

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

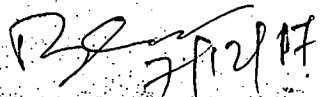
INDEX

O.A/T.A No. 241/2001

R.A/C.P No.

E.P/M.A No.

- ✓ 1. Orders Sheet.....Pg. 01.....to.....✓
2. Judgment/Order dtd. 18-7-01.....Pg.to.....✓
3. Judgment & Order dtd.....Received from H.C/Supreme Court
- ✓ 4. O.A.....Pg. 01.....to 13.....
5. E.P/M.P.....Pg.to.....
6. R.A/C.P.....Pg.to.....
7. W.S.....Pg.to.....
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. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....


SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

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

ORDER SHEET

APPLICATION NO. 241 OF 2001

APPLICANT (S) Hiranny Kakat

RESPONDENT (S) Union of India Gov

ADVOCATE FOR APPLICANT(S) Mr. S. Sarma, M.A. D.D.

ADVOCATE FOR RESPONDENT(S) C.A.S.C.

Notes of the Registry	dated	Order of the Tribunal
This application is in form but not in time (Condonation Petition is not filed vide M.P. No. C.F. for Rs. 50/- deposited vide IPO/ED No. 66792424 Dated..... 11.5.2001) <i>Defective P.D. steps taken</i> <i>By Registrar 13/7/01</i> <i>MS 13/7/2001</i>	18.7.01 lm	Mr. S. Sarma learned counsel appearing for the applicant makes a prayer to withdraw the O.A. Prayer is allowed. Application is dismissed on withdrawal. Liberty is given to the applicant to file a fresh application if required. <i>11/11/01</i> Member

Copy of The order
Dtd. 18.7.2001 along with
application sent to
D. Section for issuing of
the same to the d/Adv.
for the parties.

20
25.7.01

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

13 JUL 2001

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
गुवाहाटी न्यायपीठ
Guwahati Bench

3

Title of the case :

O.A. No. 241 of 2001

Between

Shri Hiranmay Kakati Applicant.

AND

Union of India & ors Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1.	Application	1 to 7
2.	Verification	8
3.	Annexure-1	9
4.	Annexure-2	10
5.	Annexure-3	11
6.	Annexure-4	12
7.	Annexure-5	13

Filed by :

Regn.No.:

File : OA-26

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central Administrative Tribunal Act.1985)

O.A.No. of 2001

BETWEEN

Shri Hiranmoy Kakati,
Accountant, Barpeta Head Post Office,
Barpeta. Applicant.

VERSUS

1. Union of India,
Represented by the Secretary to the Govt.of India,
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi.
2. The Chief Post Master General
Department of Posts,
Meghdoot Bhawan, Guwahati-1,
Assam.
3. The Superintendent of Post Offices,
Department of Posts,
Nalbari-Barpeta Division,
Nalbari-781335. Respondents.

PARTICULARS OF THE APPLICATION

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

The instant application is directed against the order vide Memo No.B/A-19/Ch-II dated 25.2.99 issued by the Superintendent of Post Offices, Nalbari-Barpeta Division, by which the applicant has been sought to be transferred from Barpeta H.O. to Santinagar Sub Office.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

4
Filed by
the applicant through
Misha Das.
-Advocate
27/6/2001

4m

5

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and a permanent resident of Assam as such he is entitled to all the rights, privileges and protection guaranteed by the Constitution of India.

4.2. That the applicant approached this Hon'ble Tribunal making a grievance against the order dated 25.2.99 issued by the respondent No.3 illegally and with a malafide intention to victimise the applicant. The applicant is presently working as an Accountant in the Head Post Office, Barpeta. He entered into the service of the respondents as Postal Assistant on 21.8.68. Thereafter, he appeared in the Examination for Accountant Services i.e. Post Office and Railway Mail Service Accounts Examination in the year 1979 and he was declared successful in the said examination. Pursuant to the result of the said examination the applicant was allotted the job of Accountant in the Barpeta Head Office w.e.f. 12.5.85. In the year 1986 i.e. 1.7.86, the case of the applicant was considered under the Time Bound One Promotion scheme (TBOP) Scheme and his pay was fixed in the scale of Rs.1400-25-1500-EB 30-2300. In the mean time the applicant became qualified to get the benefit of (BCR) Scheme i.e. Biennial Cadre Review Scheme and his case was considered under the said scheme and his pay was raised to Rs.1600-2600 w.e.f. 1.7.96.

4.3. That the applicant begs to state that at the time of consideration of his case under time bound one promotion scheme (TBOP), option was called for asking him whether he would like to work in the Accounts Cadre on 24.4.86. Similar option was called

6

for from the applicant at the time of consideration of his case under (BCR) Biennial Cadre Review Scheme and accordingly he gave option for accounts line on 6.3.95.

Copies of the options exercised by the applicant dated 24.4.86 and 6.3.95 are annexed herewith and marked as Annexure-1 & 2 respectively.

4.4. That the applicant begs to state that the respondent No.3 issued an order vide Memo No.B/A-19/CH-II dated 9.12.98 by which he was sought to be transferred from Barpeta to Kaithalkuchi Sub Office (Post) as Sub Post Master. It is pertinent to mention here that since the applicant belongs to the Accounts Cadre as per the relevant rules, he can only be transferred to a cadre post, not as SPM which is a general line cadre post.

A copy of the order dated 9.12.98 is annexed herewith and marked as Annexure-3.

4.5. That the applicant begs to state that as stated above the aforesaid Annexure-3 order was issued without any jurisdiction and not the norms prescribed in the relevant Rules. It is pertinent to mention here that as per the rules posting of BCR Officials should be issued/ordered by Director Postal Service. Mention may be made of letter No.STAFF/17-1/R 16/TB 2nd Corr dated 3.2.98 issued by the Chief Post Master General forwarding a copy of Director's letter No.137-55/96-SPB-II dated 23.1.98 wherein the rules regarding issuance of transfer order in regard to Higher Section Gr-II Officers has been laid down as Director of Postal Services of concerned Circle. In the instant case the order has been issued by the Superintendent of Post Offices not by the Director Postal Services. However, There has been a mention that concurrence from circle has been obtained, but the respondents have failed to mention anything apart from

the aforesaid fact.

The applicant craves leave of the Hon'ble Tribunal to produce the same at the time of hearing of the case.

4.6. That the applicant begs to state that the post of Sub Post Master at Kaithalkuchi Sub Office is a post to be held by officers belonging to General Cadre not by any accounts cadre officer. The applicant being a member of Accounts Cadre could not have been transferred to the post of Sub Postmaster as the same belongs to General Cadre personnel. It is pertinent to mention here that the Accounts Cadre and General Cadre are two distinct cadre and they are not inter transferable. In this context Rule 15 of FRSR may be referred to where in it is clearly mentioned that in a case of transfer from one cadre to another, the same can be considered only on 2 counts, i.e. (i) on account of inefficiencies and misbehaviour and (ii) on written request of the person concerned. In the instant case both the said aspects are not available and hence the impugned order of transfer could not have been passed.

4.7. That the applicant stating all these above anomalies made prayer before the respondents and the respondents thereafter gave him the assurance that his case would be considered favorably, and necessary modifications will be made in the said Annexure-3 order dated 9.12.98. Accordingly the respondents have issued another order vide memo No. B/A-19/CH-II dated 25.2.99 in modification of the earlier order dated 9.12.98 (Annexure-3) and a separate order by which the same was stayed till 31.3.99. However, the respondents have again committed the similar mistake by transferring him to Santinagar Sub Office as Sub Post Master, which is also a post for General Cadre personnel.

A copy of the order dated 25.2.99 is annexed herewith and marked as Annexure-4.

4.8. That the applicant begs to state that as stated above,

the issuing authority i.e. Superintendent, of the Annexure-4 order dated 25.2.99 is not the appropriate authority. However, in the said order there has been a mention that the same has been issued as per the order of the Circle Office without specifying the name of the authority as well as the contention of the order.

4.9. That the applicant begs to state that as per the Rules, one cadre officer of Accounts cadre can not be transferred to another cadre i.e. General Cadre. The applicant stating all these, made a representation to the respondents for consideration of the same on 8.3.99 making a prayer for further modification of the same, but the same is yet to be disposed of.

A copy of the said representation dated 8.3.99 is annexed herewith and marked as Annexure-5.

4.10. That the applicant begs to state that the respondents while passing the Annexure-4 order dated 25.2.99 have failed to consider the main aspect of the matter i.e. cadre and Rules mentioned in the FRSR. On the other hand the respondents have failed to take in to consideration the relevant Rules regarding inter transferability of both the cadres.

4.11. That the applicant begs to state that after issuance of the Annexure-4 order dated 25.2.99, the applicant has not yet handed over the charge. On the other hand no reliever has come to release the applicant and no formal order of releasing has been issued by the respondents. The applicant is presently working in his present place of posting and he has got the apprehension that at any time his reliever may come and the relieve order may be issued. Hence, this application challenging the order dated 25.2.99 (Annexure-4) with a further prayer for passing an interim order directing the respondents not to give effect the said order.

4.12. That the applicant begs to state that the respondents have issued the said order of transfer dated 25.2.99

Sh

9

with a malafide intention to harass the applicant. On the other hand the respondents have failed to take into consideration the representation filed by the applicant as well as the earlier order staying the Annexure-3 order and the reason for cancellation of the same.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action of the respondents in issuing the impugned order dated 25.2.99 is arbitrary and unreasonable and same is not sustainable in the eye of law.

5.2. For that the respondents after considering his caution representation have canceled the Annexure-3 order dated 9.12.99 order has been issued without applying their mind.

5.3. For that the respondents while issuing the said order dated 25.2.99 have failed to take in to consideration the fact that the applicant is a qualified Accounts Cadre personal and in any case he can not be transferred to General Cadre.

5.4. For that the Law is clear that Accounts Cadre personal can only be transferred as a measure of punishment and on his own request and in absence of both the materials, the impugned transfer order is liable to be set aside and quashed.

5.5. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

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

The applicant further declares that he has not filed

10

previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

- 8.1. To set aside and quash the impugned order dated 25.2.99.
- 8.2. To allow the applicant to continue in his present cadre as well as present place of posting.
- 8.3. Cost of the application.
- 8.5. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicant prays for an interim order directing the respondents not to give effect Annexure-5 order till finalisation of the O.A.

10.

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

1. I.P.O. No.	: 66 792424
2. Date	: 11/5/2001
3. Payable at	: Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

VERIFICATION

I, Shri Hiranmay Kakati, son of Shri B.C.Kakati, aged about 49 years, at present working as Accountant in Barpeta H.O. do hereby solemnly affirm and verify that the statenents made in paragraphs 2,3,4,4.1,4.2,4.6,4.8,4.10,4.11,4.12..... are true to my knowledge and those made in paragraphs 1,4.3-4.5,4.7,4.9..... are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 28th day of ~~March~~ ^{June}, '99.

Hiranmay Kakati

- 10 -

ANNEXURE - 1

I, Shri Hirannay Kadam, Off. Accountant
Barpeta H.O. do hereby exercise my option
to continue in the Accounts line in
respect of promotion to L.S.G.
Accountant.

Dtd -

24/6/36.

POST MASTER,
BARPETA H.O.
781301.

Hirannay Kadam

Accountant

Barpeta H.O.

Attested
by
Advocate

- 11 -

ANNEXURE - 2Option

I, Shri Nirmal Kumar, Assistant, Barpeta.
 do hereby opt to fix my pay under JR 22(1)(2)(1)
 on account of ^{seniority} promotion under BCR) w.e.f.
 1-1-75 and to receive my pay from the date of
 my next increment of Rs. 56 in terms of Govt.
 of India, Ministry of Finance order.

Further I do hereby opt to work in the
 Accounts line after BCR.

Dt. 6-3-75

Nirmal Kumar
 Assistant
 Barpeta S.O.

Postmaster,
 Barpeta S.O. 76150.

Attested
 by
 Adm. Secy.

DEPARTMENT OF POST::INDIA
Office of the Superintendent of Post Offices
Nalbari-Barpeta Division
NALBARI-781335

Memo No. B/A-19/Ch-II

Dated at Nalbari the 09-12-98.

The following transfer and posting orders are hereby issued in the interest of service to have immediate effect.

1. Sri Mahesh Ch. Barman, LSG Accountant, Divisional Office on being relieved on office arrangement will join as Accountant, Barpeta HO vice Sri Hiranmay Kakati transferred.

2. Sri Hiranmay Kakati, HSG-II Accountant, Barpeta HO, on being relieved by Sri Mahesh Ch. Barman will join as SPM, Kaithalkuchi SO vice Sri Chandi Kalita transferred. The posting order of Sri Chandi Kalita has been issued separately.

Transfer and posting order in respect of Sri Hiranmay Kakati (HSG-II) at Sl. (2) above is issued with the concurrence of the Circle Office.

Supdt. of Post Offices
Nalbari-Barpeta Division
NALBARI-781335

Copy to:

- 1-2. The Officials concerned. On being relieved, they will join their new assignments.
2. The Chief Postmaster General (Staff), Assam Circle, Guwahati for favour of kind information.
- 3-5. The PM, Nalbari/Barpeta HO for information and necessary action.
6. The SPM, Kaithalkuchi SO for information.
- 7-9. P/F.
10. OC.
- 11-15. Spare.

Supdt. of Post Offices
Nalbari-Barpeta Division
NALBARI-781335.

Attested
by
Admin. cell

DEPARTMENT OF POSTS::INDIA
Office of the Superintendent of Post Offices
Nalbari-Barpeta Division
NALBARI-781335.

Memo No B/A-19/Ch-II

Dated at Nalbari the 25-02-99

The following transfer and posting orders are hereby issued in the interest of service to have immediate effect.

1. Sri Mahesh Ch. Barman, LSG Accountant, Divisional office on being relieved on office arrangement will join as Accountant, Barpeta HO vice Sri Hiranmay Kakati transferred.

2. Sri Hiranmay Kakati, HSG-II Accountant Barpeta HO, on being relieved by Sri Mahesh CH. Barman will join as SPM, Santinagar SO vice the vacant post.

This is in modification of this office Memo of even No dated 9-12-98 as per the order of Circle Office, Guwahati.

(G.G. SINGHA)
Superintendent.

Copy To :

1-2) *Sri H. Kakati (Ac-H)*
The official concerned. On being relieved they will join their new assignments.

3) The Chief PMG(staff), Assam Circle, Guwahati, for favour of kind information.

4-5) The PM, Nalbari/Barpeta HO for information and n/a.

6-7) P/F

8-11) OC/Spare.

(G.G. SINGHA)
Superintendent.

*Attested
Advocate*

*Attested
Advocate*

- 13 -

16

Annexure-5

To

The Superintendent of Post Offices,
Nalbari-Barpeta Divn., Nalbari-781335,
Through proper channel.
Dated Barpeta the 8th March, 1999.

Sub : Transfer.

Sir,

I have the honour to state that I submitted a representation on 21.1.99 in response to your letters No.B/A-19/CH-II dated 22.12.99 and 7.1.99. I was permitted to continue in the present post up to 31.3.99 vide your office letter No.B/A-19/CH-II dated 2.2.99 and a copy of this letter was endorsed to the Postmaster Barpeta H.O.

Now an order of my transfer endorsing the same file mark of your office No.B/A-19-19/CH-II dated 25.2.99 has been issued. Absenting some specific features endorsed on this letter No.B/A-19/CH-II dated 25.2.99 and its style and appearance, I am competent to think that this letter No.B/A-19/CH-II dated 25.2.99 is a fabricated letter prepared by somebody of your office motivatedly with the intention to harass me.

Further I would like to point out that you are the Head of Office of the Superintendent of Post Offices, Nalbari-Barpeta Division at Nalbari the charge report (in form A.C.G-6) of taking over and handing over charge of Accountant, divisional office, Nalbari should be countersigned by the Head of the Office as per rules and procedure. But the charge report handing over charge of Accountant and taking over of the some of the Divisional office at Nalbari by Sri P.C.Thakuria (who already left the Accountants line for ever and has been working under permission in general line) and Shri Mahesh Ch.Barman respectively, has been countersigned by some P.C. Bora under office designation seal of the Superintendent of Post Offices, Nalbari Barpeta Division, Nalbari. The counter signature of charge report (of P.C.Thakuria and Mahesh Ch.Barman) made by P.C. Bora is ultra vires.

Now it is ipso-facto that my transfer case is engineered by some P.C.Bora for his self interest.

Therefore, I would like to request you kindly to look in to the matter personally. And for this act of your kindness I shall be grateful to you.

Yours faithfully

(Hiranmay Kakati)
Accountant
Barpeta H.O. 781301.

Copy to:-

1. The Postmaster, Barpeta H.O. 781301 for information. All the facts stating in this representation is brought to his notice for just and correct decision in the case.

2. The Circle Secretary, P-III, AIPFU, Assam Circle, Guwahati-781021 for information and is requested to intervene in the transfer case of me as I am a member under the banners of your Union.

Yours faithfully
(Hiranmay Kakati)

Attested
W. Barman
Advocate