

30/100

3

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

(DESTRUCTION OF RECORD RULES, 1990)

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O.A.T.A No. 368/2000

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 368/2000.

Nurul Islam Khan

APPLICANTS

versus.

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

FOR THE APPLICANT(S) Mr. M. Chanda  
ADVOCATE

Mrs. N. D. Goswami

Mr. G. N. Chakraborty

FOR THE RESPONDENT(S)

C.G.S.C.

Notes of the Registry

DATE

COURT'S ORDER

31.10.2000

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

This application is in  
form but not time  
Conferred is  
filed / not F.  
for Be ed  
vide 1 50779 S.  
Dated 30/10/2000

Dy. Registrar

30/10/2000

Registry filed.

Heard Mr. M. Chanda, learned  
counsel for the applicant and also  
Mr. B. S. Basumatary, learned Addl.  
C.G.S.C. for the respondents.

The applicant is working as  
Fitterpipe H.S. (II) under the respon-  
-dents vide order bearing No. 1006/98/  
EIE dated 20.5.2000. He is permanently  
transferred to GE 872 C/O 99 APO in  
the interest of the State. Consequently,  
he was released from duty from the  
office of the Garrison Engineer, Silchar  
Division where he was working.

Mr. Chanda submits that the  
applicant has not come to this Tribunal  
for cancelling or quashing the order of  
transfer. Mr. Chanda has fairly stated  
that the applicant is eager to carry out  
the order passed by the employer in  
the public interest. Mr. Chanda  
however, mentioned about some of the  
persons who have some family problem,  
more particularly, about the ensuing  
examination in March 2001 of their

school going ...

31.10.2000  
CONT'D

school going children. Mr. Chanda has submitted that the examination will over by the end of March 2001 and, therefore, the applicant should be allowed to continue in the post till March 2001.

Since no statutory jurisdiction of malafide is alleged, I am not inclined to intervene in the matter. The submissions made by Mr. Chanda are in the nature of appeal which can only be looked into by the concerned authority namely, his employer. It is the employer who has passed the order of transfer in the public interest can only take care of the situation by providing him adequate shelter.

Considering all the aspects of the matter and after hearing Mr. B.S. Basumatary, ends of justice will be met if a direction is given to the applicant to make an effective representation before the Respondents No.3 and 4. Mr. Chanda has submitted that the applicant has already submitted two representations before the Commandant, Headquarter, 137 Works Engineer, C/O 99 A.P.O.

Let the applicant make a representation before the Respondents No.3 and 4 respectively along with a copy of this order within two weeks from today and if such representation is made, the respondents are directed to consider the same sympathetically and take necessary steps as per law till completion of the aforesaid exercise preferably within six weeks from the date of receipt of the representation. The parties are ordered to maintain status quo as on today.

Application stands disposed of.

Vice-Chairman

15.11.2000  
Copy of the order  
has been sent to the  
Office for issuing the  
order to the L/Admstr.  
for the parties.

mk

NS  
2/11/2000

32/06/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

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

Title of the Case : O.A. No. 368/2000  
Sri Nurul Islam Khan : Applicant  
-versus-  
Union of India & Ors. : Respondents

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Date : 25.10.2000

Filed by  
*Sujelly Ghosh*  
Advocate

*Nurul Islam Khan*  
NURUL ISLAM KHAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Filed by the petitioner  
through  
Sri Jagdish  
Advocate

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

O.A. No. 268/2000

BETWEEN

Sri Nurul Islam Khan  
Working as H.S. (II) Fiterpipe,  
Office of the Garrison Engineer,  
Silchar, P.O. Arunachal  
District-Cachar, Assam.

....Applicant.

-versus-

1. Union of India  
Through the Secretary to the  
Government of India,  
Ministry of Defence,  
New Delhi.
2. Army Headquarters,  
Engineer-in-Chief Branch,  
Kashmir House, DHQ,  
P.O., New Delhi.
3. Garrison Engineer,  
Government of India  
Military Engineering Service,  
Shillong.

Contd.....

18/11/00  
NURUL ISLAM KHAN

4. The Commandant  
Headquarters  
137 Works Engineer  
C/o 99 APO

....Respondents

DETAILS OF APPLICATION

1. Particulars of orders against which this application is made.


This application is made against the order of Transfer and posting issued under letter No. 1006/98/EIE dated 20.5.2000 by the Garrison Engineer, Silchar whereby the applicant is sought to be transferred from GE, Silchar Division to GE 872 EWS, C/o 99 APO in total violation of the professed norm during the middle of the academic session of his children and the applicant is praying before the Hon'ble Tribunal for a direction to the respondents to allow the applicant to continue in service at his present place of posting till completion of the academic session of the children of the applicant.

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.

  
NURUL ISLAM KHAN


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, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant initially appointed as a Valveman in the office of the Garrison Engineer, Silchar and thereafter he was working sincerely and honestly and the respondents being satisfied with his service, the applicant was promoted to the post of Pipe Fitter (SK) in the year 1981.

4.3 That thereafter the Respondents given promotion to the applicant in the post of H.S. II in the year 1997 and presently he is working as Fitter Pipe (HS II) under G.E. Silchar Division.

4. That while working as Fitter Pipe (HS II) under G.E. Silchar Division, the applicant received the impugned order of Transfer and posting issued under letter No. 1006/98/EIE dated 20.5.2000 whereby the applicant is ordered for posting to GE 872 EWS C/o 99 APO i.e. at Agartala from the office of the Garrison Engineer, Silchar Division, Cachar, during the middle of the academic session of his children. It is relevant to mention here that in paragraph 2 of the said impugned Transfer and Posting Order it is stated that the applicant would be relieved from his duties with effect from 30.5.2000 (AN) and also directed to report to his new duty station after availing joining time. It is stated that order of Transfer in respect of Government Employee normally

  
NURUL ISLAM RHA

should not be issued during the middle of academic session except in a very special circumstances or due to administrative exigencies but it appears from the impugned order itself that it is a routine transfer which has been issued without any administrative exigencies in the middle of academic session. It is a settled position law/rule that no transfer and posting should be made during the middle of academic session unless the same is unavoidable. Fifth Central Pay Commission also strongly recommended to the Government of India that as far as possible no transfer and posting should be made during the middle of academic session, as such the impugned order of transfer and posting which is issued in total violation of the professed norm is liable to be set aside and quashed.

A copy of the impugned order of transfer and posting dated 20.5.2000 is enclosed as Annexure-1.

4.5 That your applicant immediately after receipt of the impugned order of transfer and posting dated 20.5.2000 submitted a representation addressed to the Commandant, Headquarter, 137 Works Engineer, C/o 99 APO, through proper channel. In the said representation the applicant inter alia prayed for retention in his present place of posting due to domestic problems. He has stated in his representation dated 20.5.2000 that he has no~~x~~ other male members in his family to look after his bed ridden wife as well as to minor school going children and also stated that if the prayer of the applicant is not considered in that event he has <sup>other</sup> no alternative but to approach for voluntary retirement.


  
NURUL ISLAM KHAN



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The applicant finding no favourable response from the authority again submitted another representation on 24.8.2000 addressed to the Commandant, Headquarters, 137 Works Engineer, C/o 99 APO. In the said representation the applicant however stated that his case for retention at Silchar be considered at least upto March 2001 for smooth continuation of education of his children who are presently studying at Silchar in different schools. He has also stated in the said representation that he has been relieved from duty arbitrarily without any prior intimation with effect from 30.5.2000 during the middle of the academic session of his children. He has categorically stated that his five sons and daughters are presently studying under Secondary Board of Assam, as such the final examination of his children likely to be occurred in the month of March/April 2001 and requested to allow him to continue in his present place of posting at Silchar at least till the examination of his children is over by necessary modification/cancellation of the impugned order of transfer and posting dated 20.5.2000. The detail particulars of the education of the children of the applicant are shown below :

Sl.No.	Name	Age	Studying at	Name of the School
1	Master Unus Khan	16	IX	Jilkadar Ali H.S.School, Arunachal.
2	Miss Gulshan Begum	17	IX	Jalkudar Ali H.S. School, Arunachal.
3	Master Kamrul Islam	9	IV	60 No.Tupkhana L.P.School.
4	Master Jaharul	8	III	-do-

  
NURU ISLAM KHAN

5. Miss Imrana Begum 19 VI Jilkadar Ali H.S.  
School, Arunachal.

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In view of the above factual position the impugned order of transfer during the middle of the academic session is liable to be set aside and quashed.

Copy of the Certificates are annexed as Annexure-2 Series.

4.6 That the Government of India also accepted the recommendation of the 5th Central Pay Commission that transfer and posting during the middle of the academic session as far as possible should be avoided but in the instant case in spite of the recommendation of the 5th Central Pay Commission the respondents passed the impugned order of transfer in total violation of the Government Policy. On that score alone the impugned order of transfer and posting is liable to be set aside and quashed.

Copy of the representation dated 25.5.2000 is annexed as Annexure-3.

4.7 That it is stated that the applicant has already expressed his unwillingness through representation dated 24.8.2000. He is ready to carry out the order of transfer and posting dated 20.5.2000 provided he is accommodated in the present place of posting till the final examination of his children are over. As such there is no difficulty on the part of the respondents to retain the applicant in his present place of posting till March, 2001.

  
NURUL ISLAM KHAN

Copy of the representation dated 24.8.2000 is annexed as Annexure-4.

4.8 That it is stated that the Hon'ble Apex Court in the case of Director of School Education Madras and Others Vs. O. Karuppa Thevan and Another already held that in absence of urgency transfer during the middle of the academic session is restrained from being effected till the end of the academic year reported in 1994 (28) ATC 99. It is an isolated case of transfer as such there is no difficulty and there is no urgency, as such in view of the law laid down by the Hon'ble Apex Court the applicant is entitled to be retained in his present place of posting till the academic session is over.


4.9 That your applicant approached the authority by way of filing representations but unfortunately no action has been taken by the respondents in favour of the applicant as such in the compelling circumstances the applicant is approaching the Hon'ble Tribunal for protection of his rights and interests as stated above otherwise it will cause irreparable loss to smooth continuation of education of his children.

4.10 That this application is made bona fide and for the cause of justice.

~~xxxxxx For that the impugned order of transfer and posting~~

5. Grounds for relief with legal provisions

5.1 For that the impugned order of transfer and posting has been issued in total violation of professed norm during the middle of the academic session of the children of the applicant.

  
NURUL ISLAM KHAN

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- 5.2 For that the children of the applicant are studying in different schools at Silchar under Assam Board of Secondary Education as such transfer of the applicant during the middle of the academic session will cause irreparable loss to smooth continuation of education of his children.
- 5.3 For that the applicant submitted number of representations praying inter alia to retain him in his present place of posting till the final examination of his children are over, but no decision has been communicated by the respondents in spite of his repeated approach.
- 5.4 For that the Hon'ble Apex Court as well as 5th Central Pay Commission also held that the transfer and posting normally should not be effected during the middle of the academic session of the children of a Government employee.
- 5.5 For that it appears from a mere reading of the transfer order that there is no urgency or administrative exigencies for his posting at Agartala rather it is an isolated case of routine transfer.
- 5.6 For that the applicant is a low paid employee as such it will be difficult on his part to maintain double establishment if the impugned order of transfer and posting is effected.
6. Details of remedies exhausted.  
That the applicant states that he has no other

  
NURUL ISLAM KHAN

alternative and other efficacious remedy than to file this application.


7. Matters not previously filed or pending with 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. Reliefs sought for :

In view of the facts and circumstances stated in paragraph 4 of this application, the applicant prays for the following reliefs :

- 8.1 That the impugned order of transfer issued under letter No. 1006/98/EIE dated 20.5.2000 (Annexure-1) be set aside and quashed or alternatively;
- Respondents be directed to retain the applicant in his present place of posting i.e. at Silchar, office of the Garrison Engineer, Silchar Division till the final examination of his children are over.
- 8.3 Costs of the application.
- 8.4 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

  
NURUL ISLAM KHAN

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9. Interil order prayed for :

Pending disposal of this application, an observation be made that pendency of this application shall not be a bar for the respondents to consider the representation of the applicant already submitted on 24.8.2000 with regard to retention of the applicant in his present place of posting i.e. in the office of the Garrison Engineer, Silchar.

10. ....

That this application is ~~xxxxxx~~ filed through Advocate.


11. Particulars of the I.P.O.

- |      |               |                     |
|------|---------------|---------------------|
| i.   | I.P.O. No.    | : 26-503795         |
| ii.  | Date of Issue | : 30-10-2000        |
| iii. | Issued from   | : G.P.O., Guwahati. |
| iv.  | Payable at    | : G.P.O., Guwahati. |

11. List of enclosures :

As stated in the Index.


..... Verification

  
NURUL ISLAM KHAN

V E R I F I C A T I O N

I, Sri Nurul Islam Khan, aged about 58 years, working as H.S. (II) Fitterpipe, in the office of the Garrison Engineer, Silchar, P.O. Arunachal, District-Cachar, Assam do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 25th day of October, 2000.

  
NURUL ISLAM KHAN

Signature

Annexure-1

Tele Mily : 2500

Office of the GE Silchar Division  
Post : Arunachal, Dist-Cachar  
Assam-788 025

1006/98/EIE

20 May '2K

MES/228783

Shri NI Khan, Fitter Pipe (HS II)

POSTING/TRANSFER : INDUSTRIAL STAFFS

1. You are hereby permanently transferred to GE 872 C/o 99 APO in the interest of the State.

Authority : HQ 137 Wks Engrs, C/o 99 APO letter No. 17026/128/EIC on dated 30 May '2000.

2. You will be relieved of your duties from this office w.e.f. 30 May '2000 (An) and will report to your new duty station after availing joining/journey time. ✓

3. TA/DA is admissible.

4. You will submit the following before leaving the station :..

- a) Clearance Certificate (b) Departure Report  
c) Ration Card (If any),

5. Please note that your pay and allcs for the Month of Jun '2000 and onwards will be claimed by your new unit after you report for duty there.

6. Certified that the above indi is not involved in any SPE/Disciplinary case/Court of Inquiry in GE Silchar Division.

Sd/- Illegible

RP Maurya

AEE

Garrison Engineer

Copy to :

Details of Pay & Allces

1. HQ CESZ Shillong
2. CDA Guwahati
3. AAO Shillong
4. HQ 127 Wks Engrs
5. GE 872 EWS, C/o 99 APO
6. AAO GE Silchar
7. AAO BSO Silchar
8. AGE E/M Silchar
9. BSO Silchar
10. All Section (Internal)

Basic Pay : Rs. 4300.00  
DA : Rs. 1591.00  
HRA : Rs. 322.00  
SCA : Rs. 80.00  
TPA : Rs. 75.00

GPF subscription - 1000/-  
A/c No. 1072221

CGEIS 30/-  
Fest Adv 200/-

(Bal 900 to be recovered)

Bal CL/RH - 08 days/02 days

*Attested  
Adv.*

*NURUL ISLAM KHAN*



/SEAL/

TO WHOM IT MAY CONCERN


Certify that Miss Imrana Degum, D/o Nurul Islam Khan, aged about 13 years an inhabitant of village Tupkhana, Part-I, Arunachal, District-Cachar, Assam, has been reading in this school since two years.

Now she is reading in class-VI, Section-C, bearing Roll No. 39.

She bears a good moral character.

Sd/- Principal 18.9. 2k

Kilkadar Ali H.S.School,  
P.O. Arunachal, Cachar.

  
NURUL ISLAM KHAN

/SEAL|

Annexure-2 (Series)

TO WHOM IT MAY CONCERN

Certify that Yonus Khan, S/o Nurul Islam Khan, aged about 16 years, an inhabitant of village Tupkhana Part I, P.O. Arunachal, District-Cachar, Assam, has been reading in this School since one year.

Now he is reading in class IX, Section-A, bearing Roal No. 43.

Sd/- Illegible 18.9. 2k

Principal  
Zilkadar Ali H.S.School  
P.O. Aruhachal, Silchar

/SEAL/

~~Certify~~

This is to certify that Johurul Islam, S/o Nurul Islam Khan, aged about 7 years old, an inhabitant of village Tupkhana Part-I, Arunachal, Dist-Cachar, Assam, has been reading in this school since 3(three) years.

Now he is reading in class-III, Section 'B', bearing Roll No.11.

He bears a good moral character.

Sd/- Illegible

Headmaster  
Tunkhana Patsala L.P.School  
No.60  
Cachar, Silchar 18.9.2000

/SEAL/

TO WHOM IT MAY CONCERN

Certify that Mr. Kamrul Islam, S/o Nurul Islam Khan, aged about 9 years an inhabitant of village Tupkhana, Part-I, Arunachal, District-Cachar, Assam has been reading in this school since four years.

Now he is reading in Class III, Section A, bearing Roll No. 34.

He bears a good moral character.

Date : 18.9.2000

Sd/- Illegible

Headmaster  
Tupkhana Patsala L.P.School,  
Cachar, Silchar

Annexure-2 (series)

/SEAL/

TO WHOM IT MAY CONCERN

Certify that Miss Gulsana Begum, D/o Nurul Islam Khan, aged 17 years an inhabitant of village Tupkhana, Part I, P.O. Arunachal, District-Cachar, Assam has been reading in this school since 6 years.

Now she is reading in class-IX, Section B, bearing Roll No. 38

She bears a good moral character.

Sd/- Illegible 18/9/2k

Zilkadar Ali H.S. School  
P.O. Arunachal, Dist-Cachar,  
Assam

To

The Commandant,  
Headquarters,  
137 Wks, Engrs.,  
C/o 99 APO.

Through G.E.Silchar.

SUB : POSTING TRANSFER INDUSTRIAL STAFF.

Ref : Your letter No. 1006/98/EIS dt. 20.05.2000

Sir,

With due respect and humbly I lay down the following few lines for your kind consideration and favourable action please.

That Sir, I was promoted as F/pipe-II in the year of Nov'96 and placed in SITU vide your letter No. 1006/1280/EIE dt. 18.10.97 and I performed my duty to the entire satisfaction to my superiors.

That, I have been posted to GE 872 EIS/C/o 99 APO vide your movement order No. 1006/1552/EIE dated 2.8.96 and 1006/1621/EIE dated 12.12.96 and same has been cancelled vide your letter No. 1006/1676/EIE dt. 30.5-97, but it was now surprised to me that the movement order again issued vide your letter No. 1006/98/EIE dt. 20th May 2000 for posting transfer to GE 872 EWS C/o 99 APO. Neither I will be the Senior or Junior in this station, moreover I am 51 years old (over age) which is very difficult for me to serve in Field Station at this juncture.

Sir, it is also very difficult for me to maintain two establishment as a low paid employee and save me from the financial hardship.

That Sir, my wife is suffering from female diseases and high blood pressure for the last couple of year and under treatment. She is bed sick at present. There is no

Contd...

male member in my family who can look after my bed sick wife as well as my school going minor children.

Further, it is added if the difficulties express before your honour is not considered by your end then I shall bound to pray to you for voluntary retirement as because I have no alternative way except this, for the interest of my family members.

I hope in my earnest that the foregoing fact will be viewed by your goodself from its true perspective and this time justice will not be denied to me.

Dated, Silchar,  
The 25.5.2000

Yours faithfully,

Sd/- Illegible

(N.I.KHAN)

To

The Commandant  
Headquarters,  
137 Wks Engrs  
C/o 99 APO

Sub : Prayer for cancellation/modification of impugned order of transfer and posting issued under letter No. 1006/98/EIE dated 20.5.2000 till the academic session of my children are over.

Ref : My representation dated 25.5.2000 and reminder dated 7.8.2000.

Respected Sir,

I like to draw your kind attention on the subject cited above and further beg to state that I have been served with the Movement Order issued under letter No.1006/98/EIE dated 20-5-2000 whereby the undersigned is relieved from duty with effect from 30.5.2000 with a direction to report to the office of the Garrison Engineer, 872 EWS, C/o 99 APO, Agartala from the office of the Garrison Engineer, Silchar Division, Cachar. Immediately after receipt of the above relieved order dated 20.5.2000, I submitted consecutive two representations praying inter alia to retain me in my present place of posting at Silchar on medical ground. However, till date I have not received any reply to my aforesaid representations. However, I further request you to consider my case of retention at Silchar at least upto March, 2001 following the smooth running of education of my children who are studying at Silchar in different schools. The detail particulars of education my children are given below :

Sl. No.	Name	Age	Studying at	Name of the School
1	Master Unus Khan	16	IX	Jilkadar Ali H.S. School, Arunachal.

Contd...



Annexure-4 (Contd.)

2	Miss Gulshan Begum	17	IX	Jalkudar Ali H.S. School, Arunachal.
3	Master Kamrul Islam Khan	9	IV	60 No. Tupkhana L.P. School.
4	Master Jaharul Islam Khan	8	III	60 No. Tupkhana L.P. School.
5.	Miss Imrana Begum	13	VI	Jilkadar Ali H.S. School, Arunachal.

It is most respectfully submitted that I have been relieved from duty arbitrarily without any prior intimation with effect from 30.5.2000 for posting at Agartala during the middle of the academic session of my children as named above. In this connection it may be stated that my above son and daughters are studying under Secondary Education Board of Assam, as such the final examination of my above mention children are likely to be over in the months of March/April, 2001. Therefore you are requested that till the examination of my children are over I may kindly be allowed to continue in the present place of posting at Silchar and the Movement Order dated 20.5.2000 may kindly be modified/ cancelled accordingly. It is further requested that the undersigned is also suffering from Kidney troubles and also under medical treatment for a long period. It will be extremely difficult on my part to move out from Silchar at this critical juncture. However I am making this appeal to consider my case sympathetically for retention in the present place of posting at Silchar and if the same is not possible I may be allowed to continue at Silchar till the academic session of my children are over and accordingly the impugned movement order dated 20.5.2000 be modified/cancelled.

Contd...

It is further requested that your decision may kindly be communicated at an early date.

Thanking you,

Yours faithfully,

Date : 24.8.2000

Sd/-

Place : N.I.Khan, H.S. F/  
Fitter Pipe  
G.E. Silchar  
P.O. Arunachal  
Dist. Cachar (Assam)

(NURUL ISLAM KHAN)