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X
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

	<u>INDEX</u>	
(1) MP 165/2001 under page - 1 to 2		O.A/T.A No. 4115/2000
(2) MP 164/2001 under page - 1 to 2		R.A/C.P No.....
(3) MP 2/2001 under page - 1		E.P/M.A No.....
(4) MP 3/2001 under page - 1		
1. Orders Sheet.....	O.A.....	Pg. 145 to 500
2. Judgment/Order dtd. 22.12.2002	.....	Pg. 1 to 600
3. Judgment & Order dtd.....	.....	Received from H.C/Supreme Court
4. O.A.....	Amended 4115/2001 Pg. 1 to 26	
	O.A 4115 (2000) page - 1 to 23	
5. E.P/M.P.....	.....	Pg. 1 to
6. R.A/C.P.....	.....	Pg. 1 to
7. W.S.....	.....	Pg. 1 to 7
8. Rejoinder.....	.....	Pg. 1 to 3
9. Reply.....	.....	Pg. 1 to
10. Any other Papers.....	.....	Pg. 1 to
11. Memo of Appearance.....	.....
12. Additional Affidavit.....	.....
13. Written Arguments.....	.....
14. Amendment Reply by Respondents.....	.....
15. Amendment Reply filed by the Applicant.....	.....
16. Counter Reply.....	partibus exceptis	
(1) MP 165/2001 page - 1 to 7		
(2) MP 162/2001 page - 1 to 8		
(3) MP 2/2001 page - 1 to 7		
(4) MP 3/2001 page - 1 to 9		

SECTION OFFICER (Judl.)

S. Chakraborty
22/12/17

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI.5

ORIGINAL APPLICATION NO. 415/2000

... Sri. Badan C.L. Deka..... Applicant.

VERSUS

Union of India & Ors Respondents.

For the Applicant(s) Mr. J. L. Sarkar,
Mrs. S. Deka,
Mrs. P. Chakrabarty

For the Respondents. C.G. S.C.

NOTES OF THE REGISTRY

DATE

ORDER

This application is in form
but not in the Corporation
Petition No. 21.9.2000
M.P. 3/2000
for the above
IPO/ 771026
Dated 25.11.2000
9/11/2000
Dy. Registrar

Steps & Envelopes are
filed.

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

Application is admitted. Is
usual notice. Call for the re
Heard Mr J.L.Sarkar, lear
counsel for the applicant and
Mr B.C.Pathak, learned Addl.C.G.
for the respondents on the i
order.

Issue notice to show cause
to why the Annexure-E order
21.9.2000 directing the appl
to join in Rehabari Sub Post
shall not be suspended during
pendency of this application
nable by four weeks.

List on 3.1.2001 for show
and further orders. Meanwhile,
operation of the impugned order
No. B2/BCR/HSG-II/72 dated 21.
shall remain suspended till the
returnable date.

Vice-Chairman

pg

3.1.2001 In view of the order passed
M.P.3/2001 the prayer for amendment
of this C.A. is allowed. The appl
licant shall file a consolidated
application incorporating the a
conco

3.1.01 ment as prayed for.

List on 5.2.2001 for further order.

Vice-Chairman

pg.

5.2. No S.B. Adjournd to 7.2.2001.

M/s

A/C

2/2

✓ 7.2.01

List it again after four weeks to enable the respondents to file written statement.

List on 14.3.2001 for written statement and further orders.

Vice-Chairman

6.2.2001
 A Consolidated application has been filed by A. Chakrabarty

trd

26-2-2001

14.3.01

On the prayer of learned counsel for the respondents 6 weeks time is granted for filing of written statement. List on 2.5.01 for orders.

I (Usha)
Member

Consolidated application for 6.2.2001
by A. Chakrabarty
Co-counsel party
C. O. No. 773-75 dt. 1m

28-2-01

2.5- P.M. 11-5-2001

M/s
A/C
2.5

13.3.01

No WJS filed

11.5- There was a reference
List on 18/5/2001.

M/s

A/C

2.5

21/5/2001

1. S. has been filed in
last of the R-
3.

List on 17.8.2001 for
hearing.

B/o
B/o

NJS
21/5/01

(3)

Notes of the Registry	Date	Order of the Tribunal
	17.8.01	At the request of learned counsel for the parties case is adjourned to 26.9.01 for hearing.
Written statement filed on behalf of R No- 1 to 3.	1m <u>28.9.01</u>	ICU/a Member
	26.9.01	On the prayer of Mr J.L.Sarkar, learned counsel for the applicant the case is adjourned to 17.10.01 for hearing.
Written statement has been filed.	pg	Vice-Chairman
	17.10.01 <u>16.10.01</u>	Written statement has been filed. Counsel for both the parties pray for a short adjournment. Prayer allowed. List on 5.12.01 for hearing.
The case is ready for hearing.	pg <u>31.1.02</u>	ICU/a Member
	5.12.2001	Mr.J.L.Sarkar, learned counsel appearing for the applicant submitted that there are some developments in the case. He prays for adjournment of the case. Mr. B.C.Pathak, learned Addl.C.G.S.C is also heard.
		List the case again for hearing on 2.1.2002.
	bb	ICU/a Member (A)

M

Notes of the Registry	Date	Order of the Tribunal
18.10.2001 Rejoinder in reply to the notice has been submitted.	2.1.02	Mr. A. Chakraborty learned counsel prays for adjournment on behalf of Mr. J. L. Barkar learned counsel for the applicant due to his personal difficulty. Prayer is accepted. List on 1-2-02 for hearing.
The case is ready for hearing.	1.2.2002	Mr. A. Deb Roy, learned Sr. C.G.S.C. prays for adjournment on behalf of Mr. J. L. Sarkar due to his illness. The case was adjourned earlier also. Mr. B. C. Pathak, learned Addl. C.G.S.C. stated that the matter pertains to transfer of the applicant. We, however, adjourned the case and posted on 8.2.2002. If the learned counsel for the applicant absent on that day, the case shall proceed.
		List on 8.2.2002 for hearing.
		R. S. S. T. S. Vice-Chairman
		cc

Notes of the Registry	Date	Order of the Tribunal
<p><i>Richard A</i> <i>20/2/2002</i></p> <p><u>21.2.2002</u> <i>Copy of the Judgment handed over to the L/Advocate for the parties.</i></p> <p><i>45</i> <i>for C/2002</i></p>	8.2.02	<p>Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs.</p> <p><i>ICCC Member</i></p>

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 415 of 2000

8-2-2002
Date of Decision.....

Shri Badan Ch. Deka

Petitioner(s)

Mr. J. L. Sarkar, Mrs. S. Deka, Mr. A. Bhakraborty

-Versus-

Advocate for the
Petitioner(s)

Union of India & Ors.

Respondent(s)

Mr. B. C. Pathak Addl. C. G. S. C.

Advocate for the
Respondent(s)

THE HON'BLE

MR. K. K. SHARMA, ADMINISTRATIVE MEMBER

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 Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : ADMINISTRATIVE MEMBER

1 C Usha

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.415 of 2000

Date of Order: This the 8th Day of February, 2002.

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

Shri Badan Ch.Deka , H.S.G..II working under Director
General of Postal Services, Assam Circle, Guwahati-1

... Applicant.

By Advocate Mr.J.L.Sarkar, Mrs.S.Deka.

Mr.A.Chakraborty.

-Vs-

1. Union of India represented by the Secretary, Government of India, Ministry of Communication, Department of Postal Services.
2. The Director General of Postal Services, Assam, Meghdut Bhawan, Guwahati-781001
3. The Senior Superintendent of Post Offices, Guwahati Division, Guwahati-78001

... Respondents.

By Advocate Mr.B.C.Pathak, Addl.C.G.S.C.

O R D E R.

K.K.SHARMA, MEMBER(ADMN):

Vide this O.A. the applicant has challenged the impugned order of transfer dated 21.9.2000, transferring the applicant from SPM, Maligaon to SPM, Rehabari, Guwahati. This order has been challenged on the ground that the post of SPM, Rehabari is Lower Scale post. The applicant is seniormost H.S.G.II official and admittedly the post of SPM, Rehabari is Lower scale post. The applicant was on leave with effect from 24.9.2000 to 20.12.2000. When the applicant was on leave another order dated 21.11.2000 was passed, transferring the applicant from the post of SPM Maligaon S.O. to DPM-II,Guwahati, which was H.S.G.II post. However, on expiry of leave the applicant joined as SPM, Maligaon on 21.12.2000, in view of the interim order passed

LCW/ha

contd/-

by this Bench on 30.11.2000. The Respondents passed another order dated 21st May 2001 transferring the applicant from SPM, Maligaon to PSD, Guwahati (Annexure A/2 in M.P.No.164 of 2001). During the course of pendency of this application the applicant moved the Misc.Petition No.164 of 2001 for amending the O.A.No.415 of 2000. The applicant prayed for amendment of the O.A. and accordingly the applicant has challenged the transfer order dated 21.5.2001. The order of transfer dated 21.5.2001 however, was not implemented, as there was a status quo order of this Tribunal. The factual position is that the applicant is continuing as SPM, Maligaon and the applicant has challenged the orders dated 21.9.2000, 21.11.2000 and 21.5.2001.

2. Mr.A.Chakraborty learned counsel appearing on behalf of the applicant has been heard. Mr.B.C.Pathak, learned Addl. C.G.S.C. has also been heard for the Respondents. The Respondents have filed the written statement. By an order dated 3.1.2001 in Misc.Petition No.3 of 2001, the Respondents were directed to maintained the status quo. Mr.A. Chakraborty learned counsel for the applicant pointed out that the Respondents have passed another order on 20.9.2001 by which another officer has been posted as SPM, Maligaon, (H.S.G.-I) the which post the applicant is holding at present. Another officer has also been posted as Manager, PSD/Guwahati. He submitted that as such the position of the applicant is not clear. Mr.B.C.Pathak, learned Addl.C.G.S.C. on the course of hearing to-day submitted that the Respondents had taken interim order passed in O.A. before the Hon'ble High Court, Guwahati. The High Court by an order dated 22.11.2001 has directed the Tribunal to dispose of the O.A. within a period of 3 months. Mr.B.C.Pathak, learned Addl.C.G.S.C. also filed

(Signature)

contd/.

a copy of letter dated 4.1.2002 issued by the Sr. Superintendent of post Offices, Guwahati Division, Guwahati whereby it is informed that the post of SPM, Maligaon, Railway Headquarter has been up-graded from H.S.G. II to H.S.G.I. Since the applicant has been holding the post of H.S.G. II, the applicant has become disentitled to this Post with effect from 20.9.2001. Mr.B.C.Pathak, learned Addl.C.G.S.C. referred to rules of tenure posting as per post and Telegraph Manual Vol.IV read with Vol.III. He submitted that though the tenure period is 4 years but it can be extended or reduced in public interest. Mr.B.C.Pathak, Addl.C.G.S.C. submitted that the applicant was transferred within the city of Guwahati. There is no malafide in the order of transfer.

3. The learned counsels have been heard at length. It is admitted fact that the applicant was holding the post of H.S.G. II level and the post of SPM, Rehabari, to which the applicant was posted by order dated 28.4.2000 was a lower level post. Apperantly the order dated 21.9.2000 is beyond jurisdiction and the same cannot be sustained. The post of SPM, Maligaon, DPM-II, Guwahati, Manager, PSD, Guwahati to which the applicant has been posted have since been upgraded. The applicant is the seniormost H.S.G. II officer, he is not entitled to be posted to either of the posts.

4. In view of the developments that have taken place the ends of justice will be met if direction is given to the applicant to make afresh representation to the Respondents to consider all facts which have been placed before me, so that the Respondents can reconsider his case. The applicant shall file representation within 15 days from the date of receipt of this order. Thereafter, the Respondents are

Kulshary

contd/-

directed to dispose of the representation by a reasoned order within a period of 2 months. Till disposal of the representation filed by the applicant the applicant will not be disturbed from his present posting. All interim order stands vacated. The application is disposed of, as indicated above. There shall be no order as to costs.

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

LM

173	6589/2000
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL	

GUWAHATI BENCH :: GUWAHATI

CONSOLIDATED APPLICATION

Title of the case : D.A. No.: 415/2000

Sri Badan Ch. Deka : Appellants

----- versus -----

Union of India & ors. : Respondents

I N D E X

Sl.No.	Annexure	Particulars of Documents	Page No.
1.	-	Application	1 - 10
2.	-	Verification	11
3.	A	Copy of the seniority list circulated under Circular dt. 27.08.96	12 - 13
4.	B	Copy of the office order dt. 22.06.98	14
5.	C	Copy of the letter dt. 30.03.92 of the Directorates of Postal Services.	15
6.	D	Copy of Directorates letter dt. 23.01.98 circulated by CPMG, Assam Circle's letter dt. 03.02.98	16
7.	E	Copy of the letter dt. 21.9.2000	17
8.	F	Copy of the representation dt. 6.10.2000	18
9.	G	Copy of the representation dt. 14.10.2000	19 - 20
10.	H	Copy of the order dt. 12.06.2000 in D.A. No.: 52/98	21 - 24
11.	I	Copy of the Memo dt. 21.11.2000	25
12.	J	Copy of the Delivery slip dated 23.12.2000	26

Filed by Mr. App. Counsel
 Brogab D. Chakraborty
 Advocate
 25/10/2000
 Badan Ch. Deka

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

D.A. No. 415/2000

BETWEEN

Shri Badan Ch. Deka, HSG-II working
under Director General of Postal
Services, Assam circle, Guwahati-1.

Applicant

AND

1. Union of India represented by

the Secretary, Government of
India, Ministry of Communica-
tion, Department of Postal
Services.

2. The Director general of Postal

Services, Assam, Meghdut
Bhawan, Guwahati - 781 001.

3. The Senior Superintendent of

Post Offices, Guwahati
Division, Guwahati - 781 001.

Respondents

Details of the Application :

1. Particulars of the order against which the
application is made :

The application is made for enforcement of the
policy & norm of posting to the HSG-II post as laid down in
Assistant Director General (S.P.N.) Directorate of Postal
Services, New Delhi's letter No.: 4 - 4/ 92 - SPB - II

Badan Ch. Deka
25/09/01

Filed by my app. court
Mr. A. Choudhury
25/09/01

dt.30.03.92 and against order in memo no.: B - 2/B.C.R./HSG-II/72 dt. 21.09.2000 issued by the Respondent No. 3 transferring the applicant to a lower scale post and memo No.B2/BCR/HSG-II/72 dt.21.11.2000 issued by the respondent No.3

2. Jurisdiction:

The Applicant declares that the subject matter of the application is within the jurisdiction of the hon'ble tribunal.

3. Limitation:

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India. He is a member of the Scheduled Tribe Community (for short ST).

4.2 That the applicant joined service as postal clerk with effect from 06-08-63. In the year 1977 he was promoted to Lower Selection Grade (for short LSG). Thereafter under the scheme of Biennial Cadre Review (for short BCR) he was promoted to Higher Scale Grade - II (for short HSG-II) with effect from 01-10-91. While posted as post master G.U.H.O. the applicant in a very unfortunate incident lost his young eldest son who was a bank employee who died in an accident in February, 1998. The department has been very sympathetic to the applicant and considered his case for transfer and posting and posted him to Maligaon Railway Head Quarter P.O. as sub-post master by order dated 22-06-98. He Joined the

post at Maligaon Railway Head Quarter on 26-06-98.

It is stated that your applicant is the senior most HSG-II official. It is also stated that due to unavoidable circumstances of family and domestic affairs and chronic physical ailment and mental agony he refused promotion to HSG-I so that he may not have to work outside Guwahati. His only surviving son and one daughter are taking their education at Gauhati University and Pandu B.Ed. College, Pandu respectively.

copy of the seniority list circulated under circular dt.27.08.96 is enclosed as Annexure - A.

copy of the office order dt. 22/06/98 is enclosed as Annexure - B.

4.3 That the normal practice and procedure in the department is that the tenure of posting is 4 years. The applicant joined the Maligaon Railway Head Quarter office with effect from 26.06.98 and his tenure will expire on 25.06.2002. It is stated that under the tenure system of posting he should not ordinarily be transferred from Maligaon Railway Head Quarter Post Office before the expiry of the said tenure of 4 years. Moreover, posting in the said post office was made on humane and sympathetic consideration following the death of his young son.

4.4 That the HSG - II post are filled up in order of seniority of officials (i.e. HSG-IIIs) in the manner indicated below:

- i) Norms based HSG-II posts viz HSG-II Postmaster/HSA and SRO.
- ii) HSG-II Sub Postmaster, HSG-II Dy.Postmaster etc./HSA and SRO.

Deputy
Bardan Ch

iii) Norms based LSG posts i.e. the LSG Supervisory posts.

iv) The remaining officials will be utilised for manning the above said posts at places where adequate number of HSG-II officials are not available and the transfer will be of that of junior most HSG-II officials. If still there are HSG-II officials they will continue to do operative duties and they will be assigned the positions which are considered would contributed in a better manner towards efficiency and better public satisfaction if they are manned by the officials enjoying the higher scales of pay.

iv) Same principle will be applicable for postmen/mail guard cadre also.

It is stated that the post of Sub Post Master, Maliogaon Railway Head Quarter P.O. is a norm based post, and the post at Rehabari S.O. is a LSG (Lower Selection Grade) post. The applicant can not be posted in a lower post.

copy of the letter dt.30.03.92 of the Directorate of Postal Services is enclosed as Annexure - C

4.5 That as per the rule of posting the HSG-II official to the norm based post and under the instruction of

Badam Ch Jeng

the Directorate of Postal Services, New Delhi it is stated that under the BCR scheme the officials are promoted even if there is no norm based post and they get the higher scale in the non-functional post(i.e. existing post). But immediately a norm based post is available, the official on seniority basis shall be transferred to the norm based post and direction is that in such cases the rule of tenure posting shall be relaxed and the official shall be posted in the norm based post before the completion of the tenure period. From this it is clear that posting senior HSG-II official in norm-based HSG-II post is mandatory and shifting the applicant from Maligaon Post is arbitrary.

copy of Directorates letter dt.23.01.98

circulated by CPMG, Assam circles letter dt. 03.02.98 is enclosed as Annexure - D

4.6 That most unfortunately under order dt. 21.09.2000 issued by the Senior Superintendent of Post Offices, Guwahati Division the applicant has been transferred as S.P.M(Sub Post Master) in Rehabari S.O. This order has been issued violating all norms of posting and transfer. It is stated that this order has made a vague statement of interest of public service though prima-facie there is no public interest involved in the transfer. Moreover, the applicant was transferred to Maligaon Railway Head Quarter Post Office where he joined on 26.06.98 and his tenure will be completed on 25.06.2002. The transfer order on this ground alone deserves to be set aside and quashed. It is stated that there has not been any extraordinary situation which call for such transfer deviating from the normal rule of 4 year tenure. Further, the HSG-II post in the Maligaon Railway Head Quarter Post Office is a norm based post and this applicant is the senior most HSG-II official in scale Rs. 5000 - 8000/-. Whereas the post of Rehabari S.O. is a

Baran Ch Sena

LSG post in scale Rs. 4500 - 7000/- post. The purported transfer of the applicant from Maligaon Railway Head Quarter Post Office to Rehabari S.O. transfers the applicant from higher post to a lower post which is a reversion and offends Article 311 of the Constitution of India.

The fact that the applicant has been given the protection of his pay scale does not cure the vice of reverting the applicant to a lower post.

Copy of the letter dt.21.09.2000 is enclosed as Annexure - E

4.7 That the applicant has submitted representation dt. 06.10.2000 to the Senior Superintendent of Post Offices and another representation dt. 14.10.2000 to the Director of Postal Services, Assam against the impugned order of transfer but he has not received any reply as yet.

Copy of the representation dt.06.10.2000 and 14.10.2000 are enclosed as Annexure F and G respectively.

4.8 That this hon'ble tribunal in OA No. 52/98 (Sri S.C. Choudhury Vs. Union of India & Ors.) have decided the question of posting HSG-II official to a lower scale post and held as under :

" Once the applicant has been posted to a post of HSG-II carrying the pay scale of Rs. 5000 - 8000 the applicant can not be sent back to a post of LSG even though the same may carry the same scale."

Copy of the order dt.12.06.2000 in OA No. 52/98 is enclosed as Annexure - H.

Baruwa Ch. Deka

4.9 That the transfer order has been passed for reasons other than public interest and official exigencies. This has been prompted by reasons known to the respondents and such reasons are extraneous to the cause of public interest. Moreover, this order has been passed violating norms of transfer and posting. Malice in law is patent in the facts and circumstances of the case.

4.10 That the applicant is sick and not in office and undergoing treatment under Medical Practitioner.

4.11 That the applicant is residing in Quarter No. 18B, West Maligaon with the members of his family. As explained above his son and daughter are taking their education in G.U. and Pandu B.Ed. College, Pandu respectively the impugned order of transfer shall also attract the consequence of vacating the said quarter which will cause irreparable loss to the applicant.

4.12 That the applicant was on leave w.e.f. 24.9.2000 to 20.12.2000 on medical ground and resumed his duty on 21.12.2000 in the Maligaon Railway Head Quarter post office and has submitted his resumption report formally and has been working as SPM(HSG-II), Maligaon Railway Head Quarter post office. As already stated, the post of Maligaon railway head quarter post office is norm based HSG-II post. It is also stated that no other official is holding the post. Shri Samudra Kaibarta is on leave on medical ground. Moreover Shri Kaibarta is not entitled to norm based HSG-II post. On 23.12.2000 a closed cover addressed to the applicant has been delivered to him. The envelop contained Memo No. B2/BCR/HSG-II/72 dt. 21.11.2000 which purports to post the applicant to Guwahati GPO as DPM-II. This posting order is also in fact an order of transfer from Maligaon Railway Head

Deputy
Bordam Ch

Quarter post office before the tenure period of 4 years without any cogent reason. This has been issued in continuation of the earlier similar unreasonable order dated 21.9.2000. This order dt.21.11.2000 shows that the respondents are pursuing the effort to shift the applicant from Maligaon Railway Head Quarter post office for reasons not disclosed. The respondents have not disclosed anywhere as to what call for the departure from the normal policy of transfer after tenure. It is stated that the purported transfer of the applicant from Maligaon post office is unreasonable and from the facts and circumstances of the case malice in fact and malice in law is explicit.

Copy of the Memo dated 21.11.2000 is enclosed as Annexure - I

Copy of the delivery slip dt. 23.12.2000 is enclosed as Annexure - J

4.13 That order dated 21.11.2000 has not been passed in public interest and no reason has been given for departing from the normal rule of transfer and posting.

4.14 That the Memo dt.21.11.2000 is arbitrary and offends Article.14 of the Constitution of India.

5. Grounds for reliefs with legal provisions:

5.1 For that the order of transfer dt. 21.09.2000 is violative of the rule of tenure posting of 4 years.

5.2 For that the posting at Rehabari S.O. against a lower scale post amounts to reversion and is violative of Article 311 of the Constitution of India.

Barom Ch. Deur

5.3 For that the posting in the lower scale post at Rehabari S.O. has been made ignoring and violating the directives of the Directorate of Postal Services, New Delhi.

5.4 For that the order of transfer is the result of malice and caprice and whimsical and arbitrary and offends Article 14 and 16 of the Constitution of India.

5.5 For that the respondents are bound by the law laid down by this hon'ble tribunal in O.A. No.: 52/98.

6. Details of remedy:

The applicant has submitted representation without any result. There is no other remedy under any rule.

7. Matter not pending before any other Courts:

The applicant declares that he has not filed any other case in any tribunal or Court against the impugned order.

8. Reliefs sought for :

Under the facts and circumstances of the case, the applicant pray for the following reliefs :

17
25
8.1 The order dt. 21.09.2000 directing the applicant to join as S.P.M Rehabari S.O. be set aside and quashed.

8.2 The order dt. 21.09.2000 be modified posting/ allowing the applicant to continue as S.P.M in the Maligaon Railway Head Quarter P.O.

8.3 The order dt. 21.11.2000 as regards the applicant be set aside and quashed.

8.4 He may be allowed to continue the occupation of Quarter No. 18B, West Maligaon, Guwahati-11.

8.5 Cost of the case.

The above reliefs are prayed for on the grounds stated in para 5 above.

9. Interim relief prayed for :

During the pendency of this application the applicant prays for the following reliefs :

9.1 The direction in office order dt. 21.09.2000 asking the applicant to join in Rehabari S.O. (a lower scale post) be suspended and the applicant be allowed to continue as S.P.M., Maligaon in the norm-based HSG-II post.

9.2 He may be allowed to continue the occupation of the Quarter no. 18B, West Maligaon, Guwahati-11.

The above reliefs are prayed for on the grounds stated in para 5 above.

10. This application has been filed through Advocate.

11. Particulars of Postal Order :

- i) I.P.O. No. : 6G 771026
- ii) Date of issue : 25.11.2000
- iii) Issued from : G.P.O. Guwahati
- iv) Payable at : G.P.O. Guwahati

12. Particulars of Enclosures :

As stated in the index.

Verification.....

Barman Ch. Deka

24
:: 11 ::

Verification

I, Badan Ch. Deka, son on Late Bapuram Deka, resident of Maligaon, Guwahati-II., aged about 56 years do hereby verify that the statements made in para 1,4,6 to 12 are true my personal knowledge and those made in para 2,3 & 5 are true to my legal advice and that I have not suppressed any material facts.

And I, sign this verification on this
18 th day of January, 2001

Guwahati

Badan Ch Deka

Signature

Maligaon.

S.P.M

On 22.6.78 - HSG II
Norton Bazaar Host
Semior more

(13)

4.3

441, Norton tenno.

17 Transferred from HSG to LSS - suspended

26.9.00 - to 20.12.2000 - Leave

Resumed 21.12.2001 - Rec. memo 21.11.00
modified Ann. E

(23)

- Th. D. to masters

this order - suspended 3.1.01

Ann. E

Status quo

21.5.01 - Another to order - Masters PS Guwahati

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ANNEXURE-A

Department of Post : India
Office of the Sr. Supdt. of POs : Guwahati Division
Meghdoott Bhawan 3rd floor : Guwahati : 781 001

No. : B/0-0/BL/Ch/131 the August 27, 1996.

To

Regd.

The ~~Supdt.~~ HEAD/ED
The 2nd FM/EM/SEM

Guwahati University HO

Sub : Draft gradation list in respect of officials in the cadre of HSG-II (ECR) in Guwahati Postal division corrected upto 10-07-96.

This may be brought to the notice of the officials working under you. Any discrepancy or omission in this list should be brought to the notice of the Sr. Supdt. of Post offices, Guwahati Division, Guwahati through proper channel for rectification within a fortnight from the date of issue of the same.

Encl : As above.

(I. Panigrahi (Longsang))
Sr. Supdt. of Post offices
Guwahati Division, Guwahati.

12

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28

SL. NO.	NAME	COMM.	DOB	DOE	DOE/EROP	DOHER	REMARKS
1	001 Badan Chandra Deka	ST	02/01/44	05/03/63	06/04/77	01/10/91	Postmaster GU HO
2	002 Nalini Mn. Bhattacharjee	DC	01/06/40	01/12/61	09/04/79	01/10/91	SPM Silpukhuri
3	003 Joy Kanta Kalita	DC	01/01/41	17/06/60	24/03/79	01/10/91	DFM Guwahati GPO
4	004 Dandi Ram Kalita	DC	01/11/49/23	11/05/62	27/09/79	01/10/91	AFM Guwahati GPO
5	005 Bhupendra Nath Kalati	DC	01/03/39	12/12/60	02/10/79	01/10/91	DFM G U HO
6	006 Mahibuddin Ahmed	DC	31/01/41	25/06/60	23/12/79	01/10/91	SPM A. Sachivalaya
7	007 Surendra Ch. Das II (Refused)	DC	01/06/40	08/12/58	04/07/80	01/10/91	SPM Maligaon Rly HO
8	008 Nagendra Nath Sarma (Refused)	DC	01/06/39	28/05/60	01/01/81	01/10/91	AFM(A/cs) GPO
9	009 Bhirendra Nath Saikia	ST	01/01/41	09/11/64	23/02/81	01/10/91	AFM Guwahati GPO
10	010 Samundra Kalita	SC	01/03/46	17/08/64	01/03/81	01/10/91	SPM Bijaynagar
11	011 Arambinda Boro	ST	01/03/45	02/09/64	01/03/81	01/10/91	FRI Guwahati GPO
12	012 Khageswar Kalita	DC	01/03/41	13/03/61	05/08/83	01/10/91	SPM GH Airport
13	013 Sukumar Paul	DC	22/06/43	21/06/66	21/11/83	01/10/91	AFM(A/cs) GU HO
14	014 Rafiul Resul	DC	01/12/38	01/06/59	20/11/83	01/10/91	SPM Rehabari
15	015 Mrs. N.R. Challagappan	DC	29/02/40	24/06/59	30/11/83	01/10/91	SPM Bharalumukh
16	016 Jaytish Chandra Kalita	DC	01/06/39	20/10/59	30/11/83	01/10/91	SPM Bhamunimaidan
17	017 Narayan Chandra Das	DC	20/11/38	02/12/59	30/11/83	01/10/91	SPM Boko
18	018 Majid Ali	DC	01/05/39	15/12/59	30/11/83	01/10/91	SPM Agcumi
19	019 Saabhu Nath Rajbanshi	DC	01/06/40	15/03/60	30/11/83	01/10/91	AFM G U HO
20	020 Sarat Chandra Goswami	DC	01/03/41	18/05/60	30/11/83	01/10/91	SPM Khanpara
21	021 Jamshed Ali	DC	01/05/39	15/07/60	30/11/83	01/10/91	Asstt. Manager FSD
22	022 Maniruddin Ahmed	DC	01/05/39	03/08/60	30/11/83	01/10/91	AFM Guwahati GPO
23	023 Bhadra Kanta Deka	DC	01/01/40	03/09/60	30/11/83	01/10/91	DFM Maligaon Rly HO
24	024 Umesh Kalita	DC	01/06/41	22/05/60	30/11/83	01/10/91	SPM Bardebar
25	025 Mrs. Dineswar Dutta	DC	29/03/40	13/12/60	30/11/83	01/10/91	AFM Guwahati GPO
26	026 Haridov Das	DC	01/03/39	15/12/60	30/11/83	01/10/91	SPM A. Fatasil
27	027 Farma Kanta Kalita	DC	01/03/40	16/12/60	30/11/83	01/10/91	SPM Kharphuli
28	028 Bhiru Ram Lehlar	DC	01/04/41	18/12/60	30/11/83	01/10/91	SPM Fencybazar
29	029 Sayadur Rahman	DC	01/02/40	05/04/61	30/11/83	01/10/91	AFM Guwahati GPO

Continue... /-

14
13

Department of Posts : India :
Office of the Sr. Supdt. of POS : Guwahati Division :
Meghdoot Bhawan 3rd floor : Guwahati : 781 001.

No III B/A-19/B/HSG/Ch. III.

the June 22, 1998.

In partial modification of this office memo of even no. dated 20-03-98 the following transfer and posting orders are issued in the interest of service to have immediate effect.

01. Shri Badan Ch. Deka, Postmaster GU HO (on leave) and now designated APM, Guwahati GPO will join as S.P.M., Maligaon Rly. HD WRs SO relieving Shri Surendra Ch. Das II SPM, Maligaon.
02. Shri Surendra Ch. Das II, SPM, Maligaon SO on being relieved will join as Postmaster, GU HO relieving Shri Khargeswar Kalita, Postmaster there.
03. Shri Khargeswar Kalita, Postmaster, GU HO on being relieved will join as DPM GU HO terminating the existing arrangement.

36
(B.S. Sadap)

Sr. Supdt. of Post Offices,
Guwahati Dn, Guwahati-781001.

Copy to :-

- 1-3. The Officials concerned.
- 4-6. PF of the officials.
7. The Sr. PM, Guwahati GPO.
8. The Postmaster, GU HO, Guwahati.
9. The CPMG (Staff), Assam Circle, Guwahati.
10. Spare.

11
(B.S. Sadap)

Sr. Supdt. of Post Offices,
Guwahati Dn, Guwahati-781001.

A copy of the Dte. letter No.444/92-SPE-II dtd.30-3-92 referred above.

In this office circular letter No.22-8/89-PE.I dtd. 11-10-91 it was conveyed inter alia that with a view providing relief to the employees, Government have accepted the need for Biennial Cadre Review i.e. once in two years, under which the incumbents of existing posts would be enabled to draw pay in higher-scale on completion of 26 years of service not only for providing promotional opportunity for the staff concerned but also on the basis of functional justification. Thus placement of an official in a higher scale after 26 years of service in the basic grade and the next higher grade put together would in effect be a second time bound promotion. As per the TBOP scheme introduced w.e.f.30-11-83, officials are placed in the next higher scale after 16 years of service in the basic grade. The said circular envisages that the officials who are allowed such higher scale of pay as a result of the Biennial Cadre Review would be utilised as far as possible for providing better supervision and for dealing with work involving comparatively higher responsibility and better skills. In the light of this, the following instructions are issued as envisaged in para 2(x) of the above said circular dated 11-10-91. Those are issued with the concurrence of representatives of the Staff Side of JCM Departmental Council.

2. The officials who become HSG-II as a result of the Biennial Cadre Reviews and those who are already in HSG-II based on norms prior to the introduction of the Biennial Cadre Review scheme be posted in order of seniority to man the following posts.

- (i) Norms based HSG-II posts viz HSG-II Postmaster/HSA & SRO.
- (ii) HSG-II Sub Postmaster, HSG-II Dy. Postmaster etc./HSA & SRO.
- (iii) Norms based LSG Posts i.e. the LSG Supervisory posts.
- (iv) The remaining officials will be utilised for manning the above said posts at places where adequate number of HSG-II officials are not available and the transfer will be of that of junior most HSG-II officials. If still there are HSG-II officials they will continue to do operative duties and they will be assigned the positions which are considered would contributed in a better manner towards efficiency and better public satisfaction if they are manned by the officials enjoying the higher scales of pay.
- (v) Same principle will be applicable for Postmen/Mail Guard cadre also.

3. While the promotion of officials to HSG-II would continue to be centralised on Circle basis i.e. the cadre will continue to be a Circle cadre, as far as possible the officials may be accommodated at the same station/division/region on the basis of requirement of HSG-II hands to man the types of posts mentioned above.

4. The orders appointing officials to HSG-II grade as a result of BCR would continue to be issued by the authority which was issuing such orders earlier for HSG-II posts.

5. The seniority in LSG will be the basis for seniority in HSG-II grade, provided that the officials gets his placement in the HSG-II grade in his turn. If his promotion to HSG-II grade is postponed for one reason or the other, his seniority in HSG-II would be along with those with whom he is promoted subsequently.

Yours faithfully,

Sd/-

(R. KRISHNAMOORTHY)

ASSTT. DIRECTOR GENERAL (SPN)

16

D

DEPARTMENT OF POSTES: INDIA
DIRECTOR OF THE CHIEF POSTMASTER GENERAL, ASSAM CIRCLE
223/900T DILAWARI, GUWAHATI-781001

To,

✓ Suptt-P875/Guy

1. All Heads of Divns/Units in Assam Circle.
2. All Group Officers, CO/RO, Guwahati.
3. All Dealing charges in Staff Section, CO/RO, Guwahati.

No. Staff/17-1/875/TB 2nd Corr.

Sub:- position of BCR officials against norm based post.

A copy of Directorate's non. dated letter

No. 137-55/95-SPN-II dt. 23-1-96 on the above subject is
appended below for information, guidance and necessary action.

Appended : As above.

(J. G. GUHA)
A. P. G. (SPN)
For Chief Postmaster General
Assam Circle, Guwahati-781001.

A. R. G.

Copy of the 2nd Corr. of the letter No. 137-55/95-SPN-II dt. 23-1-96,
Sir,

I am directed to say that the Unions in one of the meetings with the Secretary(P) had pointed out that there is no uniform policy re. B.C.R. officials and their tenure posting. Secretary assured the Union that the matter would be looked into. Now, it has been decided that the tenure rule applicable to the B.C.R. officials subject to the condition that B.C.R. officials working on a non functional post would be required to be shifted to a norm based L.I./B.I. post on the basis of their seniority even if they have not completed their tenure. Posting of BCR officials to all the norm based B.C.R. posts should be ordered by the DPS concerned.

Yours faithfully,

SD/-

(A. K. KAUSHAL)
Asstt. Director General (SPN).

Department of Post :: India
Office of The Sr. Supdt. Of Post Offices, Guwahati Division
Guwahati - 781 001.

Memo No.: B2/BCR/HSG-II/72 Dated at Guwahati the 21.09.2000

The following transfer and posting orders are issued to have their effect in the interest of public services.

1. Shri Samudra Kaibarta, SPM, Gauhati University H.O. is transferred and posted as SPM, Maligaon Railway H.Q. so relieving Shri Badan Ch. Deka, SPM, Maligaon Railway H.Q. S.O.

2. Shri Badan Ch. Deka as relief will join as SPM, Rehabari so relieving Shri Chakreswar Choudhury, SPM, Rehabari S.O.

3. Shri Chakreswar Choudhury on relief will join as APM, Gauhati University P.O.

4. Shri Arun Ch. Kalita -I, APM, Gauhati University P.O. will work as SPM, Gauhati University P.O.

The postmaster, Gauhati University P.O. will relieve Shri Samudra Kaibarta on office arrangement immediately.

Sr. Supdt. Of Post Offices.

Guwahati Division, Guwahati-781 001

Copy to :-

1) The Postmaster, Gauhati University P.O. for information and immediate necessary action.

2. The SPM, Maligaon Railway H.Q. S.O.

3. The SPM, Rehabari S.O.

4 - 7. The officials concerns

B. Spare.

*After 2 months of
posting
A. Bhowmik*
Sr. Supdt. Of Post Offices.
Guwahati Division, Guwahati-781 001

To

17-
Smt. B. Radhika Chakravorty Ifs

Senior Supdt. of Post Offices,
Guwahati Division,
Guwahati-781001.

3

F

Sub

Prayer for stay order to allow me to continue as
S.P.M. Maligaon Rly. Hd. Qrs. P.O. till my normal
tenure is over.

Ref

Order No. B2/BCR/ISS-11/72 Dt. 21.09.2000.

Most Respected Madam,

With due respect and humble submission I beg to lay the following lines before you for favour of your kind informations and necessary sympathetic consideration that most Respected Madam, I am nowbased Senior most HSG-II man in this Division.

That Madam, while I was working as P.M. G.U. H.O. my young eldest Bank-employee son suddenly died on accident in February/98. It is a great untolerable shock and grief to me and my family. Due to this sorrowful condition I was sympathetically granted transfer to Maligaon Rly Hqr. P.O. I am working as S.P.M. Maligaon Rly. Hd. Qrs. P.O., since 26.06.98 and my normal tenure will be over on 26.06.2002.

But Respected Madam, it is a great misfortune to me that I have been suddenly transferred and posted to a lower graded post as S.P.M. Rehbari by your above cited order. This action is causing an another great untolerable mental shock and severe mental agony to me. It results, sometimes I am losing heart to keep myself surviving in the midot of such unbearable shock-hit situation.

That Madam, my only surviving son and one daughter are taking their higher academic education at G.U. and Pandu B.Ed College now. And so, I can not shift my family from Maligaon-Pandu locality.

Under the above circumstances, I pray you to kindly look into my matter and to give me an order of stay allowing me to continue as S.P.M. Maligaon Rly. Hd. Qrs. So, till my normal tenure is over on 26-06-2002 and oblige.

At

To

18

The Director of Postal Services, (Assam)
O/O The Chief P.M.G., Assam Circle,
Meghdoot Bhawan, GUWAHATI-781001.

(Through Proper Channel)

Sub :- Appeal Against Immature Transfer.

Most Respected Sir,

With due respect, I, the humble appellant, beg to bring to your kind notice the following facts for favour of your kind consideration and favourable order -

That Respected Sir, I am senior most norm-based HSG-II man in this Guwahati Division as well as in the Circle. I was approved and promoted to HSG-I Post, but due to my family troubles and bereaved mental condition, I refused it to avail it outside of Guwahati.

That Respected Sir, while I, the humble appellant, was working as Postmaster, G.U.H.O. in an approved and norm-based HSG-II capacity, my young eldest Bank-employee son suddenly died in accident in February/98. It is still a great untolerable shock and grief to me and to my family. Due to my this bereaved mental condition, I was sympathetically granted my transfer to Maligaon Rly. Hd. Qrs S.O. as S.P.M. and I am working since 26-06-1998 and my normal tenure will be over on 26-06-2002. (Copy of order is enclosed).

That Respected Sir, in this connection I, your humble appellant beg to state that Syed Achan Ahmed Dy.S.P.M., Maligaon Rly. Hqrs. S.O. was reporting sick on m/c for one month from 12/08/2000. The Official was transferred to Kharghuli S.O. vide order dated 21-08-2000. On expiry of sick report he resumed

duty on 12/09/2000, on the plea that of his certain representation and some Court's documents which were not understandable to me what to do. Other reference was also readily not available in the Office where the official would resume duty on expiry of his sick report. I was seeking early intimation from The Divisional Office to relieve the official immediately. The official was relieved on 23-09-2000 vide copy of SSPoS/GH Letter No.-B-725/L dated 22-09-2000. I had not any intention of non-relieving the official. It was causing a communication gap to me. As a result, the matter has been seriously viewed by the Respected SSPoS/GH and as its result I have been suddenly transferred far before expiry of my normal tenure and posted to a lower graded post as S.P.M. Rehabari (copy of order enclosed) and also I have been chargesheeted of taking disciplinary action under Rule-16.

That Respected Sir, this severe action taken against me is causing an another great untolerable mental shock and severe mental agony to me. It results to me to live alive in the midst of such untolerable shock-hit situation.

That Respected Sir, I, your humble appellant, am residing in Malignon Type-II Qrs.no.-18/B, with my family. My only surviving son and one daughter are taking their higher academic education in Gauhati University and Pandu B.Ed. College. And mental position of my bereaved wife is still not sound. So, I can not shift my family from Malignon-Pandu locality.

Under the above circumstance, I, your humble appellant at the last stage of my Service, earnestly beg your good offices to consider my prayer sympathetically and take necessary step so that I can continue as S.P.M., Malignon Rly. Hd.Qrs. S.O. till my normal tenure is over i.e. on 26-06-2002.

I, your humble appellant, am waiting for your kind and early action and oblige.

Place : Malignon.

Date : 14-10-2000

Yours humble appellant,

(BADAN CH. DEKA, On Leave)
S.P.M. Malignon Rly. Hd.Qrs. S.O.,
Guwahati-781011.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 52 of 1998.

Date of Order : This the 12th Day of June, 2000.

Hon'ble Shri D.C.Verma, Judicial Member.

Shri Subhash Chandra Choudhury,
Manager, Postal Stores Depot,
Guwahati-21.

Applicant.

By Advocate S/Shri B.K.Sharma, S.Sarma.

- Versus -

1. Union of India
represented by the Secretary to the
Government of India,
Ministry of Communication,
Department of Posts,
New Delhi-1.
2. The Director General of Posts,
New Delhi.
3. The Chief Post Master General,
Assam Circle,
Guwahati-1.

The Sr. Superintendent of Post Offices,
Guwahati-1.

Respondents.

By Advocate Shri B.S.Basumatary, Addl.C.G.S.C.

O R D E R

D.C.VERMA, JUDICIAL MEMBER,

The applicant has prayed for quashing of the
transfer order dated 29.1.1998 (Annexure-D to the O.A) and
order dated 11.3.1998 (Annexure-I to the O.A).

2. The applicant was posted as Manager, Postal Stores
Depot (PSD) at Guwahati under the administrative control
of the North East Circle, Shillong. The applicant opted for
Assam Circle. The applicant was accordingly allotted the
Assam Circle. From the post of Manager PSD the applicant
had been transferred by Annexure-D dated 29.1.1998, to
join as Supervisor, NESD, Guwahati-20. The applicant's

contd..2

case is that the impugned order of transfer dated 29.1.1998 had not been passed by the competent authority. Further ground is that the post of NESD, Guwahati carries lower scale of pay consequently the posting of the applicant to NESD amounts to reversion. The third ground is that the applicant had not complete the usual 4 years tenure as Manager PSD. The fourth ground on which the impugned order has been challenged is that the applicant belongs to Accounts cadre and the post of Supervisor, NESD is of general cadre. Consequently, it has been submitted that the applicant's cadre cannot be changed in the manner it has been done by the respondents by Annexure-D to the O.A.

3. The applicants belongs to HSG-II Grade. During the course of arguments it has been admitted that the Grade of HSG-II is Rs.5000-8000/-. The scale of pay attached to the post of Manager, PSD is also Rs.5000-8000/-. The post of Supervisor, NESD is in the scale of Rs.4500-7000/-. Thus the applicant had been transferred from the scale of Rs.5000-8000/- to the lower scale of Rs.4500-7000/-. Learned counsel for the respondents has submitted that, as per Annexures 7 and 8 filed with the written statement of the respondents, an HSG-II Grade official can be posted against LSG post but would carry the scale of HSG-II. Even if the contention of the learned counsel for the respondents be accepted the position of posting of an HSG-II Grade official to LSG post as per Annexures 7 and 8 is at the time when the BCR Scheme was being implemented and not for all time to come. Once the applicant has been posted to a post of HSG-II carrying the pay scale of Rs.5000-8000/- the applicant cannot be sent back to a post of LSG even though the same may carry the same scale. Further in the impugned transfer order dated

— 23 —

- 4 -

— 23 —

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representation of the applicant made against the transfer order. Such an order could not have been passed by the DPS if after 3.2.1998 (Annexure-E) the DPS had become the competent authority to pass the transfer. Consequently Annexure-I dated 11.3.1998 is also not valid.

5. One of the reliefs claimed by the applicant is that he be allowed to continue as Manager in the PSD till completion of his tenure of 4 years with effect from 25.8.1997. In support of the applicant's claim the learned counsel for the applicant have placed reliance on Annexure-F which is a copy of Swamy's Compilation of Posts and Telegraphs Manual Volume IV on the subject of establishment, to show that the tenure is of 4 years. Heard counsel for the parties on the point. The period of tenure provided in the rule is to be 'ordinarily' followed. It is only a guideline and is not justiciable. In a given circumstance and/or on administrative grounds or exigency of service an official can be transferred before completion of the tenure or can even be retained after he has completed the tenure period. In my view therefore, this relief of the applicant that he be allowed to continue on the post of Manager, PSD Guwahati, till completion of his tenure of 4 years, has no merit.

6. In view of the discussion made above the O.A. is partly allowed. The impugned orders Annexure-D in so far as it relates to the applicant and Annexure-I is quashed. The other reliefs claimed in the O.A. is rejected. Costs on parties.

TRUE COPY

প্রতিক্রিয়া

Sd/ MEMBER(j)

MD/666/6/2007

Deputy Registrar (O)
Central Administrative Tribunal
Guwahati Bench

K/6/6/2007

29.1.1998 there is no mention that the applicant would draw the scale of HSG-II even on the post of Supervisor, NESD. In view of this matter the order transferring the applicant from a higher scale to a lower scale post, by the impugned order, is not valid.

4. Admittedly, the impugned order dated 29.1.1998 has been passed by the Senior Superintendent of Post Offices, As per Annexure-E dated 3.2.1998 posting of BCR officials to all the norm based HSG-II post is to be ordered by the Director, Postal Services (DPS), concerned. Thus an HSG-II official can be transferred by DPS only. The present impugned order has been passed by the Senior Superintendent of Post Offices who is not a competent authority. In the light of Annexure-E dated 3.2.1998 learned counsel for the respondents has pointed out that Annexure-E was issued in February 1998 whereas the order impugned in the case was passed in January 1998. The submission is that the DPS has been made the competent authority with effect from 3.2.1998 when the order Annexure-E was issued. The learned counsel has however, not been able to show that prior to issue of this order (Annexure-E) Senior Superintendent of Post Offices was the competent authority. There is nothing in Annexure-E to indicate that Senior Superintendent of Post Offices was earlier the competent authority or the same has been changed with effect from 3.2.1998. In absence of any such document the submission of the learned counsel for the respondents cannot be accepted. It is therefore, held that the order passed by the Senior Superintendent of Post Offices, who was not a competent authority, is not valid. It may be pointed out that by Annexure-I dated 11.3.1998 the DPS rejected the

Delivered to
Anup Singh
23/12/2000 At 20.00

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SR. SUPERINTENDENT OF POST OFFICES, GUWAHATI DIVN.
MEGHDOOT BHAWAN, 3RD FLOOR, GUWAHATI-781001

Memo No. B2/BC/R/ISG-II/72

Dated at Guwahati the, 21.11.2000.

In partial modification to this office memo of even no. dtd. 21.9.2000 the following transfer and posting order is issued to have immediate effect.

1. Sri Badan Ch. Deka SPM, Maligaon SO on relief will join as DPM-II, Guwahati GPO vice vacant post.

Sri Chakreswar Choudhury (SPM), Rehbari SO will continue as SPM, Rehbari SO until further order.

St. Superintendent of Post Offices,
Guwahati Division, Guwahati-781001

Copy to:

- 1-2) Official concerned.
- 3-4) H/s of the officials.
- 5) Sr. Postmaster, Guwahati GPO.
- 6) Postmaster, Guwahati University PO.
- 7) The SPM, Maligaon Div. H.Q. SO
- 8) O/C.
- 9) SPM

St. Superintendent of Post Offices,
Guwahati Division, Guwahati-781001

Attested
Anup Singh
Divisional Officer

— 26 —

301

Delivery Slip

Through P.R.I. Maligaon Rly Hq. S.O.

1. One closed cover addressed to

Shri Badan Chandra Deka

(on leave)

Maligaon Rly HQ

Quarter no. 80

Guwahati - 11

B. C. DEKA

23. 12. 2000

Signature of addressee

Maligaon Rly Hd. Qrs. Delivered on

- 781011 23. 12. 2000

23. 12. 00 Public Relations Inspector (p)

Guwahati Maligaon, Guwahati - 781011

Date 25/01/2001

40

From
A. Chakraborty
Advocate

To
S. C. S. C.

Sub: O.A. No. 415/2000 (Sri. Bandan Ch.
Debta v/s. Cl. O. 9 & 005)

Dear Sir,

Please receive copy of our consolidated application
in the above O.A. for your use.

Yours sincerely

Chakraborty
Advocate

I undertake to serve
copies on the counsel of
the respondents

Chakraborty
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Title of the case : O.A. No.: 615 /2000

Sri Badan Ch. Deka : Applicants

----- versus -----

Union of India & ors. : Respondents

I N D E X

Sl. No.	Annexure	Particulars of Documents	Page No.
1.	-	Application	1 - 9
2.	-	Verification	10
3.	A	Copy of the seniority list circulated under Circular dt. 27.08.96	11-12
4.	B	Copy of the office order dt. 22.06.98	13
5.	C	Copy of the letter dt. 30.03.92 of the Directorates of Postal Services.	14
6.	D	Copy of Directorates letter dt. 23.01.98 circulated by CPMG, Assam Circle's letter dt. 03.02.98	15
7.	E	Copy of the letter dt. 21.9.2000	16
8.	F	Copy of the representation dt. 6.10.2000	17
9.	G	Copy of the representation dt. 14.10.2000	18 - 19
10.	H	Copy of the order dt. 12.06.2000 in O.A. No.: 52/98	20 - 23

Filed by the applicant
through Anupam
Chakrabarty
Deka on
27/6/2000

Badan Ch. Deka

In The Central Administrative Tribunal
Guwahati Bench :: Guwahati.

Filed by Mr. Apple.com
through Donyum Chakraborty
D no date
27/11/2000

O.A. No. 415 /2000

BETWEEN

Shri Badan Ch. Deka, HSG-II working
under Director General of Postal
Services, Assam circle, Guwahati-1.

_____Applicant

AND

1. Union of India represented by
the Secretary, Government of
India, Ministry of Communica-
tion, Department of Postal
Services.
2. The Director general of Postal
Services, Assam, Meghdut
Bhawan, Guwahati - 781 001.
3. The Senior Superintendent of
Post Offices, Guwahati
Division, Guwahati - 781 001.

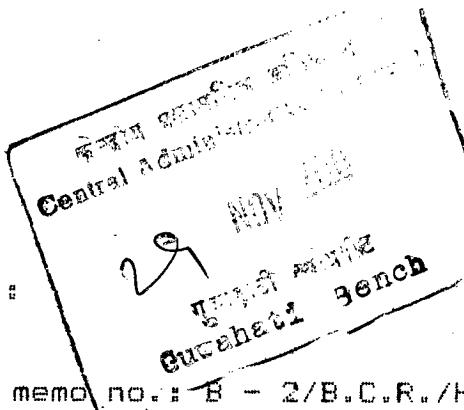
_____Respondents

Details of the Application :

1. Particulars of the order against which the application is made :

The application is made for enforcement of the policy & norm of posting to the HSG-II post as laid down in Assistant Director General(S.P.N.) Directorate of Postal Services, New Delhi's letter No.: 4 - 4/ 92 - SPB - II

Badan Ch. Deka



dt. 30.03.92 and against order in memo no.: B - 2/B.C.R./HSG-II/72 dt. 21.09.2000 issued by the Respondent No. 3 transferring the applicant to a lower scale post.

2. Jurisdiction:

The Applicant declares that the subject matter of the application is within the jurisdiction of the hon'ble tribunal.

3. Limitation:

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India. He is a member of the Scheduled Tribe Community (for short ST).

4.2 That the applicant joined service as postal clerk with effect from 06-08-63. In the year 1977 he was promoted to Lower Selection Grade (for short LSG). Thereafter under the scheme of Biennial Cadre Review (for short BCR) he was promoted to Higher Scale Grade - II (for short HSG-II) with effect from 01-10-91. While posted as post master G.U.H.O. the applicant in a very unfortunate incident lost his young eldest son who was a bank employee who died in an accident in February, 1998. The department has been very sympathetic to the applicant and considered his case for transfer and posting and posted him to Maligaon Railway Head Quarter P.O. as sub-post master by order dated 22-06-98. He Joined the post at Maligaon Railway Head Quarter on 26-06-98.

It is stated that your applicant is the senior

Badam Ch. Senka

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Central
Post Office
Guwahati
Assam
India
Recd
Date
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30/06/98
30/06/98

most HSG-II official. It is also stated that due to unavoidable circumstances of family and domestic affairs and chronic physical ailment and mental agony he refused promotion to HSG-I so that he may not have to work outside Guwahati. His only surviving son and one daughter are taking their education at Gauhati University and Pandu B.Ed. College, Pandu respectively.

copy of the seniority list circulated under circular dt. 27.08.96 is enclosed as Annexure - A.

copy of the office order dt. 22/06/98 is enclosed as Annexure - B.

4.3 That the normal practice and procedure in the department is that the tenure of posting is 4 years. The applicant joined the Maligaon Railway Head Quarter office with effect from 26.06.98 and his tenure will expire on 25.06.2002. It is stated that under the tenure system of posting he should not ordinarily be transferred from Maligaon Railway Head Quarter Post Office before the expiry of the said tenure of 4 years. Moreover, posting in the said post office was made on humane and sympathetic consideration following the death of his young son.

4.4 That the HSG - II post are filled up in order of seniority of officials (i.e. HSG-IIs) in the manner indicated below:

- i) Norms based HSG-II posts viz HSG-II Postmaster/HSA and SRO.
- ii) HSG-II Sub Postmaster, HSG-II Dy. Postmaster etc./HSA and SRO.

iii) Norms based LSG posts i.e. the LSG Supervisory posts.

iv) The remaining officials will be utilised for manning the above said posts at places where adequate number of HSG-II officials are not available and the transfer will be of that of junior most HSG-II officials. If still there are HSG-II officials they will continue to do operative duties and they will be assigned the positions which are considered would contributed in a better manner towards efficiency and better public satisfaction if they are manned by the officials enjoying the higher scales of pay.

iv) Same principle will be applicable for postmen/mail guard cadre also.

It is stated that the post of Sub Post Master, Maliogom Railway Head Quarter P.O. is a norm based post, and the post at Rehabari S.O. is a LSG (Lower Selection Grade) post. The applicant can not be posted in a lower post.

copy of the letter dt.30.03.92 of the Directorate of Postal Services is enclosed as Annexure - C

4.5 That as per the rule of posting the HSG-II official to the norm based post and under the instruction of

Badam Ch Deva

the Directorate of Postal Services, New Delhi it is stated that under the BCR scheme the officials are promoted even if there is no norm based post and they get the higher scale in the non-functional post(i.e. existing post). But immediately a norm based post is available, the official on seniority basis shall be transferred to the norm based post and direction is that in such cases the rule of tenure posting shall be relaxed and the official shall be posted in the norm based post before the completion of the tenure period. From this it is clear that posting senior HSG-II official in norm-based HSG-II post is mandatory and shifting the applicant from Maligaon Post is arbitrary.

copy of Directorates letter dt.23.01.98 circulated by CPMG, Assam circles letter dt. 03.02.98 is enclosed as Annexure - D

4.6 That most unfortunately under order dt. 21.09.2000 issued by the Senior Superintendent of Post Offices, Guwahati Division the applicant has been transferred as S.P.M(Sub Post Master) in Rehabari S.O. This order has been issued violating all norms of posting and transfer. It is stated that this order has made a vague statement of interest of public service though prima-facie there is no public interest involved in the transfer. Moreover, the applicant was transferred to Maligaon Railway Head Quarter Post Office where he joined on 26.06.98 and his tenure will be completed on 25.06.2002. The transfer order on this ground alone deserves to be set aside and quashed. It is stated that there has not been any extraordinary situation which call for such transfer deviating from the normal rule of 4 year tenure. Further, the HSG-II post in the Maligaon Railway Head Quarter Post Office is a norm based post and this applicant is the senior most HSG-II official in scale Rs. 5000 - 8000/-. Whereas the post of Rehabari S.O. is a

Badan Ch Deka

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Senor

LSG post in scale Rs. 4500 - 7000/- posted the purported transfer of the applicant from Maligaon Railway Head Quarter Post Office to Rehabari S.O. transfers the applicant from higher post to a lower post which is a reversion and offends Article 311 of the Constitution of India.

The fact that the applicant has been given the protection of his pay scale does not cure the vice of reverting the applicant to a lower post.

Copy of the letter dt.21.09.2000 is enclosed as Annexure - E

4.7 That the applicant has submitted representation dt. 06.10.2000 to the Senior Superintendent of Post Offices and another representation dt. 14.10.2000 to the Director of Postal Services, Assam against the impugned order of transfer but he has not received any reply as yet.

Copy of the representation dt.06.10.2000 and 14.10.2000 are enclosed as Annexure F and G respectively.

4.8 That this hon'ble tribunal in OA No. 52/98 (Sri S.C. Choudhury Vs. Union of India & Ors.) have decided the question of posting HSG-II official to a lower scale post and held as under :

" Once the applicant has been posted to a post of HSG-II carrying the pay scale of Rs. 5000 - 8000 the applicant can not be sent back to a post of LSG even though the same may carry the same scale."

Copy of the order dt.12.06.2000 in OA No. 52/98 is enclosed as Annexure - H.

Barman Ch. Deba

4.9 That the transfer order has been passed for reasons other than public interest and official exigencies. This has been prompted by reasons known to the respondents and such reasons are extraneous to the cause of public interest. Moreover, this order has been passed violating norms of transfer and posting. Malice in law is patent in the facts and circumstances of the case.

4.10 That the applicant is sick and not in office and undergoing treatment under Medical Practitioner.

4.11 That the applicant is residing in Quarter No. 18B, West Maligaon with the members of his family. As explained above his son and daughter are taking their education in G.U. and Pandu B.Ed. College, Pandu respectively the impugned order of transfer shall also attract the consequence of vacating the said quarter which will cause irreparable loss to the applicant.

5. Grounds for reliefs with legal provisions:

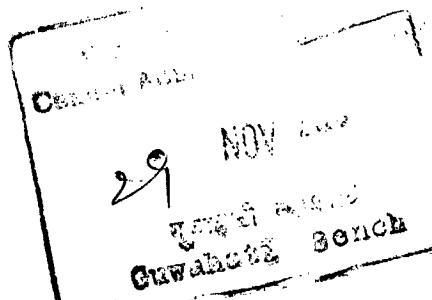
5.1 For that the order of transfer dt. 21.09.2000 is violative of the rule of tenure posting of 4 years.

5.2 For that the posting at Rehabari S.O. against a lower scale post amounts to reversion and is violative of Article 311 of the Constitution of India.

5.3 For that the posting in the lower scale post at Rehabari S.O. has been made ignoring and violating the directives of the Directorate of Postal Services, New Delhi.

5.4 For that the order of transfer is the result of ^{Whimsical} malice and caprice and ^{unreasonable} and arbitrary and offends Article 14 and 16 of the Constitution of India.

Barman Ch. Deka



5.5 For that the respondents are ~~found~~ by the law laid down by this hon'ble tribunal in O.A. No.: 52/98.

6. Details of remedy:

The applicant has submitted representation without any result. There is no other remedy under any rule.

7. Matter not pending before any other Court:

The applicant declares that he has not filed any other case in any tribunal or Court against the impugned order.

8. Reliefs sought for :

Under the facts and circumstances of the case, the applicant pray for the following reliefs :

8.1 The order dt. 21.09.2000 directing the applicant to join as S.P.M. Rebabari S.O. be set aside and quashed.

8.2 The order dt. 21.09.2000 be modified posting/allowing the applicant to continue as S.P.M in the Maligaon Railway Head Quarter P.O.

8.3 He may be allowed to continue the occupation of Quarter No. 18B, West Maligaon, Guwahati-11.

8.4 Cost of the case.

The above reliefs are prayed for on the grounds stated in para 5 above.

9. Interim relief prayed for :

During the pendency of this application the applicant prays for the following reliefs :

Baldan Ch Sena

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19/11/2000
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9.1 The direction in office order dt. 21.09.2000 asking the applicant to join in Rehabari S.O. (a lower scale post) be suspended and the applicant be allowed to continue as S.P.M., Maligaon in the norm-based HSG-II post.

9.2 He may be allowed to continue the occupation of the Quarter no. 18B, West Maligaon, Guwahati-11.

The above reliefs are prayed for on the grounds stated in para 5 above.

10. This application has been filed through Advocate.

11. Particulars of Postal Order :

- i) I.P.O. No. : 6G 771026
- ii) Date of issue : 25.11.2000
- iii) Issued from : G.P.O. Guwahati
- iv) Payable at : G.P.O. Guwahati

12. Particulars of Enclosures :

As stated in the index.

Verification.....

Bardan Ch. Deka

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Guwahati
Bapuram

Verification

I, Badan Ch. Deka, son on Late Bapuram Deka, resident of Maligaon, Guwahati-11., aged about 56 years do hereby verify that the statements made in para 1,4,6 to 12 are true my personal knowledge and those made in para 2,3 & 5 are true to my legal advice and that I have not suppressed any material facts.

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

Guwahati

Badan Ch Deka

Siganture

Department of Post : India
Office of the Sr. Supdt. of POs : Guwahati Division
Meghdoot Bhawan 3rd floor : Guwahati : 781 001

No :: E/A-8/OL/Ch III

the August 27, 1996.

To

Regd.

The Supdt. NEET/ED
The Dr. PM/ED/SEM

Guwahati University HO

Sub :: Draft gradation list in respect of officials in the cadre of HSG-II-(BCR) in Guwahati Postal division corrected upto 10-07-96.

This may be brought to the notice of the officials working under you. Any discrepancy or omission in this list should be brought to the notice of the Sr. Supdt. of Post Office, Guwahati Division, Guwahati through proper channel for rectification within a fortnight from the date of issue of the same.

Encl :: As above.

(I. P. Dombodengsang)
Sr. Supdt. of Post offices
Guwahati Division, Guwahati.

SL. NO	NAME	CCM	DOB	DOE	COFEOP	DOFCA	REMARKS
001	Badan Chandra Deka	ST	02/01/44	06/09/63	06/04/77	01/10/91	Postmaster GU HQ
002	Nalini Mn. Bhattacharjee	DC	01/06/40	11/12/61	09/04/79	01/10/91	SPM Silpukhuri
003	Joy Kanta Kalita	DC	01/01/41	17/06/60	24/09/79	01/10/91	DPM Guwahati GPO
004	Pandi Ram Kalita	DC	01/11/42	11/09/62	27/09/79	01/10/91	APM Guwahati GPO
005	Bhuzendra Nath Kakati	Refined	01/03/39	12/12/60	03/10/79	01/10/91	DPM G U HQ
006	Mahibuddin Ahmed	DC	31/01/41	25/06/60	23/12/79	01/10/91	SPM A. Sachivalaya
007	Surendra Ch. Das II	Refined	01/06/40	08/12/58	04/07/80	01/10/91	SPM Maligaon Rly HQ
008	Nagendra Nath Sarma	Refined	01/06/39	29/05/60	01/01/81	01/10/91	APM(A/cs) GPO
009	Ihirendra Nath Saikia	ST	01/01/41	09/11/64	23/02/81	01/10/91	APM Guwahati GPO
010	Samudra Kaibarta	SC	01/03/46	17/08/64	01/03/81	01/10/91	SPM Bijoynagar
011	Arabinda Boro	ST	01/03/45	02/09/64	01/03/81	01/10/91	PRI Guwahati GPO
012	Iharjeevar Kalita	DC	01/03/41	13/03/61	09/08/83	01/10/91	SPM GH Airport
013	Sukumar Paul	DC	23/08/43	21/06/66	21/11/83	01/10/91	APM(A/cs) GU HQ
014	Rafiqul Resul	DC	01/12/38	01/06/59	30/11/83	01/10/91	SPM Rehabari
015	Mrs. H.R. Challaapan	DC	29/02/40	24/06/59	30/11/83	01/10/91	SPM Bharaluueukh
016	Jyotish Chandra Kalita	DC	01/06/39	20/10/59	30/11/83	01/10/91	SPM Bamunimaidan
017	Narayan Chandra Das	DC	30/11/38	02/12/59	30/11/83	01/10/91	SPM Boko
018	Majid Ali	DC	01/05/39	19/12/59	30/11/83	01/10/91	SPM Aggumi
019	Sambhu Nath Rajbanshi	DC	01/06/40	15/03/60	30/11/83	01/10/91	APM G U HQ
020	Sarat Chandra Goswami	DC	01/03/41	18/06/60	30/11/83	01/10/91	SPM Khanasara
021	Janshed Ali	DC	01/05/39	15/07/60	30/11/83	01/10/91	Asstt. Manager PSD
022	Maniruddin Ahmed	DC	01/05/39	03/08/60	30/11/83	01/10/91	APM Guwahati GPO
023	Bhadra Kanta Deka	DC	01/01/40	02/09/60	30/11/83	01/10/91	DPM Maligaon Rly HQ
024	Umesh Kalita	DC	01/06/41	22/09/60	30/11/83	01/10/91	SPM Barduan
025	Mrs. Dineswar Dutta	DC	20/03/40	13/12/60	30/11/83	01/10/91	APM Guwahati GPO
026	Haridev Das	DC	01/03/39	15/12/60	30/11/83	01/10/91	SPM A. Fetsashil
027	Fatma Kanta Kalita	DC	01/09/40	16/12/60	30/11/83	01/10/91	SPM Kharghuli
028	Ihrigü Ban Lehkar	DC	01/04/41	28/12/60	30/11/83	01/10/91	SPM Fancybazar
029	Sayadur Fahman	DC	01/02/40	05/04/61	30/11/83	01/10/91	APM Guwahati GPO

Continue... /-

Department of Posts : India's
Office of the Sr. Supdt. of POs : Guwahati Division :
Meghdoott Bhawan 3rd floor : Guwahati : 781 001.

No. B/A-19/B/HSG/Ch. III,

the June 22, 1998.

In partial modification of this office memo of even no. dated 20-03-98 the following transfer and posting orders are issued in the interest of service to have immediate effect.

01. Shri Badan Ch. Deka, Postmaster GU HO (on leave) and now designated APM, Guwahati GPO will join as S.P.M., Maligaon Rly. HD WRs SO relieving Shri Surendra Ch. Das II SPM, Maligaon.
02. Shri Surendra Ch. Das II, SPM, Maligaon SO on being relieved will join as Postmaster, GU HO relieving Shri Khargeswar Kalita, Postmaster there.
03. Shri Khargeswar Kalita, Postmaster, GU HO on being relieved will join as DPM GU HO terminating the existing arrangement.

36 (B.S. Sadap)

Sr. Supdt. of Post Offices,
Guwahati Dn, Guwahati-781001.

Copy to :-

- 1-3. The Officials concerned.
- 4-6. PF of the officials.
7. The Sr. PM, Guwahati GPO.
8. The Postmaster, GU HO, Guwahati.
9. The CPMG (Staff), Assam Circle, Guwahati.
10. Spare.

23.6.98
(B.S. Sadap)

Sr. Supdt. of Post Offices,
Guwahati Dn, Guwahati-781001.

A copy of the Dte. letter No.4-4/92-SPB-II dtd. 30-3-92 referred above:

In this office circular letter No.22-S/89-PE, I dtd. 11-10-91 it was conveyed inter alia that with a view providing relief to the employees, Government have accepted the need for Biennial Cadre Review i.e. once in two years, under which the incumbents of existing posts would be enabled to draw pay in higher scale on completion of 26 years of service not only for providing promotional opportunity for the staff concerned but also on the basis of functional justification. Thus placement of an official in a higher scale after 26 years of service in the basic grade and the next higher grade put together would in effect be a second time bound promotion. As per the TBOP scheme introduced w.e.f. 30-11-83, officials are placed in the next higher scale after 16 years of service in the basic grade. The said circular envisages that the officials who are allowed such higher scale of pay as a result of the Biennial Cadre Review would be utilised as far as possible for providing better supervision and for dealing with work involving comparatively higher responsibility and better skills. In the light of this, the following instructions are issued as envisaged in para 2(x) of the above said circular dated 11-10-91. These are issued with the concurrence of representatives of the Staff Side of JCM Departmental Council.

2. The officials who become HSG-II as a result of the Biennial Cadre Review and those who are already in HSG-II based on norms prior to the introduction of the Biennial Cadre Review scheme be posted in order of seniority to man the following posts.

- (i) Norms based HSG-II posts viz HSG-II Postmaster/HSA & SRO.
- (ii) HSG-II Sub Postmaster, HSG-II Dy. Postmaster etc./HSA & SRO.
- (iii) Norms based LSG Posts i.e. the LSG Supervisory posts.
- (iv) The remaining officials will be utilised for manning the above said posts at places where adequate number of HSG-II officials are not available and the transfer will be of that of junior most HSG-II officials. If still there are HSG-II officials, they will continue to do operational duties and they will be assigned the positions which are considered would contribute in a better manner towards efficiency and better public satisfaction if they are manned by the officials enjoying the higher scales of pay.
- (v) Same principle will be applicable for Postmen/Mail Guard cadre also.

3. While the promotion of officials to HSG-II would continue to be centralised on Circle basis i.e. the cadre will continue to be a Circle cadre, as far as possible the officials may be accommodated at the same station/division/region on the basis of requirement of HSG-II hands to man the types of posts mentioned above.

4. The orders appointing officials to HSG-II grade as a result of BCR would continue to be issued by the authority which was issuing such orders earlier for HSG-II posts.

5. The seniority in LSG will be the basis for seniority in HSG-II grade, provided that the officials gets his placement in the HSG-II grade in his turn. If his promotion to HSG-II grade is postponed for one reason or the other, his seniority in HSG-II would be along with those with whom he is promoted subsequently.

Yours faithfully,

Sd/-

(R. KRISHNAMOORTHY)

ASSTT. DIRECTOR GENERAL (SPN)

DEPARTMENT OF POSTS & TELEGRAMS
OFFICE OF THE CHIEF POSTMASTER GENERAL, ASSAM CIRCLE
HABDOOT BHAVAN, GUWAHATI-1.

To

Supdt. POST/Geny -

1. All Heads of Divn/Units in Assam Circle.
2. All Group Officers, CO/RO, Guwahati.
3. All Dealing charges in Staff Section, CO/RO, Guwahati.

No. Staff/17-1/810/TB 2nd corr Dated at Guwahati the 3-2-90.

Subj: Postin of BCR officials against norm based post.

Enclosed is a copy of Directorate's New Delhi letter

No. 137-55/95-SPN-II dtl. 23-1-90 on the above subject is
appended below for information, guidance and necessary action.

Applauded : As above.

(I. C. BANERJEE)

A.P.G.C. (SPN/EP)

For Chief Postmaster General
Assam Circle, Guwahati-781001.

A. K. KAUSHAL

Copy of the New Delhi letter No. 137-55/95-SPN-II, dtl. 23-1-90.

sir,

I am directed to say that the Unions in one of the
Meetings with the Secretary(P) had pointed out that there is no
uniform policy rea. B.C.R. officials and their tenure postin.
Secretary assured this Union that the matter would be looked into.
Now, it has been decided that the tenure rule applies to the
B.C.R. officials subject to the condition that B.C.R. officials
working on a non functional post would be required to be shifted
to a norm based L.G./H.G post on the basis of their seniority
even if they have not completed their tenure. Postin of BCR
officials to all the norm based H.G-II posts should be ordered
by the DPs concerned.

Yours faithfully,

SD/-

(A.K. KAUSHAL)
Asstt. Director General (SPN).

Department of Post :: India
Office of The Sr. Supdt. Of Post Offices, Guwahati Division
Guwahati - 781 001. H.S.G.I

Memo No.: B2/BCR/HSG-II/72 Dated at Guwahati the 21.09.2000

The following transfer and posting orders are issued to have their effect in the interest of public services. Normal br

1. Shri Samudra Kaibarta, SPM, Gauhati University H.O. is transferred and posted as SPM, Maligaon Railway H.Q. so relieving Shri Badan Ch. Deka, SPM, Maligaon Railway H.Q. S.O.

2. Shri Badan Ch. Deka as relief will join as SPM, Rehabari so relieving Shri Chakreswar Choudhury, SPM, Rehabari S.O.

3. Shri Chakreswar Choudhury on relief will join as APM, Gauhati University P.O.

4. Shri Arun Ch. Kalita -I, APM, Gauhati University P.O. will work as SPM, Gauhati University P.O.

The postmaster, Gauhati University P.O. will relieve Shri Samudra Kaibarta on office arrangement immediately.

Sr. Supdt. Of Post Offices.

Guwahati Division, Guwahati-781 001

Copy to :-

- 1) The Postmaster, Gauhati University P.O. for information and immediate necessary action.
2. The SPM, Maligaon Railway H.Q. S.O.
3. The SPM, Rehabari S.O.
- 4 - 7. The officials concerns
8. Spare.

Sr. Supdt. Of Post Offices.
Guwahati Division, Guwahati-781 001

*Attestd
A. Chakreswar
Advocate
27/11/2000*

Smt. B. Radhika Chakravorty I/Ps

ANNEXURE-F

Senior Supdt. of Post Offices,
Guwahati Division,
Guwahati-781001.

Sub : Prayor for stay order to allow me to continue as
S.P.M. Maligaon Rly. Hd. Qrs. P.O. till my normal
tenure is over.

Ref. : Order No. B2/BCR/HSG-11/72 Dte. 21.09.2000.

Most Respected Madam,

With due respect and humble submission I beg to lay the following lines before you for favour of your kind informations and necessary sympathetic consideration that most Respected Madam, I am now based Senior most HSG-II man in this Division.

That Madam, while I was working as P.M. G.U. H.O. my young eldest Bank-employee son suddenly died an accident in February/98. It is a great untolerable shock and grief to me and my family. Due to this sorrowful condition I was sympathetically granted transfer to Maligaon Rly Hqrs. P.O. I am working as S.P.M. Maligaon Rly. Hd. Qrs. P.O., since 26.06.98 and my normal tenure will be over on 26.06.2002.

But Respected Madam, it is a great misfortune to me that I have been suddenly transferred and posted to a lower graded post as S.P.M. Rehbari by your above cited order. This action is causing an another great untolerable mental shock and severe mental agony to me. It results, sometimes I am losing heart to keep myself surviving in the midst of such unbearable shock-hit situation.

That Madam, my only surviving son and one daughter are taking their higher academic education at G.U. and Pandu B.Ed College now. And so, I can not shift my family from Maligaon-Paran locality.

Under the above circumstances, I pray you to kindly look into my matter and to give me an order of stay allowing me to continue as S.P.M. Maligaon Rly. Hd. Qrs. So, till my normal tenure is over on 26.06.2002 and oblige.

(B. C. DEKA.)

To

The Director of Postal Services, (Assam)
O/O The Chief P.M.G., Assam Circle,
Meghdoct Bhawan, GUWAHATI-781001.

(Through Proper Channel)

Sub :- Appeal Against Immature Transfer.

Most Respected Sir,

With due respect, I, the humble appellant, beg to bring to your kind notice the following facts for favour of your kind consideration and favourable order -

That Respected Sir, I am senior most norm-based HSC-II man in this Guwahati Division as well as in the Circle. I was approved and promoted to HSC-I Post, but due to my family troubles and bereaved mental condition, I refused it to avail it outside of Guwahati.

That Respected Sir, while I, the humble appellant, was working as Postmaster, G.U.H.O. in an approved and norm-based HSC-II capacity, my young eldest Bank-employee son suddenly died in accident in February/98. It is still a great untolerable shock and grief to me and to my family. Due to my this bereaved mental condition, I was sympathetically granted my transfer to Maligaon Rly. Hd. Qrs S.O. as S.P.M. and I am working since 26-06-1998 and my normal tenure will be over on 26-06-2002. (Copy of order is enclosed).

That Respected Sir, in this connection I, your humble appellant beg to state that Syed Achan Ahmed Dy.S.P.M., Maligaon Rly. Hdqrs. S.O. was reporting sick on n/c for one month from 12/03/2000. The Official was transferred to Kharghuli S.O. vide order dated 21-03-2000. On expiry of sick report he resumed

duty on 12/09/2000, on the plea that of his certain representation and some Court's documents which were not understandable to us what to do. Other reference was also readily not available in the Office where the official would resume duty on expiry of his sick report. I was seeking early intimation from the Divisional Office to relieve the official immediately. The official was relieved on 23-09-2000 vide copy of SSPOS/CH Letter No.-B-725/4 dated 22-09-2000. I had not any intention of non-relieving the official. It was causing a communication gap to me. As a result, the matter has been seriously viewed by the Respected SSPOS/CH and as its result I have been suddenly transferred far before expiry of my normal tenure and posted to a lower graded post as S.P.M. Rehabari (copy of order enclosed) and also I have been charged with of taking disciplinary action under Rule-16.

That Respected Sir, this severe action taken against me is causing an another great intolerable mental shock and severe mental agony to me. It results to me to live alive in the midst of such intolerable shock-hit situations.

That Respected Sir, I, your humble appellant, am residing in Maligna Type-II Qrs.no.-18/B, with my family. My only surviving son and one daughter are taking their higher academic education in Gauhati University and Pandu B.Ed. College. And mental position of my beloved wife is still not sound. So, I can not shift my family from Maligna-Pandu locality.

Under the above circumstance, I, your humble appellant at the last stage of my service, earnestly beg your good offices to consider my prayer sympathetically and take necessary step so that I can continue as S.P.M., Maligna Hly. Hd. Qrs. S.O. till my normal tenure is over i.e. on 26-06-2002.

I, your humble appellant, am waiting for your kind and early action and oblige.

Yours humble appellant,

Place : Maligna.
Date : 14-10-2000

(B.DAH CH. DEKA, On Leave)
S.P.M. Maligna Hly. Hd. Qrs. S.O.
Curnatf-781011.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 52 of 1998.

Date of Order: This the 12th Day of June, 2000.

Hon'ble Shri D.C.Verma, Judicial Member.

Shri Subhash Chandra Choudhury,
Manager, Postal Savings Depot,
Guwahati-21. Applicant.

By Advocate S/ Shri B.K. Sharma, S. Sarma.

- Versus -

1. Union of India
represented by the Secretary to the
Government of India,
Ministry of Communication,
Department of Posts,
New Delhi-1.

2. The Director General of Posts,
New Delhi.

3. The Chief Post Master General,
Assam Circle,
Guwahati-1.

The Sr. Superintendent of Post Offices, . . . Respondents.
Guwahati-1.

Advocate Shri B.I.S. Basumatary, Addl.C.G.S.C.

ORDER

D.C. VERMA, JUDICIAL MEMBER.

The applicant has prayed for quashing of the transfer order dated 29.1.1998 (Annexure-5 to the O.A) and order dated 11.3.1998 (Annexure-I to the O.A).

2. The applicant was posted as Manager, Postal Stores Depot (PSD) at Guwahati under the administrative control of the North East Circle, Shillong. The applicant opted for Assam Circle. The applicant was accordingly allotted the Assam Circle. From the post of Manager PSD the applicant had been transferred by Annexure-D dated 29.1.1998, to join as Supervisor, NESD, Guwahati-20. The applicant's

cont'd. . . 2

Case is that the impugned order of transfer dated 29.1.1998 had not been passed by the competent authority. Further ground is that the post of NESD, Guwahati carries lower scale of pay consequently the posting of the applicant to NESD amounts to reversion. The third ground is that the applicant had not complete the usual 4 years tenure as Manager PSD. The fourth ground on which the impugned order has been challenged is that the applicant belongs to Accounts cadre and the post of Supervisor, NESD is of general cadre. Consequently, it has been submitted that the applicant's cadre cannot be changed in the manner it has been done by the respondents by Annexure-D to the O.A.

3. The applicants belongs to HSG-II Grade. During the course of arguments it has been admitted that the Grade of HSG-II is Rs.5000-8000/-. The scale of pay attached to the post of Manager, PSD is also Rs.5000-8000/-. The post of Supervisor, NESD is in the scale of Rs.4500-7000/-. Thus the applicant had been transferred from the scale of Rs.5000-8000/- to the lower scale of Rs.4500-7000/-. Learned counsel for the respondents has submitted that, as per Annexures 7 and 8 filed with the written statement of the respondents, an HSG-II Grade official can be posted against LSG post but would carry the scale of HSG-II. Even if the contention of the learned counsel for the respondents be accepted the position of posting of an HSG-II Grade official to LSG post as per Annexures 7 and 8 is at the time when the BCR Scheme was being implemented and not for all time to come. Once the applicant has been posted to a post of HSG-II carrying the pay scale of Rs.5000-8000/- the applicant cannot be sent back to a post of LSG even though the same may carry the same scale. Further in the impugned transfer order dated

contd.. 3

29.1.1998 there is no mention that the applicant would draw the scale of HSG-II even on the post of Supervisor, NESD. In view of this matter the order transferring the applicant from a higher scale to a lower scale post, by the impugned order, is not valid.

4. Admittedly, the impugned order dated 29.1.1998 has been passed by the Senior Superintendent of Post Offices. As per Annexure-E dated 3.2.1998 posting of BCR officials to all the norm based HSG-II post is to be ordered by the Director, Postal Services (DPS), concerned. Thus an HSG-II official can be transferred by DPS only. The present impugned order has been passed by the Senior Superintendent of Post Offices who is not a competent authority. In the light of Annexure-E dated 3.2.1998 learned counsel for the respondents has pointed out that Annexure-E was issued in February 1998 whereas the order impugned in the case was passed in January 1998. The submission is that the DPS has been made the competent authority with effect from 3.2.1998 when the order Annexure-E was issued. The learned counsel has however, not been able to show that prior to issue of this order (Annexure-E) Senior Superintendent of Post Offices was the competent authority.

There is nothing in Annexure-E to indicate that Senior Superintendent of Post Offices was earlier the competent authority or the same has been changed with effect from 3.2.1998. In absence of any such document the submission of the learned counsel for the respondents cannot be accepted. It is therefore, held that the order passed by the Senior Superintendent of Post Offices, who was not a competent authority, is not valid. It may be pointed out that by Annexure-I dated 11.3.1998 the DPS rejected the

64

representation of the applicant made against the transfer order. Such an order could not have been passed by the DPS if after 3.2.1998 (Annexure-E) the DPS had become the competent authority to pass the transfer. Consequently Annexure-I dated 11.3.1998 is also not valid.

5. One of the reliefs claimed by the applicant is that he be allowed to continue as Manager in the PSD till completion of his tenure of 4 years with effect from 25.8.1997. In support of the applicant's claim the learned counsel for the applicant have placed reliance on Annexure-F which is a copy of Swamy's Compilation of Posts and Telegraphs Manual Volume IV on the subject of establishment, to show that the tenure is of 4 years. Heard counsel for the parties on the point. The period of tenure provided in the rule is to be 'ordinarily' followed. It is only a guideline and is not justiciable. In a given circumstance and/or on administrative grounds or exigency of service an official can be transferred before completion of the tenure or can even be retained after he has completed the tenure period. In my view therefore, this relief of the applicant that he be allowed to continue on the post of Manager, PSD Guwahati, till completion of his tenure of 4 years, has no merit.

6. In view of the discussion made above the O.A. is partly allowed. The impugned orders Annexure-D in so far as it relates to the applicant and Annexure-I is quashed. The other reliefs claimed in the O.A. is rejected. Costs on parties.

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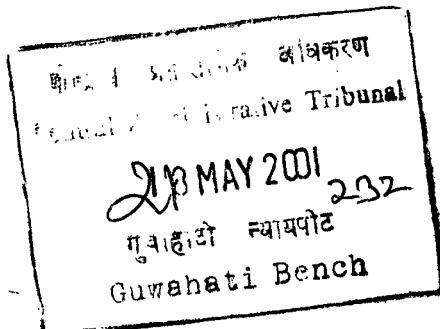
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Sd/MEMBER(j)

My block

Deputy Registrar (A)
Central Administrative Tribunal
Guwahati Bench

6/6/2007



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

O.A. NO. 415 OF 2000

Shri Badan Ch. Deka.

..... Applicant.

Union of India & Others.

..... **Respondents.**

(Written Statements of the Respondent No. 1, 2 & 3

The Written Statements of the abovenamed respondents are as follows :-

1. That a copy of the O.A. No. 415/2000 (herein-after referred to as the "application") has been served on the respondents. The respondents have gone through the said application and understood the contents, Thereff. The interest of all the respondents being common and similar, the respondents have filed the common written statements for all of them.

2. That all the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.

3. That before traversing the various statements of the application, the respondents beg to give a brief history of the case as under :

Shri Badan Chandra Deka, HSG-II official joined as SPM, Maligaon Railway H.Q. SO on 30.6.98.

Consequent on some complaints of serious nature against the PA(SB), Dy. SPM and SPM, Maligaon Railway H.Q. SO, the circle office, Guwahati directed the divisional head to take action for their transfer to elsewhere for the greater interest of public.

Thus he has been transferred to Rehabari SO under this Office memo No. B2/BCR/HSG-II/72 dated 21.09.2000.

Ch.

Shri Badan Deka submitted representation dated 23.09.00 dated 25.9.2000, 29.9.2000 and 6.10.2000 for stay of his transfer order. However, he has been informed that his prayer for stay can not be considered under the office letter no. B-653-Pt.II dated 10.10.2000.

Shri Badan Ch. Deka, then submitted representation dated 14.10.2000 at the Director of Postal Services, Guwahati through proper channel. However, considering his length of service he has been posted as DPM-II, Guwahati GPO under this office memo no. B1/BCR/HSG-II/72 dated 21.11.2000. Shri Badan Ch. Deka did not give due regards to that order and joined again as SPM, Maligaon Railway H.Q. SO on 21.12.2000 without any authority from the Divisional Head on the strength of Hon'ble C.A.T. order dated 30.11.2000. Concealing the fact before Hon'ble C.A.T. that the posting order dated 21.9.2000 has since been modified by the Sr. Superintendent of Post Offices, Guwahati Division and he has been posted as DPM-II, Guwahati GPO which is norm based HSG-II Post.

4. That with regard to the statements made in para 1 of the application the respondents have no comment since the order in memo no. B-2/BCR/HSG-II/72 dated 21.9.2000 was modified under order in memo no. B2/BCR/HSG-II/72 dated 21.11.2000.

5. That the respondents have no comments with regard to the paras 2, 3, 4.1 & 4.2 of the application.

6. That with regard to para 4.3 of the application, the respondents state that transfer of an official can be made in the interest of public service irrespective of completion of tenure. The applicant has been transferred from Maligaon Railway H.Q. SO in the interest of public service.

7. That with regard to para 4.4, the respondents state that the order for posting at Rehabari SO as SPM was modified under memo no. B2/BCR/HSG-II/72 dated 21.11.2000 and the applicant has been posted as Dy. Postmaster-II (HSG-II), Guwahati GPO and copy endorsed to the applicant and all others concerned.

8. That with regard to the statements made in para 4.5, the respondents re-assert the foregoing statements of this written statements.

9. That with regard to para 4.6, the respondents state that a good number of complaints of serious nature were received against the P.A. (SB Branch), Dy. SPM and SPM, Maligaon Railway H.Q. So and duly inquired into. After necessary inquiry, it is found that the complaints are based on facts. Thus keeping in view of public interest, transfer of PA (SB branch), Dy. SPM and SPM, Maligaon Railway H.Q. SO were made. However, the posting order of applicant as SPM, Rehabari SO made under memo no. B2/BCR/HSG-II/72 dated 21.9.2000 has since been modified and the applicant has been posted as Dy. Postmaster-II(HSG-II), Guwahati GPO under memo no. B2/BCR/HSG-II/72 dated 21.11.2000.

10. That with regard to para 4.7, the respondents state that reply to the applicant's representation dated 6.10.2k was forwarded given under letter no. B-653-Pt.I dated 10.10.2000 and the representation dated 14.10.2000 was forwarded to the CPMG, Assam Circle, Guwahati under letter no. B-653-Pt.I dated 17.10.2000.

11. That with regard to para 4.8, 4.9 and 4.10, the answering respondents re-iterate and re-assert the foregoing statements of this written statements.

12. That with regard to para 4.11, the answering respondents state that the applicant is residing in a departmental quarter meant for SPM, Pandu SO. The applicant occupied the quarter while he was working as SPM. Pandu SO. After the applicant's posting as SPM, Maligaon Railway H.Q. SO the applicant should have vacated the quarter but the applicant did not vacate the quarter. However, the applicant has been asked to vacate the said by post quarter but the applicant has not vacated the quarter till date.

13. That with regard to the para 4.12, 4.13 and 4.14, the respondents state that the applicant was relieved from the charge of SPM, Maligaon Rly. H.Q. SO on 23.9.2000 after noon and thereafter the applicant applied for leave on medical ground. As per order dated 21.9.2000, Sri Samudra Kalibarta took charge of SPM, Maligaon Rly. H.Q. SO w.e.f. 23.9.2000 afternoon. Shri Kaibarta was on leave from 30.11.2000 and Dy. SPM was holding the charge of SPM, Maligaon Rly. H.Q. SO. As the applicant is normed based HSG-II, the order dated 21.9.2000 was modified under order no. B2/BCR/HSG-II/72 dated 21.11.2000 and the appli-

applicant was posted as DPM-II at Guwahati GPO against vacant post which is norm based HSG-II post. But the applicant did not give due regards to that order and joined again as SPM, Maligaon Rly. H.Q. SO on 21.12.2000 without any authority from the respondent no.3 on the strength of Hon'ble C.A.T. Order dated 30.11.2000 in which this office order dated 21.9.2000 was suspended. The transfer of the applicant from the post of SPM, Maligaon Rly. H.Q. SO was necessary in the interest of public service as huge public complaints against the applicant and others two staff of the office were received and enquired and found based on facts. The applicant was ordered to shift from Maligaon Rly. H.Q. SO to keep the image of the department as well as to give proper service to the valuable customers of the department before completion of normal tenure of 4 years.

14. That with regard to the statements made in para 5.1 to 5.5, the respondents state that the grounds shown are not at all legally valid grounds in the eye of law. Order for transfer was issued in the interest of service irrespective of completion of tenure. In this respect Hon'ble C.A.T. has passed a judgement on O.A. No. 52 of 1998 dated 12th June, 2000 that the period of tenure provided in the rule is to be "ordinarily" followed. It is only a guideline and is not justiciable. In a given circumstances and/or on administrative grounds or exigency of service an official can be transferred before completion of the tenure or can even be retained after he has completed the tenure period. Moreover, the law regarding transfer is well settled unless such transfer is made malafide or in violation of statutory rules, the authority can transfer a person in public interest

-6-

15. That with regard to the statements made in para 6 and 7, the respondents state that representation submitted by the applicant was duly considered and posted as Dy. Postmaster-II (HSG-II), Guwahati GPO.

16. That with regard to the statements made in para 8.1 to 8.5, the respondents state that as stated above, under the facts and circumstances and the law, the applicant is not entitled to any relief as sought for the application is liable to be dismissed with cost.

17. That with regard to the statements made in para 9.1 and 9.2, the respondents state that the applicant by suppressing the fact of modification of his transfer order from Rehabari to GPO., Guwahati, has got the interim order of stay. Hence the said interim order is also liable to be vacated.

In the premises aforesaid, the respondents pray that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall further be pleased to dismiss the petition with cost.

Verification.....

-7-

VERIFICATION

I, Shri B. R. Chakravarthy, Presently
working as SSP, Guwahati, being com-
petent and duly authorised to sign this verification, do
hereby solemnly affirm and state that the statements made
in para 1 to 17 are true to my knowledge
and belief, those made in para — being
matter of records are true to my information derived therefrom
and the rest are my humble submission before this Hon'ble
Tribunal. I have not suppressed any material fact.

And I sign this verification on this 14th day
of April, 2001 at Guwahati.


B. Radhika

Declarant पुस्तकालय, गुवाहाटी-781001

पुस्तकालय, गुवाहाटी-781001
Sr. Superintendent of Post Office
Guwahati Division, Guwahati-781001

(31) 22
Filed by the Appellants -
Through A. Chakraborty
Dated 01/01/2000

OCT 2001

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. NO. 415/2000

Sri B. C. Deka

Vs.

Union Of India & Ors.

In the matter of :

Rejoinder in reply to the
written statement

The applicant most respectfully begs to state
as under :

1. That the applicant has gone through the written statement filed by the respondents and ~~has~~ understood the contents thereof.
2. That in reply to the statements in para 3 it is stated that the applicant is working as SPM (HSG-II), Maligaon Rly. H.Q. w.e.f. 26.06.1998 and not w.e.f. 30.6.1998. There were 4(four) complaints lodged by 2(two) complainants. 3(three) complaints were against encashment of one KVP of Rs.5,000/-. The said KVP was in the joint name of the complainant and his mother. The complainant was asked to follow some official procedure but he did not comply with. The other complaint was against encashment of one IVP of Rs.5,000/-. In this case also due to procedural lapse the payment could not be made. It is stated that the complaints were of daily routine nature works and not of serious nature. It is a matter of fact that the applicant has been working with satisfaction of all concern and he has also received many letters of appreciation for his service rendered to the customers of his post offices.

It is submitted that the applicant was served the transfer order No.B1/BCR/HSG-II/72 dated 21.11.2000 in a closed cover on 23.12.2000. The applicant was on leave w.e.f. 24.9.2000 to 20.12.2000 on medical ground and resumed duty on 21.12.2000. The respondents brought a serious allegation of concealment of fact before the Hon'ble Tribunal against the applicant. The applicant humbly submits that he did not conceal any material fact before the Hon'ble Tribunal.

3. That in reply to statements in para 6 to 7 the applicant re-asserts the foregoing statements of para 2 above.

4. That with regards to the statements in para 9 the applicant reiterates the statement in para 2 above. It is stated that the applicant has not received any communication of findings of the so called inquiry by the respondents nor he was asked for any representation.

5. That with regards to the statement in para 12 it is stated that the charge of the Maligaon Type II Qr. No. 18/B has been handed over by the applicant to Syed Mokiban Rahman, SPM, Pandu P.O. on 02.02.2001.

6. That with regards to the statements in para 13 it is reiterated that the applicant was on leave w.e.f. 24.9.2000 to 20.12.2000 on medical ground and resumed duty on 21.12.2000. The applicant is continuing as S.P.M, Maligaon Rly H.Q. P.O. with the authority of the order of 'Status Quo' passed by the Hon'ble Tribunal.

7. That this petition is filed bonafide and for the cause of justice.

Verification

I, Badan Ch. Deka, son of Late Bapuram Deka, resident of Maligaon, Guwahati-11 do hereby verify that, the statements made in the paragraphs 1 to 7 are true to my knowledge and that I have not suppressed any material fact.

4

Guwahati

Badan Ch Deka
Signature

10/10/2001