

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 043/00280/2019

Date of Order: This, the 24<sup>th</sup> day of January 2020

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)**

**THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**



Shri Anthony Lawphniaw  
Son of Shri Wilfred Thongnibah  
Office: Working as Superintendent of Customs  
In the Office of the Assistant Commissioner of  
Customs Division, Shillong.

Resident: Baniun Block II, 7<sup>th</sup> Mile  
P.O. – Nonglyer, Near Govt. L.P. School  
Shillong – 793009.

...Applicant

By Advocates: Sri N. Dasgupta & Mrs. P. Sikdar  
-Versus-

1. Union of India, represented by the  
Secretary of Revenue  
Govt. of India, Department of Revenue  
North Block, New Delhi.
2. The Chief Commissioner  
Goods and Service Tax & Customs  
Guwahati Zone, Guwahati.

**...Respondents**

By Advocate: Sri A. Chakraborty, Addl. CGSC

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**O R D E R (ORAL)**

**MANJULA DAS, MEMBER (J):-**

In this O.A., the applicant is asking for the following reliefs:-

"Applicant fervently prays for setting aside Transfer Order No. 31/2019, dated 14.08.2019, Serial No. 47, so far the Applicant is concerned or the authority is concerned may kindly be directed to place the Applicant under jurisdiction of the Shillong CGST Commissionerate."



2. Sri N. Dasgupta, learned counsel appearing on behalf of the applicant submits that applicant has been transferred at the verge of retirement. Only two years left in his service for retirement from service. He wants to settle his peaceful retirement life at his present place of posting. As such, he is entitled to get the benefit as extended by the Hon'ble Gauhati High Court of Agartala in the case of **Narayan Choudhury Vs. State of Tripura & Ors.** reported in **2000 (1) GLR 519** as well as **Union of India Vs. Dr. Umesh Kumar Mishra WA No. (SH) 17/12.**

3. Learned counsel further submitted that applicant will be satisfied if he will be accommodated nearby Shillong by modifying the impugned transfer

order No. 31/2019 dated 14.08.2019, so far the applicant is concerned. The representation dated 16.08.2019 submitted by the applicant is also pending before the Chief Commissioner (respondent No. 2).



4. On the other hand, Sri A. Chakraborty, learned Addl. CGSC appearing on behalf of the respondents submit that the applicant has enjoyed his home posting or nearby home posting for long 30 years depriving other similarly placed officers. According to Sri Chakraborty, instant transfer order has been issued as per administrative exigencies.

5. We have heard the learned counsel on both parties, perused the pleadings and materials placed on record. No doubt, the department is the best suited to judge as to the existence of exigencies of such transfer who should be transferred where. Same time, it should not be given by that the power of judicial review could very well be exercised by a court of law if such transfer indicated hardship factor in compliance with such a transfer order. Moreover, it is the policy of the Govt. of India that in case of an officer due to superannuation, posting to station of choice shall be given due

weightage. There is an objective based on consideration of welfare behind such provision in the transfer policy as it would enable a person about to retire after a long and devoted service to make arrangements for settling down thereafter with her family, acquire a house if not already done and to make necessary arrangement for her superannuated life. In **Union of India Vs. Dr. Umesh Kumar Mishra WA No.**



**(SH) 17/12**, Hon'ble Gauhati High Court has held that – “Fairness requires that if a policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the exercise of power of transfer in violation of a laid down policy may be held to be arbitrary.”

6. In the present case, we have noted that, applicant will retire in May 2022. Only about 02 years left of his service. In **Narayan Choudhury Vs. State of Tripura & Ors. WP(C) No. 239/1999** reported in **(2000) 1 GLR 519**, the Hon'ble Gauhati High Court of Agartala Bench has held that – “The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ

petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months".

It is found that the present case is squarely covered with the above case of **Narayan Choudhury Vs. State of Tripura** (supra).



7. By taking into consideration the entire conspectus of the case as well as the ratio laid down by the Hon'ble Gauhati High Court mentioned above, we feel it deem fit and proper to issue a direction upon the respondents to consider the case of the applicant in view of the foregoing discussion.

8. By taking note of age as has been discussed in the foregoing paragraphs, we further direct the respondent authorities to accommodate the applicant by adjusting him either at Shillong or in any place nearer to his home town, subject to availability of vacancy.

9. Consequently, impugned transfer and posting office order No. 31/2019 dated 14<sup>th</sup> August 2019, in respect of the applicant, is hereby set aside.

10. With the above observations and directions, the O.A. stands disposed of accordingly. No order as to costs.

**(NEKKHOMANG NEIHSIAL)**  
**MEMBER (A)**

**(MANJULA DAS)**  
**MEMBER (J)**

**PB**

