

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/P.A No. 229/2000

R.A/C.P No.

E.P/M.A No. 223/2000

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FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 229/2000 OF 199

Applicant(s) Sri Gabin Ch. Boro.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. M. Chanda

Alps. N. D. Goswami

Advocate for Respondent(s) Mr. G. N. Chatterjee

C. G. S. C.

Notes of the Registry	Date	Order of the Tribunal
100/31/2000 492/52 18/10/2000 1/7/2000	22.9.2000	Present: The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman. List on 7.11.2000 for admission alongwith M.P.223/2000.
9/11/2000 13/7/2000	7.11.00	List on 21.11.00 for Admission alongwith M.P.No.223 of 2000.
1m	21.11.00	List on 22.12.00 for Admission alongwith M.P.No.223 of 2000.
Aug 2/11	1m	

Notes of the Registry	Date	Order of the Tribunal
Order dtd. 22/12/00 Communicated to the parties Convened. Note D (No. 26 to 29 dtd 2/1/2001)	22.12.00	Present: Hon'ble Mr. Justice D.N.Choudhury, Vice-Chairman and Hon'ble Mr. M.P. Singh, Administrative Member. Heard learned counsel for the parties. Application is admitted. Issue notice on the respondents. Call for records. Returnable by 8. 4 weeks. List on 8.2.01 for orders.
<u>12-1-2001</u> Show Cause Reply has been filed by the respondents No. 1, 2, 3, 4. From	1m 8.2.01	<u>AK</u> Member Vice-Chairman List on 1.3.01 to enable the respondents to file written statement.
Show cause has been filed.	1m 1.3.01	<u>IC Usha</u> Member Vice-Chairman List on 2.4.01 to enable the respondents to file written statement.
<u>28/2/01</u> ① Show case has been filed. ② No. Rejoinder has been filed.	1m pg 2.4.2001	<u>IC Usha</u> Member Vice-Chairman It has been stated that the written statement has been filed. The respondents shall serve a copy of the written statement to the learned counsel for the applicant, if not already served. The applicant may file rejoinder, if any, within two weeks thereafter. List for orders on 24.4.01.
No. Rejoinder has been filed.	nkm 24.4.01	<u>IC Usha</u> Member Vice-Chairman Written statement has been filed. The applicant may file rejoinder if any within two weeks. List on 14.5.01 for hearing.
<u>27/6/01</u>	1m 14.5.	<u>IC Usha</u> Member Vice-Chairman List on 22.5.2001 for hearing 22.5.01 Leftover. List on 29.6.01. 820

Notes of the Registry	Date	Order of the Tribunal
Mr. Jaginder has been billed. 30 4.7.01 18.7.2001 Copy of the Judgment has been sent to Mr. Jaginder the same to the applicant as well as to Mr. C.G. S.C. for the Respon.	28.6.01 bb 05.07.01 gg	<p>On the request made by Mr. M. Chanda, learned counsel for the applicant, the case is adjourned to for the date. List on 19-7-2001 for hearing.</p> <p>K C U Shary Member</p> <p>Vice-Chairman</p> <p>Heard counsel for the parties. Hearing con- cluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of in terms of the orders. No order as to costs.</p> <p>K C U Shary Member</p> <p>Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 229 of 2000.

DATE OF DECISION. 05-07-2001.....

Sri Gehin Chandra Boro,

PETITIONER(S)

Sri M.Chanda

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

O.A. NO. of

THE HON'BLE MR. K.K.SHARMA, ADMINISTRATIVE MEMBER.

DATE OF DECISION.....

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.

RESPONDENT(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 229 of 2000.

Date of Order : This the 5th Day of July, 2001.

The Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr. K.K.Sharma, Administrative Member.

Sri Gahin Chandra Boro,
Lower Division Clerk,
Small Industries Service Institute,
Diphu Branch, P.O. Diphu,
Dist. Karbi Anglong (Assam)

... . . . Applicant

By Advocate Sri M.Chanda.

- Versus -

1. Union of India
through the Secretary to the Govt.
of India, Department of Industries,
New Delhi-1.

2. The Development Commissioner (SSI)
Nirman Bhawan, 7th Floor,
New Delhi-11.

3. The Director,
Small Industries Service Institute,
Guwahati-21.

4. The Director,
Small Industries Service Institute,
Agartala.

... . . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

The legitimacy of the conditions in transferring the applicant from Agartala to Diphu mentioned in the impugned Notification dated 4.12.1998 is under challenge in this O.A.

2. The basic facts material for proper adjudication of this proceeding are recounted here in below :

The applicant was appointed in S.I.S.I. as L.D.C. after selection by the Staff Selection Commission and he joined on 1.1.91. He was transferred to Agartala by order dated 10.4.92. The aforementioned transfer order

 contd...2

Was assailed before the Tribunal by way of an O.A. which was registered and numbered as O.A.81/93. The said transfer order was stayed by the Tribunal. Subsequently the above transfer order was withdrawn and the service of the applicant was terminated by order dated 8.5.92. The applicant submitted representation before the authority for recall of the termination order by stating his willingness to comply with the transfer order to Agartala. As per the judgment and order dated 7.6.93 in O.A. 81/93 the applicant was made to understand that the termination order would withdrawn and the applicant would be allowed to join at Agartala subject to withdrawal of O.A. No. 82/92. Subsequently the O.A. 82/92 was withdrawn by the applicant with liberty to institute a fresh application if such occasion did arise and to that effect order was passed on 28.5.92. In the judgment and order dated 7.6.93 in O.A.81/93 interalia recorded the statement of the Superintendent of S.I.S.I., Guwahati that the applicant would be allowed to join at Agartala and the termination order dated 8.5.92 would stand vacated on his reporting for duty at Agartala. The Director, S.I.S.I., Guwahati passed the order dated 1.6.92 transferring the applicant to report for duty at Agartala on the condition that if the applicant failed to report for duty the said order would be treated as termination order from service. The applicant reported for duty at Agartala on 18.6.92 but he was not allowed to join and informed that his case of joining would be considered only on receipt of further clear cut advice from DC(SSI), New Delhi. After some time the applicant again filed O.A. No.81/93 and the Tribunal disposed of the said O.A. by its order dated 7.6.93. The Tribunal directed the respondents, particularly Director, S.I.S.I., Guwahati and Director and

Deputy Director, S.I.S.I, Agartala to allow the applicant to resume his duty as L.D.C at Agartala recording his date of joining with effect from 18.6.92. The applicant was accordingly allowed to join. The applicant while working at Agartala submitted representation to the authority for posting him nearest to his home town in Assam. Failing to get appropriate remedy the applicant approached this Tribunal by way of an O.A. which was registered and numbered as O.A. 183/97. By order dated 20.8.97 the said application was disposed of by the Tribunal directing the respondents to consider his representation for posting of the applicant in Assam. By order dated 1/2.11.98 the respondent No.4 informed the applicant that the competent authority did not have any objection for inter State transfer of the applicant from SISI, Agartala to Branch SISI, Diphu subject to condition that the transfer of the official would be at his own cost and as such no T.A., D.A etc. would be admissible to him for such transfer. By order dated 10.11.98 the applicant was transferred from SISI, Agartala to branch SISI, Diphu. The applicant accordingly moved the authority for his release. By communication dated 27.11.98 the respondent No.4 informed the applicant that he could be released from duty only on receipt of the clarifications from Headquarter. The respondent No.4 issued memorandum dated 10.11.98 transferring the applicant from Agartala to Diphu and thereafter the impugned memorandum dated 4.12.98 was issued, which reads as follows :

h
"In continuation to this office Order No.2(19)/SISI/AGT/98/825-29 dated 10.11.98 transferring Shri G.C.Boro, L.D.C. to Br.SISI Diphu as per D.C.(SSI), New Delhi's Order No.C-18013/11/97-A(NG)

dated 29.10.98 and subsequent Inter Office Note dated 27.11.98 regarding his release from this office, Shri G.C.Boro, is hereby informed that implementation of his transfer as well as release is subject to his undertaking on the following conditions :-

- 1) That the transfer will be at his own cost.
- 2) That no TA/DA and joining time will be admissible to him on this transfer journey.
- 3) That he will rank Junior most in the grade of LDC in cadre of S.I.S.I., Guwahati.
- 4) He will lost the right to revert back to this cadre in future under any circumstances.

(Authority : D.C.(SSI), New Delhi's telegraphic instruction vide No.C-18013/11/97-A(NG)

This issues with the approval of Director."

The legitimacy of the aforesaid direction is under challenge in this proceeding. Mr M.Chanda, learned counsel for the applicant submitted that as a matter of policy applicant was entitled to be posted in Assam but arbitrarily he was transferred to Agartala. Whatever the reason may be the respondents could not have ordered to rank the applicant junior most in the grade of L.D.C in the cadre of SISI, Guwahati ignoring his past services. Mr Chanda particularly assailed condition No.3 and 4 of the impugned order. According to the learned counsel the conditions No.3 and 4 are per se arbitrary and discriminatory and therefore those conditions are liable to be set aside.

3. Mr A.Deb Roy, learned Sr.C.G.S.C countering the arguments of the applicant submitted that transfer was not made on public interest. The applicant was borne in the cadre of SISI, Agartala and as per conditions of his service he was not liable to be transferred out of his cadre, save and except in the public interest. The transfer of the applicant to Diphu was made at his own request. As the transfer of the official was not in public interest he was assigned seniority as per ^{the} administrative practice

followed by the department. Mr Deb Roy submitted that as per the practice followed by the department whenever an officer who is a part of the decentralized cadre choose to go on transfer at his own request from one cadre to another cadre regulated on decentralised basis i.e. transfer involving inter cadre movement, he looses the benefit of seniority. Mr Deb Roy also referred to a communication dated 9.2.2001 issued by the Government of India, Ministry of SSI & ARI and stated that as per conditions of the service all Group 'C' and 'D' employees recruited by Directorate becomes part of that cadre only, such employees are not entitled to be transferred out of their cadre. However if any employee seeks any transfer outside his cadre such a request is considered at employee's own cost on compassionate ground and he is ranked juniormost in new cadre.

4. We have given our anxious consideration on the matter. The applicant was transferred at his own request. Therefore the condition specifying that he would be treated as junior to those who are already working in the transferred cadre *prima facie* cannot be held to be arbitrary. Mr Chanda, learned counsel for the applicant however referred to us a Full Bench decision of the Central Administrative Tribunal, Madras Bench in T.A.No. 65 of 1987 disposed of on 5.10.1987, K.A. Balasubramanian vs. Union of India & Ors., reported in Full Bench Judgments of C.A.T (1986-1989) page 209. Relying upon the aforementioned judgment Mr Chanda submitted that the regular service of the applicant in the grade of Guwahati prior to his transfer to Agartala as well as the service rendered at Agartala could not have been ignored under any circumstances. The judgment and order referred to us was not a case for computing the past service in case of transfer of a person sought at his own request. The case mentioned above pertains to the eligibility condition for promotion to the cadre of UDC. Under the relevant rule

8 years regular service in the grade is required. The Full Bench decided that 8 years regular service in the grade was required and not in the unit. Hence the applicant is entitled for promotion. The case is completely a distinct one. The conditions No.1, 2 and 3 in our view as such cannot be faulted. We however find it difficult to uphold the condition No.4 thereby denying the applicant's right to revert in future under any circumstances. The applicant sought his transfer from Agartala to Diphu for his personal convenience. It is open to the respondents to consider such transfer outside his cadre as per the policy decision on compassionate ground. The respondents has accepted his application subject to the condition that he would be ranked junior in the grade of LDC in the cadre of Guwahati. The condition No.3 is only confined to the seniority of the applicant in the grade of LDC in the cadre of SISI,Guwahati. The above condition will not in any way affect his eligibility of career progression nor it will in any form impinge or efface and/or obliterate the experience in computing the eligibility for promotion, subject to the rules of recruitment. The condition No.3 thus cannot be labelled as arbitrary. The condition No.4 appears to be arbitrary without any reasonable nexus. The condition No.4 mentioned in the impugned Memorandum dated 4.12.1998 is accordingly set aside and quashed. Subject to the observations and directions made above, the application stands dismissed.

There shall, however, be no order as to costs.

K. K. Sharma
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

D. N. CHOWDHURY
(D.N.CHOWDHURY)
VICE CHAIRMAN

U.GU 10 JUL 2000

Guwahati Bench

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Filed by the
Applicant-Through
N.D. Goswami
Advocate
3.7.2000

In the Central Administrative Tribunal

Guwahati Bench :: Guwahati.

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

Title of the Case : O.A. No. 229 /2000

Shri Gahin Chandra Boro : Applicant

- Versus -

Union of India and others : Respondents.

I N D E X

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Filed by

N. D. Goswami
N.D. Goswami
Advocate.

Gahin Ch. Boro.

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In the Central Administrative Tribunal

Guwahati Bench :::: Guwahati.

O.A. No. 229 /2000

BETWEEN

Shri Gahin Chandra Boro
Son of Shri Ghana Kanta Boro
Working as Lower Division Clerk
Small Industries Service Institute
Diphu Branch, P.O. Diphu
Dist. Karbi Anglong (Assam)

Gly
Applicant (within
Term)

..... Applicant.

AND

1. The Union of India
Through the Secretary to the Govt. of India
Department of Industries,
New Delhi - 1.

2. The Development Commissioner (SSI)

Nirman Bhawan, 7th Floor,
New Delhi - 11.

3. The Director

Small Industries Service Institute
Industrial Estate, Bamunimaidan,
Guwahati-21.

4. The Director

Small Industries Service Institute
Agartala.

.... Respondents

Gahin Ch. Boro.

1. Particulars of Order(s) against which this application is made :

This application is made against the impugned memorandum dated 4.12.98 issued by the respondent no.4 whereby the applicant was transferred subject to few arbitrary and unconscionable pre-conditions, viz, conditions no. (iii) & (iv) as enumerated therein which are detrimental to the interest of the applicant and are subject matter of challenge in this original application.

2. Jurisdiction :

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

3. Limitation :

The applicant further declares that the application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case :

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

4.2. That the applicant was initially appointed as Lower Division Clerk (for short, L.D.C.) under the respondent no.3 through Staff Selection Commission in the year 1991. However, on completion of about one and half year of

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his service, he was declared surplus and consequently was terminated. Being aggrieved with the order of termination, he approached this Hon'ble Tribunal in O.A. No. 82/92. The said O'A. No. 82/92 was disposed of by this Hon'ble Tribunal vide judgement and order dated 7.5.93 with a direction to allow the applicant to join in service and in terms thereof the applicant was allowed to join at Agartala.

4.3. That since thereafter, the applicant had been working at Agartala and during that period a good number of vacancies of L.D.C. had fallen vacant in different places under the disposal of the respondent no.3. The applicant being a resident of Assam who also belong to Scheduled Tribe Community was entitled to be posted nearest to his home town in the available vacancies in terms of Government of India, Department of Personnel and Training Office Memorandum dated 24.6.85 and 21.8.89. He therefore reasonably approached the respondent authorities, particulary the respondent no.4 seeking a favourable action. But as nothing was done, he again approached this Hon'ble Tribunal in O.A. No. 183/97.

4.4. That the abovenamed O.A. No. 183/97 was disposed of by the Hon'ble Tribunal vide order dated 20.8.97 with a direction to consider transfer and posting of the applicant as desired by him and to dispose of his representation dated 14.7.97 within a period of three months from the date of passing the order.

Gohin Ch. Baro.

4.5. That in the abovenarrated background, the respondent no.4 issued a letter dated 1/2.11.98 to the applicant intimating that the competent authority had no objection to his Inter State Transfer provided that the the same would be at his own cost and as such no T.A. etc would be admissible to him on such transfer. By the said letter the applicant was also advised to submit his willingness in that regard. The applicant, on receipt of the said letter, immediately submitted his willingness for transfer on 10.11.98 to the respondent no.4. The applicant initially appointed vide order dated 12.12.90

and appointed order dated 12.12.90
A copy of the said letter dated 1/2.11.98 is annexed herewith as Annexure -1. and IA

4.6. That thereafter vide order dated 10.11.98, the respondent no.4 transferred the applicant from SISI, Agartala to Branch S.I.S.I., Diphu under the Administrative Control of the Respondent No.3. It was, however, mentioned in the said order that no. T.A. etc. would be admissible to the applicant on such transfer as the transfer was at his own cost. The applicant, however, after receipt of the said order dated 10.11.98 requested the respondent no.4 vide his letter dated 12.11.98 to release him from duties w.e.f. 4.12.98.

Copies of the order dated 10.11.98 and letter dated 12.11.98 are annexed herewith as Annexure - 2 and 3 respectively.

4.7. That surprisingly on 27.11.98 the respondent no.4 issued a letter to the applicant intimating him thereby that he could be relieved from his duty only on receipt of certain clarifications from Headquarters sought by the respondent no.4 on certain points on inter state transfer. Therefore, curiously enough, the respondent no.4 issued a Memorandum on 4.12.98 transferring the applicant from SISI, Agartala to Branch SISI, Diphu subject to few conditions. It is stated that the said memorandum dated 4.12.98 was passed under authority of D.C.(SSI) New Delhi's Telegraphic instruction vide No. C-18013/11/97-A(NG). It was further stipulated in the said Memorandum dated 4.12.98 that the implementation of the transfer order as well as release of the applicant would be subject to his undertaking on the conditions enumerated therein.

Copies of the letter dated 27.11.98, telegraphic instruction dated 3.12.98 and memorandum dated 4.12.98 are annexed herewith as Annexure -
4, 5 and 6 respectively.

4.8. That the applicant states that the conditions that were laid down in the memorandum dated 4.12.98 are namely, (i) that the transfer will be at his own cost ; (ii) that no T.A., D.A. and Joining Time will be admissible to him on that transfer journey ; (iii) that he would rank juniormost in the grade of IDC in the Cadre of SISI, Guwahati and (iv) that he would lose the right to revert back to the cadre of SISI Agartala in future under any

Gahan Ch. Baru.

circumstances. It is stated that the conditions no. (iii) and (iv) are detrimental to the interest of the applicant besides being unconscionable. The said conditions has been put in a most arbitrary and unfair manner and without any basis. Therefore, the said conditions are liable to be set aside and quashed.

4.9. That after receipt of the said memorandum dated 4.12.98, the applicant, however, accepted those conditions on compelling circumstances finding no suitable alternative and prayed for his release w.e.f. 8.1.1999. He was accordingly, thereafter, ~~was~~ relieved of his duties from the office of the respondent no.4 with instruction to report for duty at Branch SISI Diphu, vide order dated 6.1.99.

Copies of the letter of acceptance dated 4.12.98 submitted by the applicant and order dated 6.1.99 are annexed herewith as Annexure-7 and 8 respectively.

4.10. That the applicant states that the impugned conditions as enumerated in the memorandum dated 4.12.98 are illegal and unjustified inasmuch as the same have been put without any basis and in arbitrary exercise of power. The same are therefore liable to be declared void and inoperative. It is stated that the said conditions are detrimental to the interest of the applicant. Therefore, if the same are allowed to stand, the applicant would suffer irreparable loss and injury. It is further stated

Gahin Ch. Baru.

that the applicant being originally appointed under the administrative control of the respondent no.3 has every right to serve under him. The applicant started working under the respondent no.4 only as a consequence of setting aside of the illegal order whereby he was terminated as a surplus employee. In this view of the matter, his transfer cannot be termed as Inter-State Transfer and the rules governing such transfer cannot be applied to his case as has been done by the ~~xx~~ respondents.

4.11. That the applicant states that the approach of the respondents in transferring him on some unconscionable grounds/conditions is patently erroneous and on this count along the impugned conditions no. (iii) and (9v) as enumerated in the impugned memorandum dated 4.12.98 are liable to be set aside.

4.12. That this application is filed bonafide and in the interest of justice.

5. Grounds with Legal Provisions :

5.1. For that, the action of the respondents in passing the memorandum dated 4.12.98 subject to some unconscionable conditions is illegal and unjustified and therefore the conditions no (iii) & (iv) as contained in the memorandum dated 4.12.98 are liable to be set aside.

Gahin Ch. Baro

5.2. For that, the impugned memorandum dated 4.12.98 containing some unreasonable and unjustified conditions has been passed in a fanciful manner and in arbitrary exercise of power by the respondents and therefore the same is liable to be modified.

5.3. For that, the impugned conditions are detrimental to the interest of the applicant and the same have been put without any just and reasonable cause and therefore the same are liable to be expunged.

5.4. For that, the applicant originally being an employee of the respondent no.3 was given appointment under the respondent no.4 as a consequence of setting aside of the illegal order of his of service and in this view of the matter his transfer to his original cadre cannot be termed as Inter-State Transfer not the rules governing such transfer can be applied to him.

5.6. For that, the approach of the respondents in transferring the applicant on some highly unreasonable conditions is patently erroneous and ex-facie illegal and therefore the impugned memorandum dated 4.12.98 is liable to be modified.

5.7. For that, in the facts and circumstances of the case, the applicant cannot be deprived of his seniority in the grade of L.D.C. in the cadre of SISI, Guwahati

Gahin ch. Baro.

and his seniority cannot be curtailed by the arbitrary action of the respondents as has been done in the instant case.

5.8. For that, in any view of the matter, the impugned memorandum dated 4.12.98 is bad in law and is liable to be modified and the condition no. (iii) and (iv) are liable to be expunged.

6. Details of Remedies Exhausted.

The applicant stated ~~s~~ that he has no other alternative or other efficacious remedy than to file this application before this Hon'ble Tribunal for protection of his valuable right.

7. Matters not previously filed or pending before any other court.

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

8. Relief(s) Sought For :-

In the facts and circumstances of the case, the applicant prays for the following relief(s) :-

8.1. That the conditions no. (iii) & (iv) as enumerated in the impugned memorandum dated 4.12.98 be declared illegal and inoperative and therefore be expunged.

Gahin Ch. Borth.

8.2. That the respondents be directed to cancell/recall and/or modify the impugned memorandum dated 4.12.98 in so far it relates to incorporation of the conditions enumerated therein which are detrimental to the interest of the applicant.

8.3. That the respondents be directed to confer appropriate seniority to the applicant in the grade of LDC in the cadre of SISI, Guwahati considering his length of service since his initial appointment under the respondents.

8.4. Any other relief(s) to which the applicant is entitled under the facts and circumstances of the case.

8.5. Cost of the case.

9. Interim Relief (s) Prayed for :-

The applicant does not pray for any interim relief in the instant case. He, however, prays for an early hearing of the case.

10.

This application has been filed through advocate.

11. Particulars of I.P.O.

i.	I.P.O. NO.	:	062 497652
ii.	Date of Issue	:	17/2/98
iii.	Issued from	:	G.P.O. Guwahati.
iv.	Payable at	:	G.P.O. Guwahati.

12. List of enclosures.

As stated in the Index.

..... Verification

Gohain Ch. Baru.

V_B_R_I_F_I_C_A_T_I_O_N

I, Shri Gahin Chandra Boro, son of Chana Kanta Boro, aged about 32 years, working as Lower Division Clerk, Office of the Director of Small Industries Service Institute, Agartala, Tripura, applicant in this application as such I am well acquainted with the facts and circumstances of this case, do hereby verify that the statements made in paragraphs 1 to 6 and 9 to 12 are true to my knowledge and those made in paragraph 7 and 8 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 3rd day
of July, 2000 at Guwahati.

Gahin Ch. Boro

Signature.

GOVT. OF INDIA
MINISTRY OF INDUSTRY
Small Industries Service Institute
HOSPITAL ROAD.
AGARTALA - 799001 (Tripura)

No. 2(17)/GCB/SISI/AGT/92/803

Date the 1/2.11.98.

To
Shri G. C. Baro,
L.D.C.
S.I.S.I.
Agartala -1.

Subject :- O.A. No. 183/97 - transfer of Shri Gahin -
Chandra Baro, L.D.C. from SISI, Agartala
to Br. SISI, Diphu.

Sir,

With reference to our letter No.2(17)/GCB/SISI/
AGT/92/739 dated 23-10-90 the competent Authority has
informed that they have no objection to the Inter State
Transfer of Shri G.C. Baro, L.D.C. from SISI, Agartala
to Br. SISI, Diphu. Transfer of said official will be
at his own cost. As such no T.A. etc will be admissible
to him on above transfer.

You are advised to submit your willingness in
this regard which will be forwarded to the O/O the DC(SSI),
New Delhi for further action at their end.

Yours faithfully,

Sd/-
(A. BASU)
ASSTT. DIRECTOR (CHEM)/DDO & HO
For DIRECTOR

- 15 -

Annexure - 1.

Regd. post.

Gram : Smallind.
Tlx. 235-2379 ASEK INPones : 31949
31950.

Government of India.
 Ministry of Industry
 Small Industries Service Institute
 Bamunimaidan.
 Guwahati-21.

No. A.12021(1)/89. Dated the 12.12.90.

MEMORANDUM.

1. With reference to the Nomination from S.C.C.Gauhati the Director, Small Industries Service Institute, Guwahati is pleased to offer Shri Gahin Chandra Boro, Registration No. SSC. Roll 100 43-30576 temporary post of L.D.Clerk in Small Industries Service Institute, Guwahati in the scale of pay Rs. 950-20-1150-EB-25-1500. The appointee will also be entitled to draw dearness and other allowances at the rates admissible under and subject to the conditions laid down in rules the orders governing the grant of such allowances in force from time to time.

2. THE TERMS OF APPOINTMENT ARE AS UNDER :

- i) The appointment is temporary and will not confer any title to permanent employment.
- ii) The appointment will be on trial for two years. the period is liable to be extended or curtailed at the discretion of the appointing authority. During this period his/her services may be terminated at any time without assigning any reasons.

iii)

iii) If during trial period Shri Gahin Ch. Boro may desire to leave the Organisation, one month's clear notice will be necessary.

iv) On completion of the trial period the appointment may be terminated at any time by a month's notice given by either side. The appointing authority reserves the right of terminating his services forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

v) The appointment carries with it the liability to serve anywhere in Assam, Meghalaya & Arunachal Pradesh.

vi) He will have to attain the speed of 30 (thirty) words per minute in type within 6 (six) months from the date of appointment. Other conditions of services will be governed by the relevant rules and orders from time to time.

3. THE APPOINTMENT WILL BE FURTHER SUBJECT TO :

- 1) Production of Certificate of Fitness from the Civil Surgeon (Chief Medical & Health Officer, Darrang).
- 2) Submission of a declaration in the form enclosed and in the event of the candidate having more than one wife living the appointment will be subject to his/her being exempted from the enforcement of the requirement in his behalf.
- 3) Taking on each of Allegiance/faithfulness to the Constitution of India.
- 4) Production of the following original certificates together with one attested copy.
- 5) a) Degree/Diplomas/Certificates of educational and other Technical qualification, if any, (b) Certificate of age, (c) Character Certificate from Two Gazetted officer of the Central/State Government (d) Discharge Certificate of previous employment, if any, (e) Certificate in the prescribed form in support of candidates claim to belong to Scheduled Castes or Tribes/Anglo Indian Communities. (The Certificate should be signed by the District Officer of the Sub Divisional Officer or any other officer of the District in which his/her parents ordinarily reside, who has been designed by the State Govt. concerned as competent to issue such Certificate, if both parents are dead, if the district in which he himself resided

otherwise,.....

otherwise than for the purpose of his own education. Where the certificates are issued by Gazetted Officer of the Union Government or State Govt., they should be countersigned by the District Magistrate or Deputy Commissioner or Sub-Divisional Officer.

4) It may please be stated whether the candidate is serving or is under obligation to serve another Central Government Department or State Government or in public ~~extrabux~~ authority.

5) If any declaration given or information furnished by the candidate, if found to be false or if the candidate is found to have wilfully suppressed any material information he will be liable to remove from service and such other action as Government may deem necessary.

6) If Shri Gohin Chandra Boro accepts the offer on the above terms he/she should report for duty to the Director, SISI, Bamunimaidan, Guwahati-21/Dy. Director/Asstt. Director Incharge, Branch SISI/Extn. Centre _____ immediately but not later than 6.1.1991 failing which the offer will be treated as cancelled. While reporting for duty he/she should produce the certificates mentioned in para 3 above.

7) No travelling allowance will be allowed for joining the appointment or on termination thereof unless otherwise admissible under rules.

Sd/- Illegible. 14.12.90.
Assistant Director (ADMN)
for Director.

To
Shri Gohin Chandra Boro,
Vill. Dewanpukhuri, P.O. Barangabari,
Dist. Darrang(Assam), Pin Code No. 784533.
Copy to :- 1) Regional Director, SSC, Gau-1.
2) The Asstt. Employment Officer, Dist. Employment Exchange,
Guwahati-3. 3) Personal file of Sri Boro, & 4) Recruitment
File of Class ' employees/staff, SISI, Ghy. 5) Office
Supdt. (Accounts), SISI, Ghy.

Assistant Director (Admn.)
for Director.

REGISTERED

Annexure -2
PHONE : 226570

GOVERNMENT OF INDIA
MINISTRY OF INDUSTRY
SMALL INDUSTRIES SERVICE INSTITUTE
HOSPITAL ROAD
AGARTALA - 799 001.

NO.2(19)/SISI/AGT/98/825-29

Dated, the 10th November, 1998.

O R D E R

In pursuance of Development Commissioner, (SSI), New Delhi's letter No.C-18013/11/97-A(NG), dated 29-10-1998 and subsequent Telegraphic Order dated 03-11-1998, the Director, Small Industries Service Institute, Agartala is pleased to Order the transfer of Shri G.C. Baro, L.D.C. from SISI, Agartala to Br. S.I.S.I. Diphu under the Administrative Control of SISI, Guwahati against existing vacancy as per Director, SISI, Guwahati's letter No.A-20017(30)/91/2779 dated 6th October, 1997 with the instruction to report for duty at Br. SISI, Diphu.

The transfer is at his own cost, and as such no T.A. etc. will be admissible to him on above transfer.

Sd/-

To
Shri G.C. Baro,
L.D.C.
SISI, Agartala.

(A. BASU)
ASSTT. DIRECTOR (CHEM)/DDO & HO
For DIRECTOR

Copy for information to :-

- 1) The Development Commissioner, (SSI), Nirman Bhavan, 7th-floor, New Delhi - 110011 for kind information.
- 2) The Director, SISI, Bamunimaidan, Industrial Estate, Guwahati - 781021 .
- 3) The Asstt. Director In-charge, Br. SISI, Diphu.
- 4) The Accounts Officer, Pay and Accounts Office, (SSI), Calcutta -700035.
- 5) Accounts Section, SISI, Agartala -2 copies - for necessary action.
- 6) Personal file of Shri G.C. Baro, L.D.C.

(A. BASU)
ASSTT. DIRECTOR (CHEM)/DDO & HO
for DIRECTOR.

To
The Director,
S.I.S.I.,
Agartala.

Sub:- Relieving order.

Sir,

With reference to your letter No.2(19)/
SISI/AGT/98/825-29 dt. 10.11.98, I may please be
relieved from my duties on 04.12.98 to report
for duty at Br. SISI, Diphu under the control of
S.I.S.I., Guwahati.

Thanking you.

Yours faithfully,

Sd/-
(G.C. BARO.)
L.D.C.
SISI, Agartala.

Dated : Agartala,
The 12th Nov.'98

GOVERNMENT OF INDIA
MINISTRY OF INDUSTRY
SMALL INDUSTRIES SERVICE INSTITUTE
HOSPITAL ROAD(NEAR GANDHIGHAT)
AGARTALA-799001 (TRIPURA)

INTER OFFICE NOTE /

With reference to his letter dated 12-11-98
requesting the Office for his release on 04-12-1998, Shri G.C.-
Baro, L.D.C. of this Office is hereby informed that he can be
relieved from his duty from this Office only receipt of the
clarifications from H.Q. sought by this Office on certain points
on inter state transfer.

Sd/-

Shri G.C. Baro,
L.D.C.
SISI, Agartala.

(A.K. SARKAR)
DIRECTOR

U.O. NO. 2(19)/SISI/AGT/98/917

Dated:- 27-11-1998.

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-16-

Annexure -5

TELEGRAM COPY

NO.C-18013/11/97 - A (NG)

REFYLET DT 01.12.98

REG TRANSFER OF SHRI G C BORO

TO RELIEVE BORO SUBJECT TO FOUR CONDITIONS

IN YOUR LETTER DT 27TH NOVEMBER '98

SMALLINDEVCOM

GOVT. OF INDIA
MINISTRY OF INDUSTRY
Small Industries Service Institute
HOSPITAL ROAD.
AGARTALA - 799001 (Tripura)

No.2(19)/SISI/AGT/98/959-61

Date the 4th December, 1998.

M E M O R A N D U M

In continuation to this office Order No.2(19)/SISI/AGT/98/825-29 dated 10.11.98 transferring Shri G.C. Baro, L.D.C. to Br.SISI Diphu as per D.C.(SSI), New Delhi's Order No.C-18013/11/97-A(NG) dated 29.10.98 and subsequent Inter Office Note dated 27.11.98 regarding his release from this office, Shri G.C. Baro, is hereby informed that implementation of his transfer as well as release is subject to his undertaking on the following conditions :-

- i) That the transfer will be at his own cost.
- ii) That no TA/DA and J&ining time will be admissible to him on this transfer journey.
- iii) That he will rank Junior most in the grade of LDC in cadre of S.I.S.I., Guwahati.
- iv) He will lost the right to revert back to this cadre in future under any circumstances.

(Authority : D.C.(SSI), New Delhi's telegraphic instruction vide No.C-18013/11/97-A(NG)

This issues with the approval of Director.

Sd/-

(A. BASU)

Asstt. Director (Chem)/DDO & HO

To

Shri G.C. Baro,
L.D.C.
S.I.S.I., Agartala

A/1-1/1
1/1/3

Copy to :-

1. The Director, SISI, Bamunimaidan, Guwahati for information.
2. The Asstt. Director In-charge, Br. SISI, Diphu.

Sd/-

(A. BASU)

Asstt. Director (Chem)/DDO & HO

Attn: *[Signature]*
A. Basu
A. Basu

To

The Director,
S.I.S.I.,
HOSPITAL ROAD
Agartala - 799001.

Sir,

With reference to your Memo. No.2(19)/SISI/AGT/98/959-61 dt. 04.12.98, I do hereby undertake to accept the following conditions in connection with my transfer from SISI, Agartala to Br. SISI, Diphu under the jurisdiction of the Director, SISI, Guwahati :-

- i) that the transfer will be at my own cost.
- ii) that no TA/DA and Joining time will be admissible to me on this transfer journey.
- iii) that I will rank Junior most in the grade of LDC in cadre of S.I.S.I., Guwahati.
- iv) I will not be given the right to revert back to this cadre in future under any circumstances.

This is for your kind perusal please.

Yours faithfully,

Sd/-

Dated : 04.12.98.

(G.C. BARO.)
L.D. Clerk,
SISI, Agartala.

GOVERNMENT OF INDIA
MINISTRY OF INDUSTRY
SMALL INDUSTRIES SERVICE INSTITUTE
HOSPITAL ROAD, (NEAR GANDHIGHAT)
AGARTALA - 799 001 (TRIPURA)

No.2(19)/SISI/AGT/98/1051-1055 Dated, the 6th January, 1999.

O R D E R

In pursuance of Development Commissioner, (SSI), New - Delhi's letter No.C-18013/11/97-A(NG), dated 29.10.98 & Telegraphic Order dated 03.11.1998 and subsequent Order No.2(19)/SISI/AGT/98/825-29 dated 10.11.98 of Director, SISI, Agartala transferring him to Br. SISI, Diphu under the Administrative Control of SISI, Guwahati Shri G.C. Baro, I.D.C, SISI, Agartala will stand relieved of his duties from this Institute w.e.f. 08-01-99 (A.N.) with the instruction to report for duty at Br. SISI, Diphu.

The transfer is at his own cost, and as such no P.A. etc. will be admissible to him on above transfer.

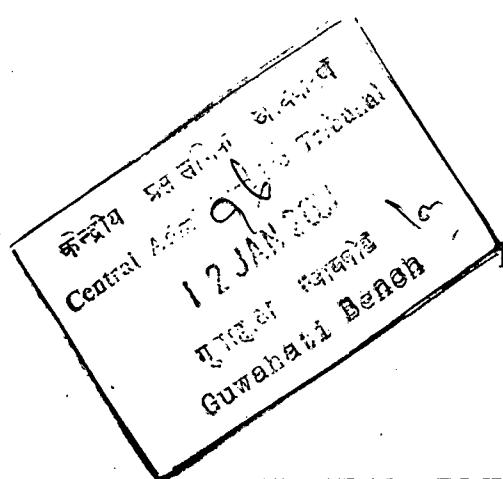
Sd/-

To
Shri G.C. Baro,
L.D.C.
SISI, Agartala.
(A. BASU)
ASSTT. DIRECTOR (CHEM)/DDO & HO
for DIRECTOR

Copy to :-

- 1) The Development Commissioner, (SSI), Nirman Bhavan, 7th floor, New Delhi - 110011 for kind information.
- 2) The Director, SISI, Bamunimaidan, Industrial Estate, Guwahati - 781021.
- 3) The Asstt. Director In-charge, Br. SISI, Diphu.
- 4) The Accounts Officer, Pay and Accounts Office, (SSI), Calcutta - 700035.
- 5) P.A. to Director, SISI, Agartala.
- 6) Accounts Section, SISI, Agartala - 2 copies for necessary action.
- 7) Personal file of Shri G.C. Baro, L.D.C.

(A. BASU)
ASSTT. DIRECTOR (CHEM)/DDO & HO
for DIRECTOR.



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

O.A. NO. 229/2000

SRI GAHIN CHANDRA BORO

-VERSUS-

UNION OF INDIA & OTHERS

**SHOW CAUSE ON BEHALF OF RESPONDENT Nos .1,2,3 & 4 IN THE
STATE OF AFFIDAVIT.**

I, Dr. P. K. Choudhury, Director, Small Industries Service Institute, Bamunimaidan, Guwahati. I have been impleaded party Respondent No. 3 in the instant O.A. I have received a copy of the aforesaid O.A, gone through the same, understood the contents thereof and as such I am competent to this affidavit for and on my own behalf as well as for and on behalf of all other Respondent and file in the Hon'ble Tribunal.

2. That this deponent does not admit any of the facts, allegations statements and averments made in the O.A save and except those have been specifically admitted herein-under in the affidavit. Further the statements which are not borne on records have been categorically denied.

P. N. Chaudhury

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3. That before traversing to parawise reply on the O.A this deponent begs to raise preliminary objection as regards the maintainability of the instant O.A in as much as there is a delay of 1 year 2 months 21 days in filling the OA and the applicant has not explained the reasons of delay nor he has filed any delay condonation petition in this regard. Thus the instant O.A is heavily time barred and not maintainable as such liable to be dismissed in limine.
4. That as regards the contents of paragraphs 1 of the O.A this deponent respectfully have no comments except that the respondents have prescribed condition no (iii) & (iv) in Memorandum dated 4.12.98 as per administrative practice prevalent in the Deppt. In the Small Industries Development Organisation, the cadre of Lower Division Clerk to which the applicant belongs is regulated on decentralised basis and the cadre is specific to a Small Industries Service Institute(SISI). Prior to his transfer to Diphu the applicant was borne on the cadre of SISI, Agartala. As per conditions of his service he is not liable to be transferred out of his cadres jurisdiction save and except in the public interest. Since the transfer of the applicant was not made in the public interest, namely, as a result of re-organisation of the Deppt., or shifting of office etc. his transfer was not in public interest. His transfer was at his own request and as such the condition No. (iii) & (iv) prescribed in Memorandum dated 4.12.98 while effecting his transfer are according to the administrative practice being followed by the Deppt.
5. That as regards the contents of paragraph 2 of the O.A this deponent does not make any comments.

P. N. Chaudhury

6. That as regards the contents of paragraph 3 of the O.A this deponent respectfully states that the applicant has made a wrong statement that the O.A has been filed within the limitation as prescribed under section 21 of the Administrative Tribunal Act 1985 , Whereas there is a delay of 1 year 2 months 21 days in filling the O.A and reasons for such delay has not been explained in any manner for condonation. As such the instant O.A is hit by section 21 of the Administrative Tribunals Act and liable to be dismissed summarily on that count itself.

7. That as regards the contents of paragraph 4.1 and 4.2 of the O.A this deponent does not make any comments.

8. That as regards the contents of paragraph 4.3 of the O.A this answering Respondent respectfully states that the petitioner was borne on the cadre of Small Industries Service Institute, Agartala and his services were not liable to be transferred outside the cadre control span of Institute save and except in the public interest e.g reorganisation, merger, de-merger etc of Institute. The Applicants transfer to Diphu was at his own option and request submitted by him for the same. As such the transfer of the officer was not in the public interest and he has been assigned seniority in his new cadre at junior most level as per administrative practice being followed by the Deppt. It is a practice in the Department whenever an officer who is a part of the decentralized cadre choose to go on transfer at his own request from one cadre to another cadre regulated on decentralised basis i.e transfer involving inter cadre movement, he loses the benefit of seniority. It is unreasonable on the part of the applicant to claim the benefit of transfer from one cadre to another cadre regulated on decentralised basis for his own convenience and at the same time

P. N. Chaudhury

claim the benefit of seniority. Similarly when he has become part of the new cadre there is no question to his reversion to old cadre.

9. That as regards the content of paragraph 4.4 to 4.7 of the O.A this deponent respectfully states that the decision in O.A No 183/97 the representation of the applicant for transfer in another cadre viz. SISI,Guwahati was considered by the competent authority and he was allowed to be transferred from SISI,Agartala to Branch SISI,Diphu under SISI,Guwahati. The Applicant has not vested right to claim to be posted in any particular cadre in the public interest and claim benefit of seniority etc.
10. That as regards the contents of paragraph 4.8 of the O.A this deponent respectfully state that as has been stated in reply against para 4.3 the applicant sought his transfer from Agartala to Diphu himself.

As such his transfer was not in the public interest. The appointing authority of the applicant being vested in the Director,SISI,Agartala,by implication,his cadre control got restricted to Director SISI,Agartala and in normal circumstances he is not liable to be transferred out of his cadre. Since the applicant himself sought transfer,his request was acceded to by the Govt. at his own request. He cannot now claim benefits by projecting his transfer to be in public transfer. It is categorically averred that the transfer of the applicant was not made to meet any requirement of public interest. It was simply to accede to his request to make available a convenient location of posting to him as per his own requirement.

11. That as regards the contents of paragraph 4.10 of the O.A this deponent respectfully states that it is avvered that conditions No (iii) & (iv) attendant with the transfer of the applicant from Agartala to Diphu are legal and administratively sound. If the same conditions are

P. N. Chaudhury

relaxed, the administration will suffer irreparable loss as this will encourage similarly situated Govt. Servants to start seeking transfers in such a manner.

- 12 That as regards the contents of paragraph 4.11 of the O.A this deponent respectfully states that the allegation made by the applicant are denied.
- 13 That as regards the content of paragraph 4.12 of the O.A this deponent respectfully states that there is no merit in the application filed by the applicant as the same is based on filmsy ground and the same is liable to be dismissed.
- 14 That as regards the content of paragraph 5.1 to 5.2 of the O.A this deponent respectfully submits that the condition (iii) & (iv) imposed on the applicant while effecting his transfer are legal and administratively sound and such conditions are prevalent by and large in all the department of Govt of India.
- 15 That as regards the content of paragraph 5.3 of the O.A this deponent respectfully submits that it is unreasonable on the part of the applicant to claim his transfer done on his own request to a cadre of his choice for his convenience to be in the public interest. There is no merit in the application of the applicant from this point of view and the same is liable to be dismissed.
- 16 That as regards the contents of paragraph 5.4 and 5.6 of the O.A this deponent respectfully submits that once the service of the applicant was declared surplus and he was provide alternative job in some other cadre and as such he becomes part of that cadre. The applicant cannot

P. N. Chaudhury

claim as a matter of right his appointment in a specific cadre of the organisation in public interest.

- 17 That as regards the content of paragraph 5.6 of the O.A this deponent respectfully states that as already stated in reply against 5.1 the condition imposed by the respondent No.4 while transferring the applicant are legal and administratively sound. That apart once he accepted to abide by those terms and conditions before passing transfer order is not entitled to go back after his transfer.
- 18 That as regard the content of paragraph 5.7 & 5.8 of the O.A the deponent respectfully submits that there is no merit in the claim of the applicant. The allegation of arbitrariness are denied under the facts and circumstances cited in the progressing paragraphs.
- 19 That as regards the contents of paragraph 6 & 7 of the O.A the deponent does not make any comment.
- 20 That as regards the contents of paragraph 8.1 to 8.5 of the O.A this deponent respectfully submits that there is no merit in the application of the applicant and the same is liable to be dismissed.
- 21 That as regards the contents of paragraph 9 of the O.A this deponent doesnot make any comments.

P. N. Chaudhury

That the statement made in paragraphs 2, 5, 7 of the affidavit are true to the best of my knowledge and belief and those have been made in the paragraphs 3, 4, 6, 8, 9, 10 are true to the best of my information which have been derived from the records and the rest are my humble submission before the Hon'ble Tribunal.

And I sign this affidavit this

day of 2000.

Identified by me

Sri Chandeev
Deponent

B. Basumata

Advocate

The Deponent has solemnly affirmed and declared before me who has been identified by Sri B.S Basumatary, Addl. Central Govt. Standing Counsel, this 12th day of November 2000.

Deponent
- 12/1/01
Advocate