

30/600
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

74/2000 OF 199

Applicant(s) *Sri Swapnil Kumar Roy.*Respondent(s) *Union of India and others.*Advocate for Applicant(s) *Mr. B.K. Sarma.**Mr. S. Sarma.*Advocate for Respondent(s) *Mr. U.K. Goswami**C.G.-SL*

Notes of the Registry	Date	Order of the Tribunal
456245 Dated 20-2-2000	22.2.00	<p>Present : Hon'ble Mr. G.L.Sanglyine, Administrative Member.</p> <p>Mr. S.Sarma for the applicant.</p> <p>Mr. B.C. Pathak for the respondents.</p> <p>Heard learned counsel for the parties.</p> <p>This application has been submitted by the applicant impugning the transfer order dated 27.1.2000, Annexure-2, by which he was transferred from Sonamura CPF & Srimantapur LCS, Agartala Customs Division to Belonia CPF & Muhiraghata LCS, Agartala Customs Division. According to the applicant this is in violation of the transfer policy of the department. He has submitted a representation dated 31.1.2000 praying for his retention at Sonamura. This representation has not</p> <p>Contd...</p>

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Notes of the Registry	Date	Order of the Tribunal
<p>23.2.2000 Copy of the order of 22.2.2000 has been sent to the D/Secr for issuing the same to the Applicant and to the Addl C.G. Secy, CAG, Government Banks.</p>	22.2.00	<p>In the circumstances I dispose of this application with a direction to the respondent No.2 to dispose of the representation of the applicant within a period of one month from the date of receipt of this order. Till disposal of the representation the operation of the impugned order dated 27.1.2000 in so far it relates to the applicant shall be kept in abeyance.</p>
<p>Received for CAG (A.M. 22/2/2000) (R.C. Sankar)</p> <p>trd M/S 22/2/2000</p> <p>Issued vide D.N.O. 600 to 602 on 24.2.2000.</p> <p>KK</p>		<p>The application is disposed of. No order as to costs.</p> <p>600 Member</p>

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21 FEB 2000
गुवाहाटी बैच
Guwahati Bench
BEFORE THE ~~CENTRAL ADMINISTRATIVE TRIBUNAL~~
GUWAHATI BENCH

Title of the case : C.A. No. 74 of 2000

BETWEEN

Shri Swapan Kumar Roy, ... Applicant.

AND

Union of India & ors Respondents.

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Filed by : Regn. No. :

the applicant
through Lekh Gowani
Advocate

Date : 5

Filed by
the applicant
through Mr. ~~Utkal~~
Advocate
21-2-2000

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

D.A. No. 76 of 2000

BETWEEN

Swapan Kumar Roy, Supdt. of Customs,
under Customs Division, Sonamura CPF.

... Applicant

AND

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi-1.
2. Commissioner of Customs, North Eastern Region, Shillong.
3. Commissioner of Central Excise, North Eastern Region, Shillong.
4. Assistant Commissioner, Customs Division, Agartala.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The present application is directed against the order dated 27.1.2000 issued by the Commissioner of Customs North Eastern Region, Shillong by which the Applicant has been sought to be transferred without considering the transfer policy/guideline issued by the Respondents.

2. JURISDICTION OF THE TRIBUNAL :

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

Swapan

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India.

4.2 That the present Applicant has challenged the order of transfer dated 27.1.2000 through this present application. The Applicant on 10.11.1980 joined in the post of Inspector under the Respondents and subsequently on 28.6.93 he got promotion to the post of Supdt.. During his service as supdt. since 1993 he has been transferred six times i.e. within the time span of six and half years he has been transferred six times. The Respondents have issued a guideline/transfer policy of Group 'B' Officers working in the North East Region. In the said transfer policy certain guidelines have been issued for transfer of Group 'B' Officers working in the North east Region. However, in the present case in complete violation of the aforesaid policy the Respondents i.e. the Commissioner of Customs, issued an order dated 27.1.2000 by which the present Applicant has been sought to be transferred from his present place of posting i.e. Sonamura to another far away place i.e. Belonia. Immediately on receipt of the said order dated 27.1.2000, the

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Applicant made representation on 31.1.2000 but the Respondents are yet to dispose of the same and during the pendency of disposal of the said representation, the release order so far it relates to Applicant is concerned is going to be issued soon. The Applicant in view of the aforesaid circumstances including the fact that both his childrens are presently studying in 7th and 4th standard in the Central School and in the month of March 2000 their final examination are going to be held, has come before this Hon'ble Tribunal seeking appropriate relief with a further prayer to stay the operation of the impugned order dated 27.1.2000 till the disposal of this original application.

This is the crux of the matter for which the Applicant has come before this Hon'ble Tribunal for setting aside of the order dated 27.1.2000 by way of filing the present Original Application. The detail fact of the case is as follows :

4.3 That the Applicant joined the services under the Respondents as Inspector, Department of Customs on 10.11.80. There after the Applicant had to serve at various places of the North East Region. At no point of time the present Applicant made any complaint against the said transfer orders and each time he carried out the said transfer orders treating the same to be a part of the service carrier.

4.4 That the Applicant there after got his promotion to the post of Supdt. of Customs vide order dated 28.6.93 and immediately on his promotion he was

transferred and posted at Dharmanagar vide order dated 8.7.93. It is pertinent to mention here that since 28.6.93 he has been transferred six times violating the guidelines which has been issued by the Respondents for welfare of the employees as well as to streamline the administration. For better application appretiations of the factual position a table is given below showing the transfer orders, and places;

Order dated	From	To
1. 8.7.93		Dharmanagar
2. 28.11.94	Dharmanagar	Imphal
3. 30.1.97	Imphal	Agartala
4. 27.2.98	Customs	Central Excise (but same was cancelled on the request of the Applicant.)
5. 13.4.99	Agartala	Sonamura
6. 27.1.2000	Sonamura	Belonia

4.5 That from the above transfer orders it is clear that the Applicant has been transferred very frequently without considering the guidelines framed for the purpose of transfer. It is noteworthy to mention here that the Commissioner Central Excise, Shillong i.e. the Respondent No. 3 who is the cadre controlling authority and Commissioner Customs (Preventive) issued a circular vide No. 11(7)5/ET. III/88/1674-95 dated 7.11.96 by which the policy of transfer has been circulated. In the said circular dated 7.11.96 the Respondent have categorically stated that the same has been issued after the detailed discussion with the competent

authority as well as the guidelines of the Ministry regarding transfer and the said policy has been circulated after having being agreed to follow the same.

A copy of the said transfer policy dated 7.11.96 is annexed herewith and marked as Annexure-1.

4.6 That surprisingly enough the Respondents without considering the Annexure-1 policy has issued an order vide No. 01/2000 dated 27.1.2000 by which 19 Supdts. have been sought to be transferred within North Eastern Region, including the present Applicant whose name appeared at the serial No. 14 of the said order. It is pertinent to mention here that the said order of transfer has been issued on rotation and adjustment made in the grade in the Supdt. of the Commissionerate of Customs, North Eastern Region,

A copy of the said order dated 27.1.2000 is annexed herewith and marked as Annexure-2.

4.7 That the Applicant begs to state that prior to issuance of Annexure-2 order dated 27.1.2000, he was issued with an order dated 13.4.99 by which he was transferred to his present place of posting and pursuant to the said order he joined the said post on 10.5.99. The Applicant by now has completed only about seven months in his present place of posting. As per the Annexure-1 guideline dated 7.11.96 the tenure in the particular station is four to six years and the period of stay in one station/section/office will not

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be more than two years and there will be a rotation in every two years. It is noteworthy to mention here that the impugned Annexure-2 order of transfer has been issued on rotation basis, but same is violative of the Annexure-1 policy dated 7.11.96. From the date of issuance of the Annexure-2 order it can easily be assumed to be an order of general transfer since the same has been issued in the month of January as described in the policy. It is also clear from the Annexure-2 order of transfer that the same has not been issued in public interest as well as on administrative grounds but the same has been issued on rotation basis.

4.8 That the Applicant as stated above has completed only about seven months in his present place of posting and because of the said fact as per the policy he did not make any representation as he has only completed seven months of service in his place of posting. However, immediately on receipt of the Annexure-2 order dated 27.1.2000 he made a representation on 31.1.2000, to the Commissioner of Customs, who is the authority of making transfer and alteration if any can only be made by him.

A copy of the said representation dated 31.1.2000 is annexed herewith and marked as ANNEXURE-3.

4.9 That the applicant begs to state that the case of the applicant is fully covered by the said policy and the impugned order can not be issued without considering the policy. It is pertinent to mention here

that the impugned order of transfer has been issued on rotation basis and the said order is a general order of transfer. In the policy of transfer there has been a mention that the policy will not be applicable in case of transfer on administrative grounds. But the present transfer order has been issued on rotation basis and it is a general transfer order. The policy i.e., Annexure-1 and its guidelines will be applicable so far it relates to the transfer of the applicant.

4.10 That the applicant begs to state that till date the respondents have not issued any order of release to the applicant but it is learnt from reliable sources that within a short time the release order will be issued without considering the representation filed by the applicant. In the event of such order being issued, the applicant will suffer irreparable loss and injury and the O.A. would become infructuous and as such the applicant prays for an interim order directing the respondents not to issue any order of release till finalisation of the O.A with a further direction not to disturb him from his present place of posting.

4.11 That the Applicant begs to state that the present place of posting is his home town and presently his children are studying in the Central School. In the event of such transfer their studies would adversely be effected and they will be debarred from appearing in the comming examination in the month of March and by this they may loose one valuable academic year. Apart from the above the mother of the Applicant is suffering

from High Blood Sugar as well as other chronic diseases like Arthritis and she is staying presently with the applicant and getting her treatment and in case the respondents give effect the impugned order, the entire family members will suffer a lot.

4.12 That the applicant begs to state that the impugned order of transfer has been issued with a malafide intension only to accomodate one Sri B.Paul, who, is going to be posted in the present place of posting of the applicant. It is pertinent to mention here that till date no order of release has been issued to the applicant and no one has been posted in his place. In fact the said order of transfer is yet to be implemented and the Applicant is continuing in the post from which he sought to be transferred by issuing the said impugned order, hence the applicant prays before the Hon'ble Tribunal for an interim order directing the respondents not to give effect the said order dated 27.1.2000 (Annexure-2) till the disposal of the O.A.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the action of the respondents in not considering the case of the Applicant in terms of the Annexure-1 policy is illegal and arbitrary and hence the same is liable to be set aside and quashed.

5.2 For that there has been a policy decision regarding the transfer of Group B officers and the respondents are bound to follow the same. The respondents in not considering the said policy while issuing the Annexure-

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2 order dated 27.1.2000 has resulted in total disregard to the said policy which is also a creation of the said respondent and on this score alone the impugned order dated 27.1.2000 required to be set aside and quashed.

5.3 For that the action of the respondents in not considering the representation of the Applicant is violative of the principles of natural justice and as such the impugned order is not sustainable in the eye of law.

5.4 For that since the impugned order of transfer has not been issued on administrative grounds, the respondents are required to be follow the policy and the action of the respondents in not following the said policy in issuing the impugned order is not sustainable in the eye of law and liable to be set aside and quashed.

5.5 For that in any view of the matter the entire action of the respondent are liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

Swapan

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To set aside and quash Annexure-2 order dated 27.1.2000 so far it relates to the transfer of the Applicant.

8.2 To direct the Respondents to allow the Applicant to continue in his present place of posting at Sonamura.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED FOR :

Under the facts and circumstances of the case, the Applicant prays for an interim order by way of staying the effect and operation of the Annexure-2 order dated

Swaroop

27.1.2000 and further prays for a direction to the Respondents not to give effect to the Annexure-2 order dated 27.1.2000 and to allow the Applicant to continue at his present place of posting at Sonamura.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : OG 456249
- ii) Date : 20/2/00
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Swaroop

VERIFICATION

I, Shri Swapan Kumar Roy, aged about 49 years, son of Late M. Roy, at present working as Supdt. Customs, Agartala Customs Division, Sonamura, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 3, 4.1 to 4.4, 4.7 to 4.12 and 5 to 12 are true to my knowledge ; those made in paragraphs 4.5 and 4.6 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 21 ~~5th~~ day of February 2000.

Swapan K. Roy.

TRANSFER POLICY OF GROUP 'B' OFFICERS IN NORTH EAST.

After a detailed discussion between the CCP, CCE and AC(Hqrs) alongwith various instructions of the Ministry and the last of which is F.No.A-35017/28/92-Ad.III,B dated 30th June, 1994, minutes of various conferences and other discussions, it has been agreed to follow the following transfer policy among the Group 'B' officers in the North East, coding.

1. Since the Commissionerates covers 7 (seven) North Eastern States with different ethnic background, Administration will follow as far as possible, convenient Zone and areas so that officers are not unduly put to difficulties. However, these will not include transfers on Administrative grounds.
2. Before any general transfer, Group 'B' officers will submit a representation for -
 - (a) Place of posting with reasons;
 - (b) Option for Customs/Central Excise;
 - (c) For any other deputation.These representations will be received positively by 1st October of any year.
3. The general tenure in one station will be 4 to 6 years.
4. Period of stay in any one station/section/office will not be more than 2 years.
5. Since the officers belong to a common cadre of Central Excise mainly, no officer will remain posted in Customs for more than 4 years.
6. The rotation in every 2 years will be from difficult to soft area and from sensitive to hard areas.
7. Compassionate postings will be considered mutually between the CCP and CCE and after satisfying the genuineness of the compassion cases, transfer will be made if needs be. Such transfers on compassionate grounds must be addressed to DC/AC(P&V) and endorsed to both the Commissioners.

8. Though Deptt. of Personnel & Training vide their letter dated 3rd April '86 have recommended posting of husband and wife together in one station, the area of jurisdiction being vast and the nature of work being different from general Administration only where there is absolutely any problem or difficulties, transfers will be considered as per Ministry of Personnel guidelines.

9. ~~9.1~~ Since the Commissionerates are highly short staffed, cooling off period from any deputation as recommended by the Ministry will in future be enforced.

10. ~~10.1~~ General transfers will be completed before 31st December of any year and as far as possible effected by 31st January.

11. Officers who are due to retire within 2 years will be retained/posted within and around their Home Town or places/stations requested by them.

Uttam Kumar Mitra
(LALLUNGINEMA) 7/11/96 (L.R. MITRA)
COMMISSIONER COMMISSIONER
CUSTOMS (PREV) : NER : SHILLONG CENTRAL EXCISE : SHILLONG

C. N. II (7)5/ET. III/88/ 1674-95

Dated : 7/11/96

Copy to :-

1. The Member(P&V)/(C. EX.)/(A. S.), Central Board of Excise and Customs North Block, New Delhi for kind information.
2. The Chief Commissioner(EZ), Customs and Central Excise, 15/1 Strand Road, Calcutta for kind information.
3. The Commissioner(Cus. Prev.), NER, "Shillong" for kind information.
4. The Deputy Commissioner(Cus. Prev.), NER, Shillong for kind information.
5. The Secretary, General, All India Federation of Central Excise Gazetted Executive Officers, 40A/1, J.K. Mitra Road, Calcutta for kind information.
6. The General Secretary, Group 'B' Executive Officers' Assn., Customs and Central Excise, Shillong for kind information.
7. The Assistant Commissioner of C.Ex./Cus. (P), Dibrugarh, for information.

D. Bhattacharyya 7/11/96
(D. BHATTACHARYYA)

ASSISTANT COMMISSIONER(HONS.)
CUSTOMS AND CENTRAL EXCISE : SHILLONG.

OFFICE OF THE COMMISSIONER OF CUSTOMS
NORTH EASTERN REGION
SHILLONG

ORDER NO. 01/2000

Dated, Shillong, The 27th January, 2000

Sub:- Transfer & Postings, Rotation & Adjustments in the Grade of Superintendents Group 'B' of the Commissionerate of Customs, North Eastern region, Shillong - ORDERS REGARDING.

The following transfer and postings, rotation & adjustments in the grade of Superintendents of Commissionerate of Customs, North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

Sl. No	Name of the Officer	Place Of Posting	
		From	To
1.	Shri Apalak Das	Audit Branch C.Ex. Hqrs., Shillong	Technical Br. Customs Hqrs., Shillong
2.	" Rama Kanta Das	Audit Branch C.Ex. Hqrs., Shillong	Bonsora LCS Shillong Customs Division.
3.	" P.K. Barua	Burnihat Range C.Ex. Div., Shillong	Statistics Branch Customs Hqrs., Shillong
4.	" S.N. Singh	Technical Branch C.Ex. Div., Tezpur	Technical Branch Imphal Customs Division.
5.	" Ranjit Sharma	Hqrs. Audit Unit Guwahati	Mahendraganj LCS Guwahati Customs Division
6.	" S.C. Das	PBC Range C.Ex. Div., Digboi	Badarpur CPF Karimganj Cus. Division
7.	" Biswajit Sarkar	Dhubri C.Ex. Range C.Ex. Div., Dhubri	Dhubri CPF/ St. Ghat LCS Guwahati Customs Division
8.	" S. R. Dhar	C.Ex. Range, Karimganj C. Ex. Div., Karimganj	Customs Divisional Office, Karimganj
9.	" Jahar Dey	Jars. Appeal Branch C.Ex. Hqrs., Shillong	Customs Hqrs. Office, Shillong

Afterwards

Sl No	Name of the Officer	Place Of Posting	
		From	To
10	Shri B.K. Deb	Adjudication Branch C.Ex. Hqrs., Shillong	Anti- Smuggling Unit Agartala Customs Division
11	" G.C. Paul	Silchar C.Ex. Division	Law & Appeal Branch Customs Hqrs., Shillong
12	" B. Paul	C. Ex. Range, Agartala Silchar C.Ex., Division	Sonamura CPF & Srimantapur LCS Agartala Customs Division
13	" S. Chakrabarty	Belonia CPF & Muhiraghat LCS Agartala Cus. Division	Law/ Adjudication Branch Agartala Customs Division
14	" S. K. Roy	Sonamura CPF & Srimantapur LCS Agartala Cus. Division	Belonia CPF & Muhiraghat LCS Agartala Customs Division
15	" J.C. Das(No. 2)	Lumding Range C.Ex. Div., Guwahati	Disposal Branch Karimganj Cus. Division
16	" M.S. Tyagi	Modvat Cell C. Ex. Div., Guwahati	Anti- Smuggling Unit Dimapur Cus. Division
17	" N. G. Barman	Superintendent Hqrs C.Ex. Hqrs., Shillong	Hqrs. Preventive Unit Customs Hqrs., Shillong
18	" J.R.H. Diengdoh	Hqrs. Preventive Unit Cus. Hqrs., Shillong	A/s Unit & Technical Branch Shillong Customs Division
19	" D.K. Nath	Anti-Smugaling Unit Agartala Cus. Division	Technical Branch Agartala Customs Division

22/02/2007
 (K. K. DAS)
 COMMISSIONER OF CUSTOMS
 NORTH EASTERN REGION
SHILLONG

[Signature]

C.No. II(3)9/ET/CC/CELL/SH/99/275-817(A) Dt. 27. 01. 2000

Copy forwarded for information & necessary action to :-

1. The Commissioner of Central Excise, Shillong.
2. The Joint Commissioner (P&V), Customs & Central Excise, Shillong
3. The Joint Commissioner (Tech), Central Excise, Shillong.
4. The Assistant Commissioner (P&I), Customs Hqrs., Shillong.
5. The Deputy Assistant Commissioner, Customs Division
(All). Copy meant for the concerned officer(s) is/are enclosed herewith for causing delivery.
6. The C.A.O., Customs & Central Excise, Shillong.
7. The P.A.O., Customs & Central Excise, Shillong.
8. The A.C.A.O., Customs & Central Excise, Shillong.
9. The Administrative Officer, Customs Hqrs., Shillong.
10. The Superintendent, Customs Hqrs. Office, Shillong
(all).
11. S/Shri S. K. Roy, Superintendent for compliance.
12. The Branch-in-charge, ET.II & III/ Accts. I & II/ CIU-VIG Br. of Customs & Central Excise, Shillong.
13. The General Secretary, Group 'B' Superintendents Association, Customs & Central Excise, Shillong.
14. The Senior P.A. to the Commissioner of Customs, Shillong.
15. Guard File.

27/1/2000
(M. L. DEY)
Assistant Commissioner (P&I)
Customs Headquarter
N.E.R. III: SHILLONG

M. L. DEY
N.E.R. III: SHILLONG

To

22

The Commissioner of
Customs, Customs Commissionerate,
North Eastern Region,
S H I L L I N G - I

(THROUGH PROPER CHANNEL)

Sir,

Subject :- Representation for retention at Sonamura
CPF and Srimantapur L. C. Station -
submission of -

Most respectfully, I beg to submit the following representation for favour of your kind and sympathetic consideration.

2. That I joined Sonamura CPF and Srimantapur L.C. Station on 10.5.99 on being transferred from Agartala vide order No. 5/99 dated 13.4.99 issued under C.No. II(3)ET/CC/CELL/SH/99/1378-425 (A) dated 13.4.99.

3. That vide order No. 01/2000 dated 27.1.2000 issued under C.No. II(3)9/ET/CC/CELL/SH/99/275-317(A) dated 27.1.2000, I have been transferred to Dhalong CPF and Muhurichat L.P.S.

4. That as per transfer policy of Group 'B' officers in north east, period of stay in one station will not be more than 2 years. I have only completed 7 months of stay of posting at Sonamura.

5. Earlier, I had served at Dharmanagar for one year as Superintendent after being posted there on promotion. I had also served at Imphal Division from February '95 to April '97. Thus I have had to serve in from different places in two different states within this short period.

In the circumstances stated above, I would request your honour kindly to consider my representation and pass necessary orders for my retention at Sonamura.

Dated, Agartala,
the January 2000

Yours faithfully,

Subrata Ray
(S. RAY)
SUPERINTENDENT
PUNTING PREVENTIVE
SONAMURA C.P.F & SRI MANTAPUR L.C.S