Powers". The junior can not be effected now, so he has not been made a party. This example has been quoted to show discrimination and misuse of powers which injured the petitioner now at the time of transfer to N.F. Railway.

2.2.3 Because, merit in U.P.S.C. Exams. is maintained by allotment of Officers to their choices, subject to the vacancies in various Zonal Railways. If President's power are applied discriminately then merit will have no stand and sweetwill of the respondents will prevail. In order to <sup>eliminate</sup> ~~eliminate~~ discrimination allotment is made on Zonal Railway basis otherwise, it would have been on combined Indian Railway basis.

2.2.4 Because, the petitioner has been having no grievances on his posting to other Zonal Railway (Except N.F. Rly.). This being a hard area the posting must be based on some justified/legal criteria. But, the petitioner has been picked up arbitrary, by way of punishment as no criteria of posting has so far been given to the petitioner.

*Amittel*

- 2.2.5 Because U.P.S.C. Exams. are held and Officers are accordingly allotted to various Railways including N.F. Railway. These N.F. Railway Officers escape out of N.F. Railway and Officers like me are transferred to N.F. Railway just by way of harassment, punishment and without any merit/criteria. Presidential powers are thus misused by the respondents to please some and harass the petitioner. The Honourable Tribunal did not appreciate that transfer of Officers of N.F. Railway out of N.F. Railway itself is against their service conditions but as a tool of harassment against the Officers who were allotted to other Zonal Railways on the basis of their merit in U.P.S.C.
- 2.2.6 Because, other presidential powers are exercised in accordance with laid down procedure. President has powers to remove officers from service. It does not mean that he will remove everybody left and right from service without following laid down DAR procedure. In the instant case president's powers of transferring are arbitrary vague and tool to harassment/punishment to the petitioner.
- 2.2.7 Because, the transfer order (annexure A-1) is without any qualifying criteria whereas the respondents now say that the transfer was done in administrative interest.
- 2.2.8 Because, when the petitioner joined on N.F. Railway in middle of January 1994 there was no post/vacancy for the petitioner. It is similar to a case when the petitioner from a taxi say NE is taken out and pushed in another taxi say NF which is already having all the five ~~passengers~~ passengers full to its capacity. NE taxi is having normal comforts whereas NF taxi has no comfort. Intention behind this transfer is malafide, malafide and only malafide.

*A. Senthil*



2.2.9 Because, officers junior and senior to petitioner have not been posted in this hard area. Therefore, posting of petitioner in N.F.Rly. is discrimination and in violation of article 14 of the constitution. Compensation for posting on NF Railway is secondary and primary fact is posting to hard area. As per provision of service rules posting in hard area is bound to be compensated by extra allowances. Compensation does not legalise transfer.

2.2.10 Because, the petitioner was spared from N.E.Rly sometime in middle of December 1993 for his further joining on N.F.Rly. Thereafter the petitioner fell ill and after

*Availing joining time he joined N.F.Rly. in middle of January 1994. Thereafter, the petitioner availed 21 days leave in Feb. 94.*  
The transfer order was to be carried otherwise it would have resulted into DAR Case. But, the fact remains that transfer order was illegal and it was challenged as per laid down procedure of Central Administrative Tribunal ACT 1985. Even if the order was to be challenged at the initial stage, there was no prima facie case for issuing any stay order or interim relief. Even in this case when departmental channels have been exhausted the Honourable Tribunal referred back the case to the respondents for decision on the appeal of the petitioner. The transfer order illegal at one stage will always remain illegal at other stages and can be challenged within time as done in this case.

### 3.6 LIMITATION.

The object of writ petition is to get relief in the interest of the petitioner. When the decision by the Honourable Tribunal was given on 2.8.95 and directions were issued to the respondent- Rly. Board for deciding the petitioner's appeal dt. 21.4.94, the petitioner was relieved of his worries although late in time. The Rly. Board, however decided the appeal & conveyed on 12.1.96 not on merit and accepted the malafides in transfers. In this background the petitioner dares to approach the

Honourable Tribunal to kindly review the case in the interest of the justice & petitioner.

4.0 RELIEF/PRAYER.

The petitioner most respectfully prays before the Hon'ble Tribunal for reviewing it's decision dt. 2.8.95 & may graciously grant the petitioner relief's mentioned at SN. 8.1, 8.2, 8.5 & 8.6 in O.A.

5.0 LIST OF ANNEXURES.

R.V.I- Copy of judgement /order dt. 02.08.95.

R.V.2 - Copy of decision on appeal dt. 21.4.94 by Rlys Board vide Memorandum No.E(O)III-93 AE/357 dt. 3.1.96.

6.0 VERIFICATION.

I, AJENDRA KUMAR MITTAL, Son of Late Narain Das, age 51 years working as Dy.Controller of Store, N.F.Rly., New Bongaigaon resident of Bungalow No.34, Rly. Officers' colony, New Bongaigaon(Assam) do hereby verify that contents of para 1.0 & 2.2 are true to my personal knowledge and para 2.1 & 3.0 believed to be true on legal advice and have not suppressed any material fact.

Date- 06.02.96

Place, New Bongaigaon.



Signature of Applicant.

(FILED IN PERSON)

.....

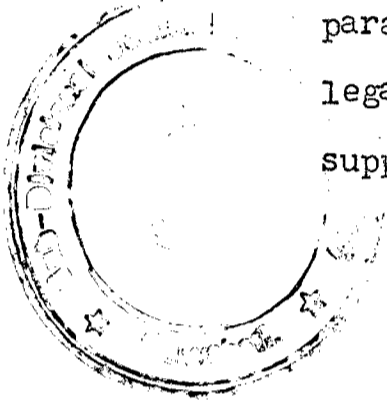
Affidavit

AFFIDAVIT

I, Ajendra Kumar Mittal S/o Late Narain Das, aged 53 Yrs. resident of R-34, Officers' Colony, N.F. Railway, New Bongaigaon, do hereby solemnly affirm an oath and state as follows:

1. That I am the petitioner in the instant case and as such I am conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statement made in this affidavit and in the accompanying review petition in O.A. No. 75 of 1995 in para 1.0 to 6.0 are based on records, my knowledge and on legal advice which all I believe to be true. I have not suppressed any material fact.

And I sign this affidavit on this 15<sup>th</sup> day of May 1997.



Identified by me:

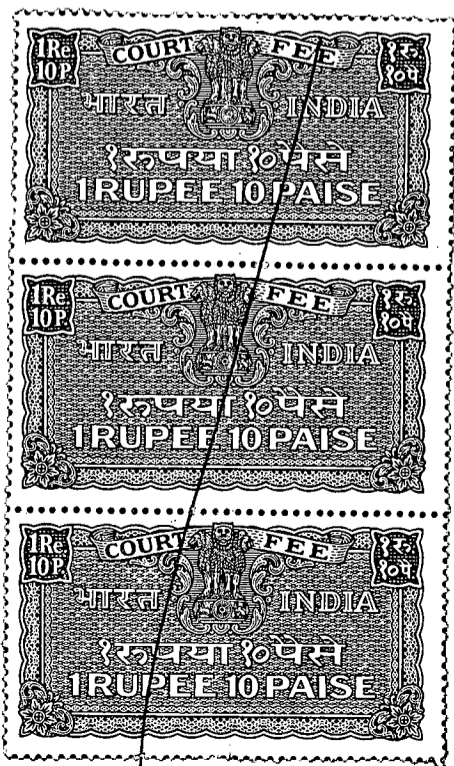
*Ujjwal Das*  
(UJJWAL DAS)  
Advocate  
15.5.97

*Ajendra Kumar Mittal*

DEPONENT

Solemnly affirmed and declared by the deponent who is identified by Sri UJJWAL DAS Advocate, Gauhati.

*[Signature]*  
MAGISTRATE



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.75 of 1995

Date of decision: This the 2nd day of August 1995  
( AT ADMISSION STAGE )

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri Ajendra Kumar Mittal  
Deputy Controller of Stores  
N.F. Railway, New Bongaigaon.

.... Applicant

Applicant appears in person

-versus-

1. Union of India  
through the Secretary,  
Railway Board,  
New Delhi.
2. Shri Amitabh Dutta  
Chief Material Manager,  
Eastern Railway,  
Calcutta.
3. Shri I. Illangovan,  
Chief Material Manager,  
Chittaranjan Locomotive Works,  
West Bengal.

.... Respondents

By Advocate Shri B.K. Sharma, Railway Counsel.

....

ORDER

CHAUDHARI, J. (V.C.)

Heard the applicant in person. No show cause reply has been filed by the respondents. Although the applicant desires that the respondents should file the reply we do not think that this is a matter of which we can take cognisance so as to require the reply to be filed.

Briefly stated the facts are that by order dated the applicant was appointed in the Indian

10/8/95  
श्री म.हरि मिश्र  
Deputy Controller of Stores  
N.F. Railway, New Bongaigaon.  
1974

*Handwritten signature*

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3 Railways Stores Service and was posted in N.E. Railway. It was, however, stipulated in that order that the applicant will ordinarily be employed throughout his service on the Railway to which he has been posted (which means <sup>N.E.</sup> any Railway), but the Railway Board reserves the right to require him to serve in any other Railway Project anywhere in or out of India. The applicant has stated in the application that between 1983 and 1989 he was posted outside N.E. Railway under South East Railway, C.D.R.E./Allahabad and R.E. Project/Bhopal. By order dated 11.11.1993 issued by the Railway Board the applicant has been transferred to the North East Frontier Railway as Deputy Controller of Stores - Selection Grade. According to the applicant he has, however, joined in the new posting on 21.1.1994.

3. The applicant has a grievance against his posting in N.E. Region. According to him it being a hard area his posting is equivalent to punishment awarded to him. He contends that he could not be transferred outside the N.E. Railway and no criteria has been applied in transferring him to N.F. Railway and the order of transfer is arbitrary, discriminatory and product of malice. He, therefore, prays that the order of transfer be declared null and void and the respondents be directed to transfer him to a place of his choice. He also prays for compensation to the extent of Rs.1,00,000/- for causing him mental agony by transferring him to N.E. Region. He also seeks penal action against respondent No.1 for passing the transfer order.

4. The applicant has no legal right to deny to accept the transfer. Not only that, under the condition of

appointment.....

*Advt*

*[Signature]*

Deputy Controller of Stores  
 C. F. Railway, New Bongaicha

*[Signature]*

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appointment the Railway Board had authority to transfer him . The applicant had already been posted under different Railways and, therefore, there is no charm in contending that he cannot be transferred outside N.E. Railway. Secondly, no circumstances have been pointed out by the applicant to draw inference that the order of transfer to N.F. Railway has been passed maliciously or with a view to punish him as there has been nothing shown that there is any reason for inflicting him such punishment. Thirdly, it is preposterous for the applicant to suggest that his posting in N.E. Region is punishment. It is true that the region is regarded as hard area, but there are provisions to compensate outside persons posted in that region. It is a part of the country and N.F. Railways is part of the Indian Railways and an individual employee cannot refuse transfer if so required by the administration according to the requirement of the Railways. We think that the applicant has also transgressed reasonable limit as a responsible officer in claiming compensation and seeking penal action against respondent No.1. Such allegation; do not help and may over-shadow a reasoned cause and we are sorry to note that out of a feeling that he has been posted to a region which is hard he has gone to the length of entertaining thoughts which are unfounded and not savoury. We do not, therefore, think that any prima facie case has been disclosed by the applicant. which calls for our interference. It is also pertinent to mention that the order of transfer was passed way back in November 1993. The applicant joined in the post at which he is transferred in early 1994 and it is not, therefore, open to him to challenge the said order at this late stage on 10.4.1995. If he had believed that legally it was wrong

he.....

A He (A-2)

[Handwritten signatures and stamps]  
 Assst. Secy. (Admin.)  
 Railway Board  
 New Delhi

[Handwritten signature]

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he ought to have challenged the same in good time or should have joined the post under protest. The applicant submits that as he had filed the appeal he had waited for six months. Although he is not wrong in saying so, the fact remains that by its very nature he had to challenge that order in initial stage and cannot do so after having acquiesced into it. It, however, appears that the appeal filed by the applicant to the Railway Board on 21.4.1994 has not been decided by the Railway Board, so far. The Railway Board could have dealt with the grievances of the applicant raised in the appeal, namely, that the posting in N.F. Railway was not justified and that a junior to him has been transferred to elsewhere <sup>and</sup> injustice has been done to him although he is senior. In the light of these grievances and other contentions raised in the appeal principles of natural justice require that the Railway Board had dealt with the appeal on merits and informed its decision to the applicant.

5. We, therefore, direct the respondent No.1 to take a decision on the appeal of the applicant dated 21.4.1994 on its own merit and convey the decision taken to the applicant in due course. While considering the appeal, if it has not so far been considered, we would desire that the Railway Board also considers the true impact of the stipulation of the appointment order that the right to transfer him was reserved for serving in any other Railway Project and whether the transfer to N.F. Railway is

tentamount.....

*Attended*

*[Signature]*  
 1994. Controller of Store  
 N. F. Railway, New Bongaigaon

*[Signature]*

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✓ tantamount to transfer to a project. We hope that the Railway Board takes the decision as expeditiously as possible. Meanwhile, we do not interfere with the present posting of the applicant.

6. The original application is rejected. No order as to costs.

*Attested*

*18/11*  
*20/11/2002*  
*14/3/04*  
*C. P. R.*

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)



ANNEX R.V.-2

No.E(O)III-93AE/357.

112/95.  
3-1-96

\* MEMORANDUM \*

The appeal dated 21.04.94 of Shri A.K. Mittal, SG/IRSS, N.F. Railway, received alongwith his representation dated 23.09.1995 in pursuance of the order dated 02.08.1995 of the CAT/Guwahati Bench, requesting for his transfer out of N.F. Railway has been considered.

Shri Mittal is advised that Group 'A' officers have all India transfer liability. This fact was mentioned even in his appointment letter which reads as follows:

"Railway Board, however, reserve the right to require you to serve in any other railway or project in or out of India."

Like all Group 'A' officers, he can, therefore, be transferred to any railway or project in the administrative interest. His transfer to N.F. Railway was in the administrative interest and in keeping with these provisions.

Once a Group 'A' officer is posted to N.F. Railway he has to put in a minimum of 3 years of service on N.F. Railway before his request for transfer out of N.F. Railway can be considered. Shri Mittal, who joined N.F. Railway in January, 1994 is yet to complete the requisite tenure. Hence, it is not possible to consider his request for transfer out of N.F. Railway at this stage.

*(Signature)*  
(A.C. Bakshi)  
Joint Secretary (G)  
Railway Board

✓ Shri A.K. Mittal,  
Dy.COS, Maligaon,  
N.F. Railway,  
Guwahati.

*A. Hestad*

*(Signature)*

*(Signature)*  
(A.K. MITTAL)  
APPLICANT

21.  
C.B.