

50/100

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

(DESTRUCTION OF RECORD RULES, 1990)

**INDEX**

✓  
O.A./T.A No. 209/01

R.A/C.P No. ....

E.P/M.A No. ....

1. Orders Sheet.....01.....Pg. 1.....to 2.....
2. Judgment/Order dtd. 10.12.2001.....Pg. x.....to 10 Separate order instructions
3. Judgment & Order dtd. ....Received from H.C/Supreme Court
4. O.A.....209/01.....Pg. 1.....to 37.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
- ✓ 7. W.S.....Pg. 1.....to 6.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendement Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Balits  
7.12.17

uitrebo

FORM NO.4  
(See Rule 42 )

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

ORDER SHEET  
APPLICATION NO .....209/01.....OF 2001.

Applicant (S) *Subhash Ch. Choudhury*

Respondent (S) *Union of India & or.*

Advocate for Applicants (s) *Sri B.K. Sharma, U.K. Nair.*

Advocate for Respondent (s) *C.G.S.C.*

Notes of the Registry

Date

Order of the Tribunal

28.5.01

This application is in form  
but not in time Condonation  
Petition is filed not filed vide  
M P.No ..... C.F.  
for Rs. 50/- deposited vide  
IPO/BD No. *GG. 792092 dtd 28/5/01*  
Dated.....*28/5/01*

*Dy. Registrar*  
*hr.*

The application is admitted. Call  
for the records. Issue notice as to why  
an impugned order No.B2/BCR/HSG-II/92  
dated 21.5.2001 transferring and post-  
ing the applicant as DPM-II at Guwahati  
GPO shall not be suspended, returnable  
by three weeks.

In the meantime, the said order of  
the applicant, Sri S. Chowdhury, shall  
remain suspended.

List for orders on 21-6-2001.

*[Signature]*  
Vice-Chairman

bb

21.6.01

Mr. A.Deb Roy, Sr. C.G.S.C. for  
the respondents, prays for and  
granted 4 weeks time to file counter  
affidavit. The applicant will have  
2 weeks time thereafter to file  
rejoinder.

List on 27-8-2001 for order. The  
interim order dated 28-5-01 shall  
continue till then.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

*[Signature]*  
bb  
22/6/01

*Requisite has been filed.*

*MS*  
*28/5/01*

*One Requisite Ch. Kart.*  
*Notice prepared and sent to*  
*Dls for error the Respondent*  
*No 1 to 4 by Regd A/D vide*  
*D.No 2073 W 76 dtd 13/6/01*

*[Signature]*  
*NT/01*

27.8.01

List on 19/9/01 for hearing.

The applicant may file rejoinder, if any.

Copy of order dtd 21/6/01  
Communicated to the  
Parties Counsel vide  
SD/No. \_\_\_\_\_ dtd

Vice-Chairman

mb

19.9.01

List again on 10.10.2001 to enable

Mr A. Deb Roy, learned Sr.C.G.S.C to  
obtain necessary instruction on the  
matter.

27.8.2001

W/s has  
been submitted by  
the respondents.

pg

Vice-Chairman

10.10.01

It has been stated that the  
applicant has already joined in the  
promotional post of HSG-I at Guwahati  
and accordingly this application has  
become infructuous and disposed of.  
Interim order stands vacated.

No Rejoinder  
has been filed.

24  
9.10.01

11.10.2001

Copy of the order  
has been sent to the  
Office for issuing the  
order to the L/Advocate  
for the applicant as well  
as to the Respond No. 2.  
H.S.

pg

Vice-Chairman

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

O.A. No. \_\_\_\_\_ of 2001

Shri Subhash Ch. Choudhury

... Applicant

- Versus -

Union of India & Ors.

... Respondents

I N D E X

| <u>SL. No.</u> | <u>Particulars of the documents</u> | <u>Page No.</u> |
|----------------|-------------------------------------|-----------------|
| 1.             | <del>Write</del> Application ...    | 1 to 15         |
| 2.             | Verification ...                    | 16              |
| 3.             | Annexure- A ...                     | 17              |
| 4.             | Annexure- B ...                     | 18              |
| 5.             | Annexure- C ...                     | 19              |
| 6.             | Annexure- D ...                     | 20-23           |
| 7.             | Annexure- E ...                     | 24              |
| 8.             | Annexure- F ...                     | 25-28           |
| 9.             | Annexure- G ...                     | 29              |
| 10.            | Annexure- H ...                     | 30              |
| 11.            | Annexure- I ...                     | 31-34           |
| 12.            | Annexure- J ...                     | 35-37           |

Filed by : U.K. Nair

Advocate

4  
FILED BY:  
The Applicant  
Through: ~~Mr. Krishna~~ Nani  
Unni Adhikari

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

(Application under Section 19 of the Central  
Administration Tribunal Act, 1985)

O.A. No. \_\_\_\_\_ of 2001

BETWEEN

Shri Subhash Chandra Choudhury, Manager  
Postal Store Depot, Panbazar, Guwahati-  
1, in the Department of Posts, Assam  
Circle.

... Applicant

- VERSUS -

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

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

3. The Senior Superintendent of Post  
Offices, Guwahati Division, Guwahati-  
781001. 4. The Director of Postal  
Services, Assam Circle, Guwahati.

... Respondents

DETAILS OF APPLICATION

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

The instant application is directed against the  
action of the respondents in issuing the order under  
Memo No. B2/BCR/HSG-II/92 dated 21.5.2001 transferring  
the Applicant to a post which is lower in duties,  
status and responsibilities than the one currently  
being held by him.

Se

2. JURISDICTION OF THE TRIBUNAL :

The applicant declare that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicant further declare that the application is 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 and laws framed thereunder.

4.2 That the Applicant is presently working as Manager, in the Postal Stores Depot, Guwahati, Assam Circle. Earlier he was under the N.E. Circle. Thereafter the office of the Postal Store Depot along with the posts therein was shifted to the administrative control of Assam Circle. The Respondents on a mis-interpretation of the matter sought to repatriate the Applicant to N.E. Circle. The Applicant being aggrieved approached this Hon'ble Tribunal by filing OA No. 1/96 which was disposed of by an order dated 5.6.97 with a direction to the Respondents to consider the case of the Applicant. Pursuant to passing of the order by this Hon'ble Tribunal the Respondent No. 2 issued an order dated 21.8.97 transferring and posting the Applicant as Manager (HSG-II), Postal Store Depot, Guwahati on

*de*

repatriation to Assam Circle.

Copies of the orders dated 21.8.97 and 25.8.97 are annexed hereto as Annexure-A and B respectively.

4.3 That the Applicant upon clearing the Post Office and Railway Mail Service Accountant Examination was holding the post of Assistant Post Master, Accountant in the scale of pay Rs. 4500-7000/-, the said post was in the Lower Selection Grade Cadre. Thereafter as per the policies adopted, the Applicant was upgraded to the higher selection grade and at present the Applicant is functioning in a post in the higher selection grade. The Applicant was selected and promoted as Manager, PSD in the scale of pay Rs. 5000-8000/- in the cadre of norm based HSG-II which is a promotional post.

4.4 That by an order dated 29.8.98 the Applicant was sought to be transferred to a post of Supervisor which was a norm based LSG Post in the general line. Making a grievance against the same the Applicant filed OA No. 52/98 before this Hon'ble Tribunal. Amongst other grounds on which the said order was challenged the Applicant contended that the order having been issued by the Senior Superintendent of Post Office who is not the competent authority as per the guidelines laid down by the Directorate vide letter dated 23.1.98 and as forwarded vide letter dated 3.2.98, the order dated 29.1.98 is liable to be set aside. Be it stated here as

per the provisions of the said guidelines BCR Officials like the Applicant can be transferred only by the Directorate of Postal Services and not by any other authority below him. In the said OA the Applicant further contended that he being in the accounts line he could not have been transferred to a post in the general line.

Copy of the letter dated 3.2.98 enclosing the letter dated 23.1.98 are annexed hereto as - Annexure-C respectively.

Instead of repeating the contention raised by the Applicant in OA No. 52/98 the Applicant craves leave of this Hon'ble Tribunal to refer and rely upon the same at the time of hearing of this application.

4.5 That this Hon'ble Tribunal vide judgment and order dated 12.6.2000 was pleased to dispose of the OA No. 52/98 quashing the impugned transfer order dated 29.1.98. It was held by this Hon'ble Tribunal that the impugned order dated 29.1.98 was passed by an authority not competent to do so.

A copy of the judgment and order dated 12.6.2000 is annexed hereto as Annexure-D.

4.6 That pursuant to passing of the Annexure-D order by this Hon'ble Tribunal the Applicant was shocked and surprised to come across an order of transfer issued under memo No. B/R-13/Rotation/Ch-IV dated 10.7.2000, by which he was again sought to be transferred to a

De



lower post. Adding insult to the injury the said order was again issued by the Senior Superintendent of Post Offices who is not the competent authority to do so and which fact was upheld by this Hon'ble Tribunal vide Annexure-E judgment and order dated 12.6.2000.

Copy of the order dated 10.7.2000 is annexed as Annexure-E.

4.7 That the Applicant begs to state that at the time of issuance of the transfer order, the Gauhati Bench of this Hon'ble Tribunal was not functioning and as such under the compelling circumstances the Applicant approached the Hon'ble Gauhati High Court by way of a writ application being WP(C) No. 3985/2000 assailing the order dated 10.7.2000. The Hon'ble Court while entertaining the writ application was pleased to pass an interim direction vide its order dated 27.7.2000 protecting the interest of the Applicant. The said writ application filed by the Applicant came before the Hon'ble High Court on 15.5.2001 and the same was dismissed on the ground that the Hon'ble High Court has got no jurisdiction to entertain the same.

Copy of the order dated 27.7.2000 is annexed hereto as Annexure-F.

The applicant craves the leave of this Hon'ble Tribunal to produce the copy of the order dated 15.5.2001 at the time of hearing of this application.

4.8. That the Applicant pursuant to dismissal of WP(C)

Be


No. 3985 of 2000 approached this Hon'ble Tribunal by filing OA No. 193/2001 making a challenge to the order of transfer dated 10.7.2000. This Hon'ble Tribunal vide order dated 23.5.2001 while issuing notices to the Respondents was pleased to pass an interim order protecting the interest of the Applicant.

Copy of the order dated 23.5.2001 passed in OA No. 193/2001 is annexed hereto as Annexure-G.

4.9 That the Applicant states that on receipt of a copy of the order dated 23.5.2001 he produced the same before the competent authority and continued to function as the as Manager, Postal Store Depot, Guwahati. Poised thus the Applicant was shocked and surprised to receive on 25.5.2001, by post, a copy of an order of transfer purportedly issued under memo No. B2/BCR/HSG-II/92 dated 21.5.2001 issued by the Senior Superintendent Post Offices, Guwahati Division transferring and posting the Applicant as DPM-II Guwahati Post Office.

A copy of the order dated 21.5.2001 is annexed hereto as Annexure-H.

4.10 That the Applicant states that he is now left with only few months of service and he is entitled to the protections as envisaged under circular No. 69-4/79-SPB-I dated 12.1.81, in terms of which a staff member who has two years or less of service left as on 30th September of each year before superannuation is to be




exempted from rotational transfer as far as possible. The said circular still holds the field and the Respondents are duty bound to act in accordance with it.

A copy of the circular dated 12.11.81 is annexed as Annexure-I.

4.11 That in the order dated 21.5.2001 it has been stated that the transfer orders are being issued in pursuance to a letter issued under memo No. Staff/3-14/95 dated 11.5.2001. The Hon'ble High Court vide order dated 27.7.2001 passed in WP(C) No. 3985 of 2000 had directed that the Applicant is to continue as Manager, Postal Depot, Guwahati and the said protection was in existence till 15.5.2001 and as such any directions as has been passed vide the letter referred to in the order dated 21.5.2001 in pursuance of directives issued on 11.5.2001, is illegal and void ab-initio.

4.12 That the malafide intention on the part of the Respondents especially the Respondent No. 3 is writ large on the face of the order dated 21.5.2001 inasmuch as this Hon'ble Tribunal has categorically held that the Respondent No. 3 is not the competent authority to issue orders of transfer in case of the Applicant. In spite of this finding the Respondent No. 3 has proceeded to issue transfer order after transfer order thereby violating the directives as formulated by the



departmental authorities and upheld by this Hon'ble Tribunal. The only intention behind the continued persecution of the Applicant is to somehow evict him from the post currently being held by him, if required by violating the guidelines issued by the department and the directives passed by the Courts of Law.

4.13 That in addition to the fact that the order dated 21.5.2001 has been issued by an authority not competent to do so, the said order, has the effect of posting the Applicant against a post the cadre in which exists and the status, responsibilities and duties attached to which is not similar to the one currently being held by him, the same is also not permitted as per the provisions of Rule 15 of FR and SR. As such the order dated 21.5.2001 is in reality an order of reversion.

An extract of FR & SR is annexed here to as  
ANNEXURE-J

4.14 That the impugned order dated 21.5.2001 having been issued as per directions issued vide letter dated 11.5.2001, the same is void ab-initio inasmuch as during that period of time the Applicant was protected vide the order passed by the Hon'ble High Court in writ application 3985/2000. As such on this count alone the impugned order dated 21.5.2001 is liable to be set aside and quashed.

4.15 That the Applicant states that in the earlier occasions also the same authority, i.e. the Senior Supdt. of Post office, Guwahati Division issued the

- 9 -

order of transfer dated 29.1.98 but against which the Applicant moved the Hon'ble Tribunal by way of filing OA No. 52/98 and on hearing the parties to the proceeding the Hon'ble Tribunal was pleased to set aside the said order of transfer on amongst the other grounds that the authority who issued the order is not a competent authority. Be it stated here that the Hon'ble Tribunal's judgment and order dated 12.6.2000 is still holding the field and to the best of the knowledge of the Applicant till date no writ petition has been filed against the said order nor any stay order has been granted suspending the operation of pursuant of the order dated 12.6.2000. In view of the judgment and order dated 12.6.2000, the Respondents specially the Respondent No. 3 could not have issued the said order of transfer showing total disregard to the judgment and order of the Hon'ble Tribunal.

4.16 That the Applicant states that presently he is working as Manager, Postal Store Depot pursuant to the Chief Post Master General, Assam Circle's order dated 25.8.97 which is a Norm based higher selection grade post (HSG-II). Officials of Norm Based HSG-II cannot be transferred by an authority other than Director of Postal Services which has been affirmed and confirmed by the Directorate letter dated 23.1.98. Thereafter the impugned order dated 10.7.2000 issued by the Senior Supdt. of Post Offices who is much lower in rank than the post of Directorate of Postal Services is not sustainable and liable to be set aside and quashed.

De

14

4.17 That the Applicant submits that the impugned order dated 21.5.2001 is an after thought as has been passed pursuant to the order dated 15.5.2001 passed by the Hon'ble Gauhati High Court, but in the overjelousness the Respondents have stated that the order was being issued in pursuance to directives issued on 11.5.2001. If that be the position the order dated 21.5.2001, which draws its strength from the directives issued vide letter dated 11.5.2001, has no legs to stand inasmuch as on 11.5.2001 the Applicant was protected by the interim order dated 27.7.2000 passed by this Hon'ble High Court and as such the impugned order dated 21.5.2001 is liable to be set aside and quashed.

4.18 That the Applicant states that to the best of his knowledge the impugned order cannot be given effect to inasmuch as Shri Badan Ch. Deka who has been transferred as Manager, PSD, Guwahati is protected by this Hon'ble Tribunal from being transferred from the post currently being held by him. The Applicant apprehends that to get over this technicality the Respondents might issue further orders temporarily transferring him to some other posts.

4.19 That the Applicant submits that the impugned order dated 21.5.2001 which was served on the Applicant on 25.5.2001 by post is yet to be given effect to and he is continuing as Manger, PSD, Guwahati. The Applicant apprehends that in view of the malafide intention existing in the minds of the Respondents against him he

OK

might be released at any time with a view to frustrate his claim. As such left with no other alternative the Applicant has come under the protective hands of Your Lordships praying for redressal of his grievances.

4.20 That the Applicant submits that the impugned order of transfer dated 21.5.2001 is ex-facie illegal, arbitrary and has been issued in colourable exercise of power.

4.21 That the Applicant submits that he is left with only nine months of service to his credit and as such he is entitled to the protection as envisaged in the circular dated 12.11.81. The Respondents specially the Respondent No. 3 in the overenthusiasm to see the ousted of the Applicant from the post currently being held by him in the Postal Store Depot, Guwahati has overlook the provisions of the guidelines governing the field.

4.22 That the Applicant submits that it is a fit case wherein Your Lordships would be pleased to pass an interim order as has been prayed for. In the event Your Lordships be pleased pass an interim order as has been prayed for the balance of convenience would be maintained in favour of the Applicant inasmuch as the impugned order dated 21.5.2001 is yet to be given effect to and the Applicant is continuing as the Manger, PSD, Guwahati.

4.22 That the applicant states the impugned order although stated to have been issued on 21.5.2001 ,the applicant has received the same only on 25.5.2001 and

*Be*

has approached this Hon'ble Tribunal at the earliest opportunity.

4.23. That this application has been filed bonafide for securing the ends of justice.

5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the action/inaction on the part of the Respondents in issuing the impugned order dated 21.5.2001 is illegal and arbitrary and violative of various provisions of law and Rules and the same is liable to be set aside and quashed.

5.2 For that ex-facie the impugned order of transfer dated 21.5.2001 is illegal, arbitrary and founded on malafide and colourable exercise of power and same is not sustainable in the eye of law.

5.3 For that by issuing the impugned order of transfer dated 21.5.2001, the Respondents have flouted the judgment and order of the Hon'ble Tribunal and for the same the Respondents are liable to be punished under contempt of court proceedings.

5.4 For that now the Applicant is left with only few months of service in his credit and thus he could not have been subjected to any transfer in terms of circular dated 12.11.81.

5.5 For that the impugned order of transfer dated 21.5.2001 is illegal, arbitrary and violative of

pl



Article 14, 16, 311 of the Constitution of India and hence same is liable to set aside and quashed.

5.6 For that the impugned order of transfer dated 21.5.2001 having been issued contrary to the judgment and order of the Hon'ble Tribunal, same is not sustainable and liable to be set aside and quashed.

5.7 For that the Applicant has attracted wrath of the Respondents because of his approached to the Hon'ble Tribunal by way of filing OAs and consequently he is constantly being harassed. This is the fourth time the Applicant has been forced to come under the protective hands of Your Lordships, and for this reason only the repeated orders of transfer having issued with malafide intention.

5.8 For that the Respondents have violated various provisions of law and rules holding the field and the issuance of the order dated 21.5.2001 in violation of the same makes it liable to be set aside and quashed.

The applicants crave leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this 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. They are seeking urgent and immediate relief.

Ar

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 quashed the impugned transfer order dated 21.5.2001 with all consequential benefits with a further direction to the Respondents to allow the Applicant to continue as Manager, Postal Store Depot, Guwahati till his retirement.

8.2 Cost of the application.

8.3 Any other relief/reliefs to which the applicant is entitled to and as may be deemed fit and proper by the

*Be*

Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of this application, it is further prayed that Your Lordships be pleased to suspend the effect and operation of the impugned order dated 21.5.2001 in so far as it concerns the applicant with a further direction to allow the Applicant to continue as Manager, Postal Store Depot, Guwahati.

10. ....

The application is filed through Advocate.

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

- i) I.P.O. No. : 66 792092
- ii) Date : 9.5.2001
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

2

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

I, Subhash Choudhury, aged about 59 years, son of Late J. Choudhury, presently working as Manager, PSD, Guwahati, Assam Circle, do hereby solemnly affirm and verify that I am one of the applicant in this instant application and conversant with the facts and circumstances of the case. Thus I am competent to verify this case and the statements made in paragraphs 403, 41, 42, 43, 46, 49, 411, 412, 413, 415, 416, 418, 422, 423 and 512 are true to my knowledge ; those made in paragraphs 44, 45, 47, 48 and 410 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 28 th day of May 2001.

*Subhas Ch. Choudhury*

OFFICE OF THE CHIEF POSTMASTER GENERAL, N.E. CIRCLE:  
SHILLONG - 793 001.

MEMO. NO. STAFF/125-1/PSD/93

Dated at Shillong the 21-8-97.

In consideration of the application dated 30.7.97 of Shri Subhash Choudhury Vis-a-vis the Judgement of the CAT, Guwahati Bench, dated 5.6.97, the Chief Postmaster General, N.E. Circle, Shillong, is pleased to accept the option dated-6.6.98 of Shri Subhash Choudhury for remaining in Assam Circle at the time of Bifurcation of the erstwhile North Eastern Circle.

Accordingly, Shri Subhash Choudhury is treated as transferred to Assam Circle with effect from the date of Bifurcation.

Sd/-  
(P.K. NANDI MAJUMDAR)  
Asstt. Postmaster General (Staff)  
for Chief Postmaster General,  
N.E. Circle, Shillong-793, 001.

Copy to:

1. The Chief Postmaster General, Assam Circle, Guwahati, N.E. T. his letter and D.O. No. Staff/57-1/94 PT. I dated 1.8.97 & 13.8.97.
2. The Supdt of P.S.D., Guwahati. - 2A.
3. The Sr. Supdt of POs, Meghalaya Divn., Shillong.
4. The Official concerned. (For Subhash Choudhury, Manager, P.S.D. Guwahati - 21)
5. Office Copy.

Sd/-  
for Chief Postmaster General,  
N.E. Circle, Shillong-793 001.

BK-

A Hested  
Anni /mk  
Advocate

- 18 -

DEPARTMENT OF POSTS, INDIA  
OFFICE OF THE CHIEF POSTMASTER GENERAL, ASSAM CIRCLE  
MECHPOOT BHAGAN, GUWAHATI-1.

No. Staff/37-1/94 Pt.-I

Dated at Guwahati the 25-08-97.

In pursuance of Chief Postmaster General,  
N.E. Circle, Shillong letter No. Staff/125-1/PSD/93 dtd. 21-8-97,  
approval of the Chief PMG, Assam Circle, Guwahati is hereby  
conveyed for repatriation of the following official of N.E.  
Circle to Assam Circle with effect from the date of bifurcation  
of the erstwhile N.E. Circle i.e. w.e.f. 28-6-1988.

| Sl.No. | Name of the official                             | Present place of posting.                                    | Allotted Dn.           |
|--------|--------------------------------------------------|--------------------------------------------------------------|------------------------|
| 1.     | Sri Subhash Choudhury,<br>P.A.(PO), HSG-II (BCR) | Manager,<br>PSD/GH.<br>on deputation<br>from N.E.<br>Circle. | Guwahati<br>Postal Dn. |

( I. C. SARMA )  
A.P.M.G. (STAFF)  
For Chief Postmaster General  
Assam Circle, Guwahati-781001.

Copy for information and necessary action.

1. SPOs, Guwahati (A copy of CO/GH. letter cited above is enclosed).
2. Sr. PM, Guwahati GPO.
3. Supdt. PSD, Guwahati w.r. to his SO/BA-141/CAT/GH/92 dtd. 7-8-97.
4. APMG(Inv), C.O./GHY. w.r. to his No.Vig/3/VII/93-96 dtd. 29-7-97.
5. Chief PMG, N.E. Circle, Shillong.
6. Sri S. Choudhury, Manager, PSD, Guwahati.

For Chief Postmaster General  
Assam Circle, Guwahati-781001

- 19 -

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

To,

✓ Supdt. PSD/Gwy -

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

No. Staff/17-1/Rls/TB 2nd Corr Dated at Guwahati the 3-2-98.

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

A copy of Directorate's New Delhi letter  
No. 137-55/95-SPB-II dtd. 23-1-98 on the above subject is  
appended below for information, guidance and necessary action.

Appended : As above.

( I. C. SARMA )  
A.P.M.G. (STAFF)  
For Chief Postmaster General  
Assam Circle, Guwahati-781001.

COPY of Dte's New Delhi letter No. 137-55/95-SPB-II dtd. 23-1-98.

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 reg. B.C.R. officials and their tenure posting.  
Secy(P) assured the 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 post on the basis of their seniority  
even if they have not completed their tenure. Posting of BCR  
officials to all the norm based HSG-II posts should be ordered  
by the DPs concerned.

Yours faithfully,

SD/-

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

29/1/98 1/0

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI Bench.

Original Application No. 52 of 1998.

Date of Order : This the 12<sup>th</sup> 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.
4. The Sr.Superintendent of Post Offices,  
Guwahati-1. . . . Respondents.

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

### ORDER

Shri 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).

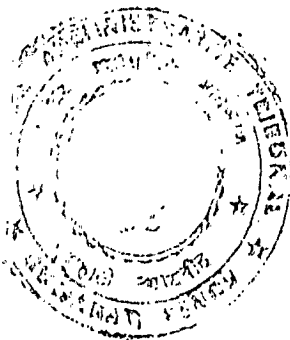
The applicant was posted as Manager, Postal Stores Depot (PSD) at Guwanati under the administrative control of the North East Circle, Shillong. The applicant opted for Asssm Circle. The applicant was accordingly allotted the Assam Circle. From the post of Manager PSD the applicant had been transferred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

contd..2



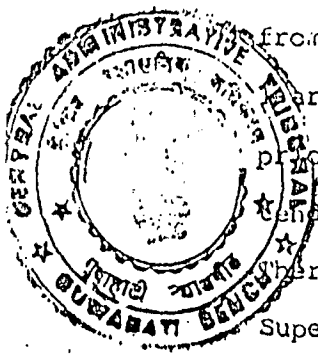
Case is that the impugned order of transfer dated 29.1.1998 had not been passed by the competent authority. Further ground is that the post of NESD, Guwahati carries lower scale of pay consequently the posting of the applicant to NESD amounts to reversion. The third ground is that the applicant had not 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 C.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 ECR 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



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 <sup>impugned</sup> 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



contd.. 4

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 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 in 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 insofar as it relates to the applicant and Annexure-I is quashed. The other reliefs claimed in the O.A. is rejected. Costs on parties.

So/MEMBER(j)

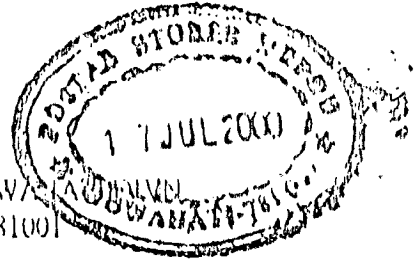
TRUE COPY

प्रतिप्रति

16/6/2000

Section Officer (J)  
आयुक्त प्रशासन, गुवाहाटी  
Central Administrative Tribunal  
Guwahati Bench, Guwahati  
अधीनस्थ प्रशासन, गुवाहाटी

Section Officer (J)  
आयुक्त प्रशासन, गुवाहाटी  
Central Administrative Tribunal  
Guwahati Bench, Guwahati  
अधीनस्थ प्रशासन, गुवाहाटी

- 24 -  
110  
DEPARTMENT OF POSTS, INDIAOFFICE OF THE SR SUPERINTENDENT OF POST OFFICES, GUWAHATI  
MEGHDOOT BHAWAN 3RD FLOOR, GUWAHATI-781001

NO. BR-13/Roultion/Ch-IV.

Dated at Guwahati the, 10.07.2000.

The following transfer and posting order is issued in the interest of Service to have immediate effect.

1. Sri Nirmal Ch. Das, P.A., PSD, on being received on office arrangement will join as SPM, Pandu Railway Colony S.O. relieving Sri Khagen Ch. Medhi, SPM, there.

2. Sri Khagen Ch. Medhi, SPM, Pandu Railway Colony SO on being received will join as SPM, Silpukhuri SO relieving Sri Arabinda Boro, SPM, there.

3. Sri Arabinda Boro on being received will join as Manager, PSD, Guwahati relieving Sri Subhash Ch. Choudhury, Manager there.

4. Sri Subhash Ch. Choudhury, Manager, PSD, Guwahati on being received will join as Asstt. Manager, PSD, Guwahati relieving Sri Jiban Ch. Das, Asstt. Manager there.

5. Sri Jiban Ch. Das, Asstt. Manager, PSD, Guwahati on being received will join as P.A., PSD, Guwahati vice Sri Nirmal Ch. Das transferred.

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

Copy to:-

- 1-5) The official concerned.
- 6-12) The PFs of the officials.
- 13) The C.P.M.G., Assam Circle, Guwahati-1 w.r.t. CO/GH No. Vig/5/XXIII/98 dtd. 13.6.2000.
- 14) The Superintendent, P.S.D., Guwahati -781021.
- 15) The Sr. Postmaster, Guwahati GPO.
- 16-17) The SPM, Pandu Railway Colony SO/Silpukhuri SO.
- 18) O/C.

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



- AND -

IN THE MATTER OF 1

Illegal and arbitrary action on the part of the Respondents in issuing the order of transfer of the Petitioner.

- AND -

IN THE MATTER OF 1

Enforcement of other fundamental rights of the Petitioner.

- AND -

IN THE MATTER OF 1

Circular issued by the Director General of Posts and Telegraph vide No. 69-4/79-SPB-1 dated 12.11.81

- AND -

IN THE MATTER OF 1

Subhash Chandra Choudhury,  
son of Late Choudhury, Manager  
Postal Store Depot, Panbazar,  
Guwahati-781001.

... Petitioner

- Versus -

Attested

*Libas*  
Advocate.

1. Director of Postal Services,  
Assam Circle, Guwahati.
2. The Chief Post Master General,  
Assam Circle, Guwahati-1.
3. Senior Superintendent of Post  
Offices, Guwahati-1.
4. Union of India, represented by  
the Secretary to the Ministry of  
Communication, Department of Posts,  
Dak Bhawan, New Delhi.

10  
Advocate

| Noting of office or Advocate | Sl. No. | Date | Office Notes, Reports, Orders or proceeding with signature |
|------------------------------|---------|------|------------------------------------------------------------|
|------------------------------|---------|------|------------------------------------------------------------|

- PRESENT -

THE HON'BLE MR JUSTICE AK PATNAIK

27.7.2K

Heard Mr BK Sharma, learned senior counsel appearing for the petitioner.

This writ petition relates to a matter which falls within the jurisdiction of Central Administrative Tribunal. Since the Central Administrative Tribunal, Guwahati Bench is not functioning presently, I am entertaining this petition under Article 226 of the Constitution.

Let a notice of motion issue calling upon the respondents to show cause as to why a Rule should not be issued, as prayed for; and/or why such further or other order or orders should not be passed as to this court may seem fit and proper.

Notice on behalf of the respondents be furnished to the learned Central Government Standing Counsel within three days.

The notice is made returnable within six weeks.

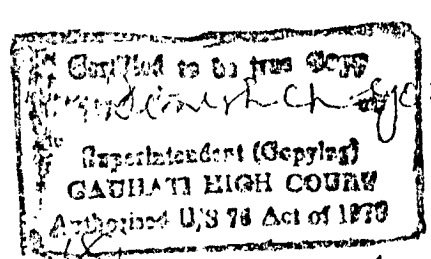
In the meanwhile, the petitioner, Sri Subhash Chandra Choudhury will continue as Manager, PSD at Guwahati and the impugned order dated 10.7.2K (Annexure-G) passed by the Senior Superintendent of Post Offices, Guwahati Division shall remain stayed so far the petitioner is concerned.

As soon as the Central Administrative Tribunal, Guwahati Bench starts functioning, counsel for the petitioner will inform the court for appropriate orders.

① 2 notes  
② put 6 more  
into the

Sd/- A.K. Patnaik  
Judge

Sd/-  
Advocate.



5/8/2000

5/8/2000



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

ORDER SHEET  
APPLICATION NO .....19.3...OF 2001.

Applicant (s) S. Chowdhury,

Respondent (s) COL 2 Dns

Advocate for Applicants (s) Mr B.K. Sharma, S. Sarma

Advocate for Respondent. (s) and Mrs U. Das.

C.G.S.C.

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------|------|-----------------------|
|-----------------------|------|-----------------------|

23.5.01

Admit. Issue Notice. Call for the records. Notice returnable on 23.6.2001.

Issue notice on the interim prayer as to why the operation of the Annexure-G order dated 10.7.2000 shall not be suspended in respect of the applicant. Notice returnable on 22.6.2001. Mr. A. Deb Roy, learned Addl. C.G.S.C. accepts notice on behalf of the respondents. In the meantime the operation of the impugned Annexure-G order dated 10.7.2000 shall remain suspended.

List on 22.6.2001 for further orders.

Sd/VICE CHAIRMAN



TRUE COPY

प्रतिनिधि

Section Officer (s)

आनुमान अधिकारी ( न्यायिक शाखा )  
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय  
Guwahati Bench, Guwahati-8

गुवाहाटी -आठवीं ई. गुवाहाटी-8

- 30 -

Annexure - H

DEPARTMENT OF POSTS: INDIA  
OFFICE OF THE SR. SUPDT. OF POST OFFICES, GUWAHATI DN,  
GUWAHATI-781 001.

NO. B2/BCR/HSG-II/92.

Dated at Ghy. the, 21.05.2001.

In pursuance of CO's, Guwahati letter No. Staff/3-14/95  
Corr dtd. 11.5.2001 the following transfer and posting orders  
are issued for the interest of service to have immediate effect.

| Sl.No. | Name of Officials     | Present post held  | Proposed place of Posting. |
|--------|-----------------------|--------------------|----------------------------|
| 01.    | Sri Subhash Choudhury | Manager, PSD/Ghy.  | DPM-II at Guwahati GPO.    |
| 02.    | Sri Badan Ch. Deka    | SPM, Mlg.Rly.HQ SO | Manager, PSD/Ghy.          |
| 03.    | Sri Samudra Kaibarta  | DPM-II, G.U. HO    | SPM, Mlg.Rly. H.Q. SO.     |

At Sl.2 will be relieved on office arrangement first.

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

Copy to:-

- 1-3) The Official concerned.
- 4-6) The PPs of the officials.
- 7) The Chief Postmaster General, Assam Circle, Guwahati-1.
- 8) The Sr. Postmaster, Guwahati GPO.
- 9) The Postmaster, Guwahati University HO.
- 10) The Supdt. PSD, Guwahati-21.
- 11) The SPM, Maligaon Rly. H.Q. SO.
- 12) O/C.

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

Received  
25.5.2001

INDIAN POSTS AND TELEGRAPH DEPARTMENT  
OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS  
SANSAD MARG NEW DELHI-110001  
NO. 69/4/79-SPH-I

Dated the 12 November, 81

- All Heads of Postal/Telecom/Civil Circles,
- All Heads of Telephone Districts,
- All Heads of other Administrative offices
- Chief Engineer (Civil)

Subj: Rotational Transfers

Sir,

The question of rotational transfers of staff - gazetted as well as non-gazetted - has been considered in depth. In supersession of all the previous orders on the subject, the following orders are issued to regulate the rotational transfers of staff.

2. As regards transfers on completion of tenure in posts, the existing instructions regarding "Post tenure" will continue to be applicable for various categories of staff, both gazetted and non-gazetted, as laid down in PRT Manual Volume IV.

3. As regards transfers on completion of tenure in a stations, the principles as explained in the following paragraphs will be followed:

4.1. Gazetted officers and non-gazetted supervisory staff (such as ASPOs, ASRMs, IPOs, DMs, JEs, Junior Accounts Officers, etc.) will be normally subject to a station tenure of 4 years, which may be extended upto 6 years in individual cases, in the public interest. The powers in respect of the gazetted officers will be exercised by the PRT Directorate and in the case of non-gazetted supervisory staff, by the concerned Heads of Circle.

4.2. Gazetted officers as well as non-gazetted officials, who have all-India transfer liability, may be transferred to another station in the same State/region on completion of tenure, to the extent administratively possible.

4.3. As regards non-gazetted operative staff, they may also be liable to transfers from one station to another (within their respective recruiting units) on the basis of completion of station tenure of 4 years. Such transfers should also take into consideration the need for balancing of popular and non-popular stations so that popular stations are not monopolised by certain favoured employees. The station tenure of 4 years may, however, be extended to 6 years in individual cases in the public interest. The powers for extending the station tenure beyond the prescribed limit in respect of the operative staff up to the level of LSG Services/Director Telegraphs/Area Manager/Deputy General Manager and in the case of higher selection grade officials, by the Head of the Circle.

- Circle Postal Accounts Officers working outside the Circle Postal Accounts Offices, i.e., in officers like the Postal Accounts Officers, should apply. These officers, after completion of their tenure, should be brought back to Postal Accounts Offices and their position in SMOs etc. should be taken by these officials working in the Postal Accounts Offices. Junior Accounts Officers on promotion, as far as possible, should be posted outside the Circle in which their parent office is located. They may be brought back wherever there are vacancies to their parent office, after completion of their tenure if suitable vacancies are available in their original parent office. The JAOS and AOs should be rotated periodically within the Circle so that they acquire varied experience.
5. The crucial date for computing the completion (or otherwise) of the tenure will be the 30th of September.
6. Transfers may not be effected, save in exceptional circumstances (which will include administrative necessity) in the middle of the academic session.
7. Transfers may, as far as possible, be effected sufficiently in advance of the commencement of the academic year. Officials who are due to complete the tenure by the 30th of September (in any year) should be transferred in the preceding April-June period or the following December-January period depending upon the academic session. Those who are completing the tenure after the 30th of September, should be transferred in December of the same year or in April-June of the following year depending upon the starting date of the academic session. Orders in respect of rotational transfers should be issued in the middle of December, 1981 so that officers/officials keep themselves in readiness for moving to their station of posting by January or April-May, 1982, as the case may be, depending upon the academic session. In future, the same procedure will be followed.
8. Periods of leave taken in the course of a posting in a station will be counted as duty for the purpose of computation of the tenure period, except that continuous leave of any kind exceeding six months at a stretch will be excluded from the tenure period.
9. Period of training/deputation exceeding six months at a time, both in India and abroad, will be excluded from the computation of tenure period. All other training/deputation periods will be counted as duty for the purpose of computation of tenure.
10. The staff who have two years or less to go on 30th September of each year before superannuation may be exempted from rotational transfer, as far as possible, and also given posting of their choice to the extent administratively feasible.
11. In the case of officers on deputation to other Departments/Ministries in the same station, the principle to be followed will be that they should not remain away from the field for too long. An officers, on return from deputation, will as a rule be posted at a station different from the one he was working at before he proceeded on deputation. The same principle will be followed in respect of officers returning from foreign assignments. In exceptional cases, which should be rare, if the competent authority is satisfied that in the interest of the Department

11. An officer/official in the non-gazetted service may be transferred to a gazetted service at the same station or to a different station. In the latter case the officer's service in the Department at the same station prior to his appointment to the gazetted service will be taken into account for calculation of the prescribed tenure. He will have to be transferred to another station. (For deputation less than 6 months, provisions under para 9 will apply).

12. In reckoning the period of stay of a gazetted officer at a station, the period of non-gazetted service immediately preceding the gazetted service at the same station will be taken into account. It will, however, be ensured that no official, on promotion, may be posted to work in a post which requires the exercise of supervisory/inspectorial powers over the staff with whom he was working for a good period of time or immediately before his promotion.

13. Re-transfer of an officer/official to the station from which he was transferred should not be normally considered for a period of two years. In other words, an officer/official should spend a minimum of two years at the station to which he is transferred before he can be considered eligible for re-transfer. The two-years break is, however, only a minimum condition and it will not entitle an officer/official to claim re-transfer to the old station in preference to others who have spent longer periods outside. Re-transfer after a break of two years may be considered in administrative as well as compassionate grounds. In such cases, an officer/official will count his tenure at the old station afresh for purpose of further rotational transfer. Re-transfer before the completion of two years may be considered only in extreme public interest or on extreme compassionate grounds in very rare cases. Re-transfer of officers from Regional/Area Headquarters to Circle headquarters may, however, be considered without the two years restriction subject to the rules of service and the principle of station tenure.

14. Transfers on promotion may be ordered keeping in view the exigencies of public service, notwithstanding non-completion of tenure by an officer/official at a station. When transferring an officer/official to a post involving all-India transferability, efforts should be made, subject to public interest, to give posting in the same State/Circle (where the Circle comprises of more than one State) or region. If transferred to outside station for lack of vacancies, the officer/official may, after for joining duty, ask for posting in his own State/Circle/region. Efforts will be made, subject to public interest, to comply with the request on the occurrence of appropriate vacancy provided that the re-transfer, if made before two years, will be treated as done at the request of the officer/official. No request for re-transfer will be considered with respect to any officer/official who does not join the station assigned to him.

15. Promotion from a non-gazetted grade to a gazetted grade, an official will be generally transferred to a different functional post at a different station.

15. Cases of extension of tenure, whether in a post or station, on compassionate grounds should be the exception and considered only in very deserving cases. Even in such cases, extension of the prescribed station tenure should not be granted for more than one year by the next superior authority and reasons therefor, should be recorded on the file. Any proposal for extension beyond one year in respect of non-gazetted staff should be referred to the Directorate. In case of gazetted officers, proposals for granting extension even for one year should be referred to the Directorate.
  16. Transfers in the interest of service may be ordered by the competent authority even though they do not fall within the purview of the above guidelines.
  17. While making transfers of officials/officers administrative needs of particular region/state should be kept in view.
  18. If the operation of rotational transfers necessitates transfer of officials exceeding 33% in a particular station/unit in a particular category, large transfers will be limited to 33% in the current year. If, however, there are only two persons at a station, who have completed their tenure, one of them will be transferred and if there is only one, he will be transferred notwithstanding the ceiling of 33%. The officers/officials, who have over-stayed in their posts as on 30th September for a longer period, may be transferred first.
  19. In the case of officials trained specially to man the advanced technology programmes in satellite communication and electronic switching, the proposals for their transfer on completion of tenure or otherwise on the grounds of administrative requirements should be referred to the Directorate.
  20. Heads of the Circles, etc., are requested to take immediate necessary action in the matter accordingly.
  21. Receipt of this letter may please be acknowledged to Director(SP).
- Hindi version will follow.

Yours faithfully,

Sd/-

( R.K. SIMON )

DEPUTY DIRECTOR GENERAL (P)

Copy to:-

- All Staff sections of the Directorate.
- All Recognised Pateratulls/Under/State etc, JCH.
- All DCA and Directors in the Directorate.

....

35

ANNEXURE-J

29

Summary's Compilation

POSTS & TELEGRAPHS

DEPARTMENT

GOVERNMENT OF INDIA

Parts I & II

Approved by the  
Director General of  
Posts & Telegraphs  
as a reference book

- 36 -

a Government servant's lien on a post may in no circumstances be terminated even with his consent, if the result will be to leave him without a suspended lien upon a permanent post.

A question has been raised as to what procedure should be followed in terminating the lien of a permanent Government servant who is transferred on foreign service and is subsequently absorbed in the service of the foreign employer.

It is hereby clarified that F.R. 14-A applies only so long as a Government servant remains in Government service. Obtaining of consent of the Government servant to the termination of lien is necessary in certain circumstances where the Government servant is to be confirmed in another post under Government. Such consent is not necessary in cases where the Government servant ceases to be in Government employ. The proper course in such cases, where it is proposed to absorb him in non-Government service in public interest, would be to ask the Government servant concerned to resign his appointment under the Government with effect from the date of such permanent absorption and the lien will stand automatically terminated with the cessation of Government service.

Such resignation from Government service will be without prejudice to the entitlement of the Government servant to the retirement benefits provided the transfer to the public sector undertakings or Government or Semi-Government Corporations is in the public interest.

However, obtaining of formal resignation is not necessary if an individual is deemed to have retired from service by virtue of rule 37 of C.C.S. Pension Rules, 1972.

In all cases where a Government servant is to be absorbed permanently by the foreign employer under his organisation, it would be incumbent on him to consult the parent employer before issuing orders absorbing the Government servant permanently in his service. The orders of permanent absorption should be issued only after the resignation of the Government servant has been accepted by the Government and with effect from the date of such acceptance.

[G.L. M.F., O.M. No. F. 4 (3)-E, IV/A/63, dated the 1st October, 1963 and 2 (1)-E.I.V. (A) 73, dated the 22nd April, 1974.]

F.R. 14-B. Subject to the provisions of Rule 15, the President may transfer to another permanent post in the same cadre, the lien of a Government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended.

F.R. 15. (a) The President may transfer a Government servant from one post to another; provided that except

- (1) on account of inefficiency or misbehaviour, or
- (2) on his written request,

a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 16, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or



- 37 -

F.R. 16

would hold a lien had his lien not been suspended under Rule 14.

- (b) Nothing contained in clause (a) of this Rule or in clause (13) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 14.

### GOVERNMENT OF INDIA'S ORDERS

(1) Creation of supernumerary post to provide a lien in the new post on transfer/reduction.—F.R. 15 (a) provides, *inter alia* that the President may transfer a Government servant from one post to another provided that, except on account of inefficiency or misbehaviour, such a Government servant shall not be transferred substantively to a post carrying less pay than the pay of the permanent post on which he holds lien, or would hold a lien had his lien not been suspended under F.R. 14. Similarly, reduction to a lower service, grade or post, or to a lower time-scale, is one of the penalties prescribed in the Central Civil Services (Classification, Control and Appeal) Rules, which may, for good and sufficient reasons, be imposed on a Government servant in accordance with the procedure laid down in those rules.

A question has been raised whether in the event of non-availability of a permanent post in the lower service/grade/time-scale, etc., to which a Government servant is transferred/reduced by the competent authority, a supernumerary post can be created in that service/grade/time-scale, etc., to provide a lien to the Government servant concerned on his new post.

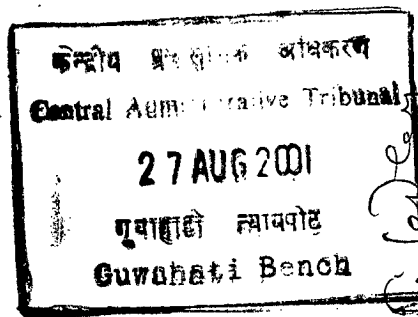
It has been decided that it would be reasonable to create such a post in the lower service/grade/time-scale, etc., to provide lien to the person concerned in case of non-availability of a permanent post in that service/grade/time-scale, etc.

It should also be noted in this connection that when a permanent post is rendered vacant by the reduction of a Government servant, it should not be filled substantively before the expiry of one year from the date of reduction.

When, on the expiry of the period of one year, such post is filled substantively and the original incumbent happens to be reinstated thereafter, he should be accommodated against a post which may be substantively vacant in the grade to which his previous substantive post belonged. In the absence of a vacant post, he may be accommodated in a supernumerary post which may be created with proper sanction and terminated on the occurrence of a substantive vacancy in that grade.

[ G.L. M.F., O.M. No. F. 9 (3)-E. IV (A)/60, dated the 29th August, 1960 and the 2nd August, 1962. ]

F.R. 16. A Government servant may be required to subscribe to a provident fund, a family pension fund or other



*Defined*

(B. C. Path K)  
24/8/01  
Central Govt. Standing Counsel  
Central Administrative Tribunal  
Guwahati Bench : Guwahati

*Recd by*  
16/7/01

(A. DEB ROY)  
Sr. C. G. S. C.  
A. T. Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 209 OF 2001

Shri Subash Chandra Choudhury

- Vs -

Union of India and others

- And -

In the matter of :

Written Statements submitted by  
the respondents

The respondents beg to submit a brief history  
of the case which may be treated as a part of  
the Written Statement .

( BRIEF HISTORY OF THE CASE )

Shri Subash Choudhury, PSD was working as  
such since 1.9.93 and ordered under No. B/R-13/Rotation/Ch-IV,  
dated 10.7.2000, was issued posting Shri Subash Ch. Choudhury  
as Asstt. Manager, PSD, Guwahati which is norm based LSG Post.  
Shri Choudhury did not submit any representation against the  
above order and filed a W.P.C. No. 3985 of 2000 to the Hon'ble  
High Court. Hon'ble High Court has passed an order for stay  
on 27.7.2000. The Hon'ble High Court dismissed the write  
petition directing the applicant to approach C.A.T., Guwahati  
on 21.5.2001.

However, Shri Subash Ch. Choudhury has been ordered to join as Dy. P.M.-II, Guwahati GPO under SSPO's, Guwahati memo no. B2/BCR/HSG-II/92 dated 21.5.2001 in pursuance of Chief P.M.G., Guwahati letter no. Staff/3-14/95, dated 11.5.2001, which has also been challenge at C.A.T. Guwahati bench under O.A. No. 209/01.mf

PARAWISE COMMENTS .

1. That with regard to para 1, the respondents beg to state that not based on fact. The post of Manager PSD, Guwahati is a HSG-II post and the post of Dy. Post-master-II, Guwahati GPO is also HSG-II post bearing the same scale of Rs. 5000-150-8000 . Both the post are equal in duties, status and responsibility.
2. That with regard to para 2, 3, 4(1), 4(2), 4(3), 4(4), and 4(5), the respondents beg to offer no comments.
3. That with regard to para 4(6), the respondents beg to state that the order dated 10.7.2000 under Memo No. B/R-13/Rotation/Ch.IV was not given effect and the applicant was allowed to continue in the same post.
4. That with regard to para 4(7), 4(8), and 4(9), the respondents beg to offer no comments.
5. That with regard to para 4(10), the respondents beg to state that the applicant has been transferred and posted in the same city at a distance of about 5 Kms. taking into consideration the terms of circular no. 69-4/79-SPB/1

-3-

dated 12.1.81 , <sup>i</sup>~~in~~ the interest of service as the applicant has been continue as Manager, PSD/Ghy. since 1993 which is not at all desirable in view of sencitive nature of the post.

6. That with regard to para 4(11), the respondents beg to state that the Hon'ble High Court Guwahati passed order-  
ed dated 27.7.2000. W.P.(C) No. 3985/2000 against the response  
order dated 10.7.2000 thus interpiton of the applicant regarding  
protection is not sustainable.

7. That with regard to para 4(12), the respondents beg to state that the transfer order of the applicant as Dy.  
P.M. II Guwahati GPO was made in pursuance of Chief PMG, Assam  
Circle, Guwahati letter no. Staff/3-14/95 Corr. dated 11.5.2001.  
Thus there is no violation of directives passed by the Hon'ble  
Tribunal.

8. That with regard to para 4(13), the respondents beg to submit the comments what have already made against the  
foregoing paragraph (1).

9. That with regard to para 4(14), the respondents beg to submit the comments what have already made against the  
foregoing paragraph 4(11).

10. That with regard to para 4(15), the respondents beg to state that the order dated 21.5.01 issued in superession  
of order dated 12.6.2000 and thus order dated 12.6.2000 is  
authmatically void.

11. That with regard to para 4(16), the respondents beg to state that the order dated 21.5.01 was issued in ✓

pursuance of Chief PMG, Assam Circle, Guwahati letter dated 11.5.2001.

12. That with regard to para 4(17), the respondents beg to submit the comments what have already made against the foregoing paragraph 4(11) above.

13. That with regard to para 4(18), the respondents beg to state that not based on facts. The transfer order is issued in the interest of service.

14. That with regard to para 4(19), the respondents beg to offer no comments.

15. That with regard to para 4(20), the respondents beg to state that the order is issued in the interest of service.

16. That with regard to para 4(21), the respondents beg to submit the comments what have already made against the foregoing paragraph 4(10) above.

17. That with regard to para 4(22), the respondents beg to state that the effect of order dated 21.5.2001 could not be given due to suspension by Hon'ble CAT order dated 28.5.01 in O.A. No. 209/01 .

18. That with regard to para 4(22) and 4(23), the respondents beg to offer no comments.

19. That with regard to para 5(1), the respondents beg to state that the order dated 21.5.2001 is issued as per 5 provision of rules.

-5-

20. That with regard to para 5(6), the respondents beg to submit the comments what have already made against the foregoing paragraph 4(10) above.
21. That with regard to para 5(7), the respondents beg to offer no comments.
22. That with regard to para 5(8), the respondents beg to submit the comments what have already made against the foregoing paragraph 5(5) above.
23. That with regard to para 6, 7 and 8, the respondents beg to offer no comments.
24. That with regard to para 8(1), the respondents beg to state that the applicant has been working as Manager PSD, Guwahati since 1993 and liable to be transfer in the interest of service in view of the sensative nature of the post which the applicant has been holding since 8 (eight ) years.
25. That with regard to para 8(2), the respondents beg to state that the comment not admissible.
26. That with regard to para 8(3), the respondents beg to offer no comments.
27. That with regard to para 9, the respondents beg to state that the suspension of effect and operation of order dated 21.5.2001 will adversely affect the interest of service.

Verification.....

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

I, Shri *B. R. Chakravarty*  
SSP, Guwahati being authorised do hereby verify and declare  
that the statements made in this written statement are true  
to my knowledge, information and believe and I have not  
suppressed any material fact.

And I sign this verification on this *3<sup>rd</sup>*  
day of *July*, 2001.

*B. Radhika*  
**Declarant.**  
वरिष्ठ अधीक्षक, डाकघर  
गुवाहाटी केंद्र, गुवाहाटी-781001  
Sr. Superintendent of Post Office.  
Guwahati Division, Guwahati-781 001