

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

3
(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDI.)

FORM NO. 4

(See Rule '42')

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

ORDER SHEET

CONGRAN APPLICATION NO. 266 OF 2001

APPLICANT (S) J. P. Bhattacharya

RESPONDENT (s) : U.G.I. Govt

ADVOCATE FOR APPLICANT(S) Mr. M. K. Bhattacharya

ADVOCATE FOR RESPONDENT(s) Case

Notes of the Registry	dated	Order of the Tribunal
This application is in form but not in time. Condobation Petition is filed not filed vide M. P. No. C. E. for Rs. 50/- deposited vide IPO/BG No. 8...1.k.12. 3811 Dated..... 13.7.2001 Teps Jnber: <i>[Signature]</i> Qy. Register. <i>[Signature]</i>	20.7.01	<p>Heard learned counsel for the parties.</p> <p>Application is admitted.</p> <p>Call for records. Issue notice on the respondents to show cause as to why the impugned order No. 40-47/DEP W/ 58 dated 21.6.01 for releasing of the applicant for posting JTO(MFCB) Tura shall not be suspended. Returnable by 4 weeks. In the meantime the operation of the impugned order dated 21.6.01 shall remain suspended till the returnable date.</p> <p>List on 24.8.01 for orders.</p> <p><i>[Signature]</i> Vice-Chairman</p>
Notice received and posted in estate Section for hearing Respondent No 1 to 8 by LAD vide D/No 2788 W 2795 dd - 30/7/01.	1m 24.8.01	<p>List on 26 27.8.01 to enable the respondents to file written statement.</p> <p><i>[Signature]</i> Vice-Chairman</p>
Order dtd. 27/8/01 Remained the parties	mb 27.8.01	<p>Written statement has been filed. The matter now be listed for hearing on 28/9/01. The applicant may file rejoinder, if any.</p> <p>In the meantime, the interim order dated 20.7.01 shall continue.</p> <p><i>[Signature]</i></p>

(2)

28.8.2001

28.9.01

*W/S Submitted
by the Respondents.*

Prayer has been made on behalf of Mr. S.C.Biswas learned counsel for the applicant to adjourn the case. Prayer is allowed. List on 12.10.01 for hearing.

Vice-Chairman

1m

12.10.01

17.9.2001

*Rejoinder to the
W/S submitted by
the Respondents.*

Mr.B.C.Pathak, learned Addl.C.G.S.C submits that the copy of the rejoinder filed on 17.9.2001 is with Mr.A.Deb Roy, Sr.C.G.S.C who is hospitalised. ~~to the applicant~~ The learned counsel is directed to give a copy of the rejoinder to Mr.B.C.Pathak. Prayer is made for short adjournment. Prayer allowed. List on 12.12.2001 for hearing.

I C Ushan

Member

*The Case is ready
for hearing as
regards W/S and
rejoinder.*

bb

12.12.01

None is present for the applicant. List the case again for hearing on 14.12.2001.

I C Ushan

Member (A)

24.9.01

RL

ay 8/1/02

bb

mb

*3.1.2002
Copy of the
Judgment turned over
to the L/Advocate
for the applicant*

st

*Judgment delivered on open court,
kept in separate sheets. The application
is dismissed. No order as to costs.*

I C Ushan

Member

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 266 of 2001.

Date of Decision. 21.12.2001

Shri J.P.Bhattacharjee

Petitioner(s)

None present for the petitioner.

-Versus-

Advocate for the
Petitioner(s)

Union of India & Others.

Respondent(s)

Mr.A.Deb Roy, Sr.C.G.S.C

Advocate for the
Respondent(s)

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

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Administrative Member.

Usha

5

CENTRAL ADMINISTRATIVE TRIBUNAL , GUWAHATI BENCH.

Original Application No. 266 of 2001.

Date of Order : This the 21st Day of December, 2001.

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

Shri J.P.Bhattacharjee
Junior Telecom Officer
In the Office of the Divisional
Engineer Microwave (MTCE)
BSNL, Silchar
Assam.

... . Applicant.

None present for the applicant.

- Versus -

1. Union of India
Represented by the Secy. to the
Govt. of India, Ministry of Communications
New Delhi.
2. Chief Managing Director
Bharat Sanchar Nigam Ltd.
New Delhi.
3. Chief General Manager
ETR, Telephone Bhawan
Kolkata.
4. Chief General Manager
B.S.N.L., N.E.Circle
Shillong-1.
5. General Manager, ETR
Tax Building,
Shillong.
6. Director MTCE, ETR
Guwahati-3.
7. Divisional Engineer
Microwave, Circuit House Road
Silchar.
8. Chief General Manager
B.S.N.L., Assam Circle
Guwahati-7.

By Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R

K.K.SHARMA, ADMN.MEMBER :

This application was listed for hearing
on 12.10.2001, 12.12.2001 and again on 14.12.2001.

CC Usha

Contd.. 2

There was no representation on behalf of the applicant on all these days. The applicant is accordingly, decided ex parte.

2. The application is made against the impugned order dated 21.6.2001, issued by General Manager, ETR, Shillong, respondent No.5, whereby it was indicated that after temporary deputation at Silchar Division, the applicant was to be released for reporting to SDE/MW/Tura. It is claimed by the applicant that order No. 40-11/99/TP/84 dated 5.1.1999 was a final order of transfer of the applicant to Assam Circle from N.E. Circle.

3. The applicant entered service as Technician at Dimapur, Nagaland on 4.2.1980. In 1996, while the applicant was serving as J.T.O. at Tawang high altitude Station in Arunachal Pradesh, he tried for transfer at his own request to Silchar in Assam Circle from N.E. Circle under Rule 38 of the P & T Manual. As the applicant was not liable to get his transfer, his wife approached the Minister of State for Communications at whose pressure action was initiated to transfer the applicant to Silchar. Vide order dated 5.1.1999 the applicant was transferred and the said order mentions that the applicant would be on deputation till further orders and he would not be entitled for deputation allowance and other terms of benefit. The applicant joined at Silchar on 12.2.1999 and he was under an impression that he would be transferred to Assam Circle from N.E. Circle. However by impugned order dated 21.6.2001, the applicant has been transferred to Tura. It is stated that the applicant is adversely affected by the transfer. It is stated that GM, ETR, Shillong has no jurisdiction to transfer the applicant.

LCU Sh

Contd..3

4. The respondents have filed written statement. It is stated therein that the applicant had brought political pressure for his transfer to Silchar, which is violation of CCS Conduct Rules. However, the respondents are kind enough to transfer the applicant to Silchar. The J.T.O. cadre is a Circle cadre. The applicant is a J.T.O. of N.E.Cadre. His transfer to Silchar was on temporary basis and not under Rule 38. All the Micro-wave and Satellite station of the entire N.E.Circle are under the administrative control of the GMM/ETR, Shillong. The J.T.O. being an Circle cadre the applicant cannot claim to be posted at Silchar for a long period. The temporary transfer of the applicant was made on personal request. Being a J.T.O. of N.E.Circle, the applicant cannot claim to be posted at Silchar Microwave which is the jurisdiction of Assam Circle.

5. I have heard Mr.A.Deb Roy, learned Sr. C.G.S.C. for the respondents.

6. Considering the facts of the case I do not find any illegality in the impugned order. The order transferring the applicant at Silchar clearly indicated that the applicant was on deputation till further order. The order shows that the applicant was not given benefit of TA, DA at joining time. He was not also allowed deputation allowance. There is no basis to assume that the applicant had been finally transferred to Silchar. The release of the applicant by the Divisional Engineer Microwave, Silchar was made on the request of GM ETR, Shillong under whose administrative control the applicant

U.U.Sha

Contd.. 4

was working before being sent on deputation to Silchar Microwave Station. I have found no reason to intervene in the impugned order.

Accordingly, the application is dismissed. The interim order dated 20.7.2001 is vacated.

There shall, however, be no order as to costs.

I C (Ush)
(K.K. SHARMA)
ADMINISTRATIVE MEMBER

bb

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

18 JUL 2001

गुवाहाटी बाष्पीट
Guwahati Bench

Application Under S/ 19 of the Administrative
Tribunal Act, 1985.

O.A 266/2001

Title of the Case.

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J.P. Bhattacharjee
Signature of the Applicant.

J.P. Bhattacharjee

File No. 10
J.P. Bhattacharjee
Assam

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH

Between

Shri J.P. Bhattacharjee Applicant

And

Union of India & Others ... Respondents.

1. Particulars of the Applicant :

(I) Name of the Applicant : Shri J.P. Bhattacharjee.

(II) Name of Father : Late Jitendra Chandra Bhattacharjee

(III) Age of the applicant : 46 years (DOB 30-6-1955)

IV) Designation and Particulars of Office (Name and Station) in which employed or was last employed before ceasing to be in Service. : J.T.O (Junior Telecom Officer) in the Office of the Divisional Engineer Microwave (M.T.C.E) BSNL, Silchar in Cachar district of Assam Circle.

V) Office address : -Ditto-

VI) Address for Service of notice : Shri J.P. Bhattacharjee, J.T.O C/O Divisional Engineer, Microwave (M.T.C.E) Silchar 788 001.

J.P. Bhattacharya

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Printed By
Chokhakalakally &
present

2. Particulars of the Respondents :

I) Name of the Respondent : (a) Union of India represented by the Secy. to the Govt. of India, Ministry of Communications, New Delhi.

(b) Chief Managing Director, Bharat Sanchar Nigam Ltd. New Delhi.

(c) Chief General Manager, ETR, Telephone Bhawan, Kolkata.

(d) Chief General Manager B.S.N.L., N.E. Circle Shillong-1.

(e) Chief General Manager B.S.N.L., Assam Circle Guwahati-7.

(e) General Manager, ETR Tax Building, Shillong.

(f) Director MTCE, ETR, Guwahati-3.

(g) Divisional Engineer, Microwave, Circuit House Road, Silchar.

Respondents are all Govt. Parties. So father's name, age etc., are not stated. Notice may be served on the addresses given above.

12
Dated 03/07/2001
By
J. P. Bhattacharya
Asst. Commr.

3. Particulars of orders against
which application is made.

The application is against
the following orders :-

(I) 40-47/DEPW/58

(II) Dated 21-06-2001

Annexure

(received by the A-I.

applicant very
recently).

(III) Passed by General

Manager, MTCE, ETR,

Shillong.

(IV) Subject in brief is
that the applicant
has been transferred
to Tura in N.E. Circle
from Silchar in Assam
Circle where he was
transferred at his own
request under the
provision of Rule 38 of
the P.T. Manual, Vol. IV.

So the present order
is not only untenable
but without jurisdiction
also.

J. P. Bhattacharya
-4-

13
Filed by
The Secretary
Orissa Govt

4. Jurisdiction of the Tribunal : The applicant declares that

the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal. In this case the applicant has not gone up in appeal, the disposal of which will naturally take time. Under the inherent power of the Tribunal under Section 19(1) of the Act an employee can approach the Tribunal for relief on grounds of an apprehension when any such act is committed causing grievance. Section 20 of the Act provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant Service Rules as to redressal of grievances which means that in exceptional cases the Tribunal can admit an application even without seeking

J. H. Shastri

-5-

14
Filed By
Ankush Mukherjee
of SCERT

departmental remedies. The Principal Bench of the CAT, Delhi in Regn. No. 04/148/1986 dated 31-12-1986 (R. Kapur Vs Union of India) has ruled that there is no statutory bar against moving the Tribunal in cases where the applicants have not gone up in appeal. As such this Tribunal has jurisdiction to entertain this application as maintainable.

5. Limitation : The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative, Tribunal Act 1985 read with the foregoing para.

6. Facts of the : The facts of the case are case. given below :-

6.1 - The applicant first entered service as a Technician at Dimapur (Nagaland) on 4-2-1980 and continued at Nagaland where he was promoted as Phone Inspector in 1984 and served as P.I. upto June 1988.

6.2 - From 1-7-1988 to middle of 1989 he was a temporary Phone Inspector at Silchar (Assam).

6.3- From middle of 1989 to 1992 he was P.I. at Shillong.

6.4 - In 1992-93

contd.. 6/-

J. T. O. Shillong
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File No. 15
Not Bhalong
for sale

6.4- In 1992-93 he was on training at Secunderabad.

6.5- On 10-31993 he was promoted as J.T.O (Junior Telecom Officer) and posted to Shillong Microwave under ETR, Calcutta.

6.6- From June, 1996 to May 1998 he was J.T.O at Tawang high altitude Station (a tenure posting) in Arunachal Pradesh.

6.7- In June 1998 he was transferred to Shillong Satellite as J.T.O.

6.8- From 1996 the applicant developed various domestic problem of Wife's illness and daughters' education. So he applied for transfer at own request to Silchar in Assam Circle from N.E. Circle under Rule 38 of the P & T Manual, Vol IV being ready to bear the pangs of loss of seniority and forgoing ~~to~~ of T.A. etc. The Rule 38 provides that transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the right of others. But the Respondents particularly

J. B. Basu

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*Given By
notary public
of Assam*

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stationed at Shillong and Guwahati sat over the matter without disposal. Meanwhile the inconveniences of the applicant's family reached such a peak that the applicant's wife had to hammer at the door of the Minister of State, Communications at whose pressure some action was initiated by the DGM, ETR, Shillong. Vide his letter No. 40-11/98/Rule 38/JTO/175 dt/- 30-12-1998 (Copy marked as Annexure A-2) In that letter the applicant was intimated that his posting to Silchar (Assam Circle) could be considered provided he was ready to forgo the out of Circle allowance and other transfer benefits. The applicant was unable to decipher as to why such question was raised as because the very provision of transfer at own request at Rule -38 to another Circle carried with it the penal condition of loss of seniority, loss of T.A. etc. But in his utter anxiety to come over to Silchar in Assam Circle from Shillong in N.E. Circle he conveyed his concurrence without raising any objection, on the very day of receipt of the letter dt/- 30-12-1998. But the Director MTCE, ETR, Shillong in his letter No. 40-14/

contd... p8/-

J.P. Bhattacharya

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Dated 03/01/2002
and forwarded
to the concerned
person

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/99/TP/84 dt/- 5-1-1998 (copy marked as Annexure A-3) ordered the posting of the applicant at Silchar, Microwave Station on deputation terms till further order which he was not competent to make. The application under Rule -38 was at own request for Circle transfer and not for deputation but the applicant joined at Silchar on 12-2-1999 taking for granted that it was an out of and out transfer to Assam Circle at Silchar from NE Circle at Shillong and no element of deputation was involved. By such circle transfer the relation with the old circle is totally severed by creation of fresh relation with the new unit. Accordingly there could be no point of repatriation to the old circle. But the learned General Manager, ETR, Shillong being oblivious of the manualised provision has issued a wrongful order in his letter No. 40-47/DEPN/58 dt/- 21-6-2001 (marked as Annexure A1) by asking the Divisional Engineer, Microwave (MTCE) Silchar to release the applicant for joining at Tura (N.E. Circle). This letter has very adversely affected the applicant. As against his Circle transfer to Silchar eliminating his domestic problems to some extent,

contd... p9/-

J. Hollings

18
Filed By
Miss Shashi
Shankar
Shankar

-9-

the new order is sure to plunge him in wide ocean. Moreover the GM ETR, Shillong had no jurisdiction to act illegally and that too without obtaining higher orders and hence his letter dt/-21-06-2001 does not stand in the eye of law.

7. Details of remedies exhausted :-

As mentioned in Para 4 above Jurisdiction of the Tribunal - difficulties in exhausting the departmental remedies, particularly against the impugned order No. 40-47/DEPN/58 dated 21-06-2001 the General Manager, ETR, Shillong against which this application is made have been explained Vis-a-Vis the possible adverses befalling the applicant by waiting for the disposal of the appeal. The applicant therefore is approaching the Hon'ble Tribunal for efficacious remedy by condoning the condition of exhaustion of departmental appeal/representatives .

8. Matters not : The applicant further previously filed or pending with any other Court. declares that he had not previously filed any application, Writ petition or Suit regarding the matter in respect of which this application

contd... p 10

J. M. Shastri
- 10 -

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2nd Bay
Marshall
of Assam

has been made before any Court of law or any other authority or any other Bench of the Tribunal and nor any such application, Writ petition or Suit is pending before any of them.

9. Relief(s) Sought :

In view of the facts mentioned in para 6 above the applicant prays for the following reliefs :-

(a) The order of the General Manager, ETR, Shillong communicated in his impugned letter No. 40-47/DEPW/58 dt/- 21-06-2001 be set aside being bad in law and equity.

(b) The posting of the applicant at Silchar communicated in letter of the General Manager, ETR, Shillong in his order No. 40-11/99/TP/84 dt/- 05-01-1999 be deemed to be a final order of transfer to Assam Circle from NE Circle as per the provision of Rule 38 (transfer at own request) of the P & T Manual, Vol IV.

(c) The question of deputation of the applicant at Silchar in

contd... p 11/-

J. N. Mukhopadhyay

29
Red By
Nakshatra
J. N. Mukhopadhyay

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in Assam Circle from Shillong in
N.E. Circle and the recent decision
of his repatriation to NE Circle at
Tura be scrapped being illegal and
in applicable as per marginalised
provision.

(d) The Respondents be directed to honour
the Rule of Law and advance substantial
natural justice to the employees without
any intent of harassing them so as to
maintain happy relation between em-
ployer and employees.

(e) Any other relief or reliefs deemed
fit and proper by the Hon'ble Tribunal.

10. Interim order, : ~~Applicant is entitled to interim order~~
if any prayed for. Pending final decision on the
present application, the applicant
seeks the issue of the following in-
terim Order :-

The execution/implementation of the
order of the General Manager, ETR,
Shillong communicated in his letter
No. 40-47/ DEPW/58 dt/- 21-06-2001
(Annexure A-1) be stayed as the same
is illegal, arbitrary and without
jurisdiction.

11. Mode of : The application is submitted to
submission of the Registry of the Tribunal
the application
to the Tribunal.

J. A. Bhattacharya

21
Sudhansu
Mukherjee
Mukherjee
Mukherjee

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by hand along with the Receipt

Slip and a Vokalatnama.

12. Particulars of :

Bank Draft/Postal

1) No. of Indian Postal order

-B-16-123811

Order in respect of

2) Name of Issuing Post

the Application fee.

Office-SILCHAR.

3) Date of issue of IPO

13-7-2001

4) Post Office at which

payable - Guwahati.

13. List of Enclosures :

1. Vokalatnama.

2. Letter No. 40-47/DERW/58

dt/- 26-6-2001 of G.M, ETR,

Shillong - Annexure-A-1

3. Letter No. 40-11/98/Rule-38

JTO, 175 dt/- 30-12-1998 of

GM, ETR, Shillong-Annexure -A2

4. Letter No. 40-11/99/TP/84

dt/- 5-1-1999 of GM, ETR,

Shillong. Annexure- A-3.

5. Indian Postal order No.

B 16123811 dt/- 13-7-2001

for Rs. 50/-

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~~- 12A -~~

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VERIFICATION

I, Shri J.P. Bhattacherjee S/O Late Jitendra Ch.
Bhattacherjee Aged 46 years, Working as J.TO in the
Office of the Divisional, Engineer, Microwave, Silchar
resident of College Road, Silchar, do hereby verify
that the contents of para-1 to 8 are true to my
personal knowledge and the rest para are believed to
be true on legal advice and that I have not suppressed
any material fact.

J.P. Bhattacherjee

Date : 16-7-2001
Place : Silchar.

Signature of the Applicant

- 1/2 -
ESTATE & SUBSIDAR LTD.
% O. D. GURKHA MFG. LTD.
SHILLONG - 793001

(5)

No. 40-24/DEPT/58

Dated at Shillong the 21.6.2001.

(9)

To, The Divisional Engineer
Shillong (mtg), BSNL
Dilshar

Sub:- Repatriation of Smti S.P. Bhattacharjee, Gt/o/mu
/ Dilshar to parent sub-region.

Ref:- your letter no. 40-24/DEPT/58/21.6.2001/11F.
Dtd. 26.5.2001.

With reference to above, I am directed to refer to
this office letter No. 40-24/DEPT/58. Dtd. 8.5.2001 on the
subject noted above and to intimate you that
The concerned official who was deputed temporarily
to your division since 12.02.1999 last, is now
required to be released from your division with
an intimation to report to D.G./mtg, Shillong
for further duty.

The official is entitled for actual deputation and
returning fare.

The date of events may kindly be intimated to
all concerned.

M/S/td
M.R. Bradley/13/7/01
General R. Bhattacharjee
Executive, Shillong

(P. Singh)
21.6.
or. no. 1000 (1000)
Sub-Div. Manager, D.G.
O/o General Manager D.G.
Shillong.

Copy to :-

1. The Dg. Div. (mtg) ETR, BSNL, Shillong

2. The Dg. Div. (mtg) ETR, BSNL, Dimapur

3. The Dg. Div. (mtg) Dimapur

4. The Dg. Div. (mtg) Dm

5. The SDE (Adm) of Dm, ETR, Dimapur

6. Smti S.P. Bhattacharjee, Gt/o/mu, Shillong

(P. Singh)
21.6.
or. no. 1000 (1000)

Shillong.

BHARAT SANCHAR NIGAM LIMITED
Office of Dy. General Manager MTCE, ETR,
Shillong 793 004

No. 40-47/DEP/MW/58

Dated at Shillong the 21.06.2001

To,

The Divisional Engineer,
Microwave (MTCE), BSNL
Silchar.

Sub : - Repatriation of Shri J.P. Bhattacharjee, JTO/MW,
Silchar to parent Sub-region.

Ref. Your letter No. DEO MW/SC/C-1/2001-2002/117
dtd. 26.5.2001.

With reference to above I am directed to refer
to this Office letter No. 40-27/DEP/MW/57 dt/- 6.5.2001
on the subject mentioned above and to intimate you
that the aforesaid Official who was deputed temporarily
to your division since 12.02.1999 last, ~~is~~ is urgently
required to be released from your division with an
instruction to report to ~~SDE~~ / Mac, Tura for further
duty.

The Officer is entitled for actual transit
time of joining time and journey fare.

The date events may kindly be intimated to
all concerned.

Sd/-

General Manager ETR
Shillong

Copy to :

- 1) The Dy. G.M. (MTCE) ETR, BSNL, Shillong.
- 2) The Dy. G.M. (MTCE) ETR, BSNL, Guwahati.
3. The DEMW Shillong.
4. SDE / Tura.
5. The SDE (Admn) O/Q DWM, ETR, Guwahati.
6. Sri J.P. Bhattacharjee, JTO/MW, Silchar.

Sd/-

6127 (Corr.) 7

1

১১ স্বার বিপাক

Department of Telecommunications

কার্যালয় Office of the GENERAL MANAGER ETR SH: 793001 ::

To,

Sri J. P. Bhattacharjee,
JTO Satellite Shillong.

No. 40-11/98/Rule-38/JTO/175 Dated at SH the 30.12.98

Sub:- Rule-38 transfer to Assam Circle at
Silchar.

It is to intimate you that your Rule-38 application had already been forwarded from this office to N.E. Circle and a copy to Assam Circle. However by that time a letter from hon'ble Minister had instructed to this office to arrange your posting at Silchar Microwave Maintenance.

Necessary order for your posting at Silchar Microwave Mtce. can be issued from this office provided you are ready to forgo the out of Circle Allowance (Deputation Allowance) and other transfer benefit.

Please intimate quickly for further follow of action.

8/12/98
Divisional Engineer (Tech)
O/o the General Manager, ETR,
Shillong.

*MR. Bhattacharjee (3/12/98)
Corinna K. Bhattacharjee
Advocate. Silchar*

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SDS

(2)

DEPARTMENT OF TELECOMMUNICATIONS
CHIEF OF THE STATE WORKS (TR) SHILLONG 793001

No. 40-14/99-T/84 Dated at Shillong the 5.1.91

Sub:- Posting of JTO on deputation.

Directorate of ETR Shillong is pleased to post
Sri J. P. Bhattacharjee, JTO Sat. Ktce. Shillong at
Silchar N/V station on deputation till further order.
The official is not entitled for deputation allowance
and other transfer benefit like TA/DA and joining time
etc. The DE concerned is requested to send the joining
report of the JTO on deputation to this office for
further necessary action at this office.

*Alleged
Notified 13/1/91
Deputy K. Bhattacharjee
Manager - Silchar*

Divisional Engineer(Tech)
O/o the General Manager, ETR,
Shillong.

Copy to:-

1. The Director Ktce. ETR Shillong.
2. The Director Ktce. ETR Gauhati.
3. The D.E. N/V Silchar.
4. The D.E. Sat. Shillong.
5. Sri J. P. Bhattacharjee, JTO Sat. Shillong.
6. The Sr. A.O. O/o the D.E. ETR Shillong.
7. The Sr. SDE (Admn) O/o the GM ETR Shillong.
8. Personal file of the officials.
9. Office copy.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI
O.A.No. 266/2001

केन्द्रीय प्रशासनिक अधिकार अधिकार
CENTRAL ADMINISTRATIVE TRIBUNAL
27 AUG 2001
गुवाहाटी न्यायालय
Guwahati Bench
Applicant

File No. 15101
A. DES ROY
10/10/2001

Shri J.P.Bhattacharjee

Vs

Union of India and others.....Respondents.

(Written statement filed by all the respondents).

1. That the copies of the O.A. No.266/2001 herein after referred to as Application have been served on the respondents and the respondents after going through the said application have understood the contents thereof.
2. That the statement made in the application save and except there which are specifically admitted and denied by the respondents.
3. That with regard to the statement made in paragraph 4 and 5 of this application the respondents have nothing to comment.
4. That with regard to statement made in paragraph 6.1 to 6.7 of this application the respondents have nothing to comment.
5. That with regard to the statement made in paragraph 6.8 of the application the respondents beg to state that the Rule 38 application of the applicant has been forwarded to the CGMT, Assam Circle. The applicant cannot claim transfer under Rule 38 as right. The transfer of an official from one arm of service to another within or outside the Circle can be allowed only with the personal approval of the Heads of Circle concerned and subject to some conditions and hence the applicant cannot claim that the respondents sat over the matter without disposal.
With regard to the applicant's wife had to hammer at the door of the minister of State Communication, the respondents beg to state that the applicant has violated Rule 20 of CCS(Conduct) Rules 1964 which clearly states that no Government servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interest in respect of matter pertaining to his service matters like transfer/posting. In the instant case the applicant has approached the minister through his wife to get his transfer order. Such a pressure for transfer by the applicant on the administration has been putting the

Rule - 38

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administration in an embarrassing situation. This act on the part of the applicant attracts the provision under Rule 20 of CCS(Conduct) Rule 1964 and invites departmental/disciplinary action against the applicant. The respondents were kind enough to transfer him temporarily to Silchar sympathetically (JTO is a Circle Cadre. The applicant is a JTO of N.E.Circle) The applicant was transferred on purely temporary basis and not under Rule 38. The statement that the official was transferred under Rule 38 is not correct and tried to mislead this Hon'ble Tribunal.

That all the M/W and Satellite station of the entire N.E.Circle is under the administrative control of the GMM/ETR Shillong . JTO being a Circle cadre the applicant cannot claim to be posted at Silchar for a long period. The order dated 21.06.2001 as mentioned by the applicant is as per departmental Rule.

6. That with regard to the statement made in paragraph 7 of the application the respondents beg to state that the order No.40-47/DEBN/58 dated 21.06.2001 was correct. The temporary transfer was made on the basis of personal request of the applicant. The applicant cannot claim the temporary transfer as Rule 38 transfer .The above mentioned order was issued on his own request . Being a JTO of N.E.Circle he cannot claim to be posted at Silchar Microwave which is the jurisdiction of Assam Circle.
7. That with regard to the statement made in paragraph 8 of the application the respondents have nothing to comment.
8. That with regard to statement made in paragraph No.9 (a) of this application regarding the relief sought for the respondents beg to state that the applicant is not at all entitled to any relief sought for, and as such the application is liable to be dismissed.
9. That with regard to the statement made in paragraph 10 of the application the respondents beg to state that in view of the circumstances no interim order is warranted as prayed for. If such an interim order is granted by the Hon'ble Tribunal then the administration will be in an embarrassing situation.
10. That with regard to the statement made in paragraph 11,12 and 13 the respondents have nothing to comment.

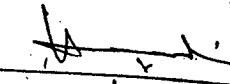
11. That the respondents submit that in fact there is no merit in this case and as such the application is liable to be dismissed with cost.
12. That the respondents submit that the applicant is not entitled to get any relief sought for and the operation of the impugned order dated 21.06.2001 is legal and as per the departmental norms. The prayer of the applicant for stay of the order dated 21.06.2001 is illegal, arbitrary and without jurisdiction. Such a pressure by the applicant on the administration is to put the administration in an embarrassing situation.
13. That the respondents pray that in the above mentioned circumstances the application is liable to be dismissed with cost.

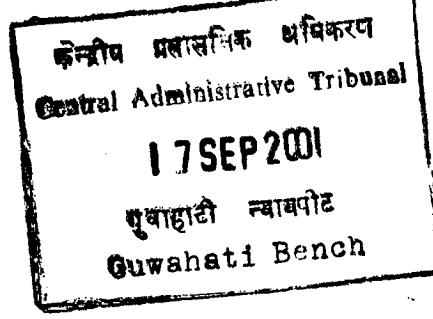
VERIFICATION

I, C. MURMU

as authorized do hereby solemnly declare that the statements made above in the Petition
are true to my knowledge, belief and information and I sign the verification on this

23rd day of August 2001.


23/8/01
DECLARANT



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filed by the applicant
through
Sri K. Bhattacharjee
Advocate
14/9/2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. 266/2001.

In the matter of -

Rejoinder to the written statement
filed by the Respondent.

-And-

In the matter of -

Sri J.P. Bhattacharjee.

..... Applicant.

-Versus-

Union of India and others.

..... Respondents.

Most Respectfully Sheweth :-

1. That a copy of the written statement has been served upon the applicant and the applicant after going through the said statements had been understood the contents.
2. That with regard to the statements made in paragraph 5 of the written statements the applicant

states

states that it is a fact that he had applied for transfer under Rule 38 of P. and T. Manual Vol. IV, and the same was forwarded to the concerned authority for consideration. It is pertinent to mention that while he was working at Shillong and being the Senior J.T.O. he approached the authority for his transfer even by foregoing the seniority as his presence in the family was very much needed for his wife being panic attack of secondary depression in 1997. Being no other male member in the family the need of hour calls for the applicant's presence in the family. But due to the delay in considering the application under Rule 38 the applicant's wife finding no other way had to approach the local M.P. and placed her grievances to save her family. Accordingly the local M.P. being sympathetic to her and he being the Minister of the said department directed the authority to consider the case of the appellant. Thereafter the Divisional Engineer, Technical issued a letter on 30.12.98 (Annexure - II of the application) stating inter alia that necessary Order for posting can be issued from this office provided the applicant was to forgo the seniority out of which allowance i.e. the deputation allowance, T.A./D.A. etc. and other transfer benefits. In reply to that letter

the.....

the applicant by his letter dated 30.12.98 accepted the condition of his transfer and also stated in the said letter that he does not ~~desire~~ to be back in the parent station i.e. N.E. Circle under the medical ground of his family. So far the question of violation of Rule 20 of the C.C.S. (Conduct Rules) is concerned the applicant states that ~~anyway~~ he had never approached nor attempted to bring any influence over ~~the~~ any superior authority it is his wife who approached the Minister in her personal capacity moreover the applicant at that relevant time was performing his duty at Shillong.

(A copy of the letter annexed hereto as Annexure - IV).

3. That with regard to the paragraph 6 of the written statement the appellant denies the correctness of the same to the extent that the applicant never made any personal request for temporary transfer rather the letter dated 30.12.98 would go to show that the proposal of transfer of the applicant came from the respondent with certain conditions after the appellant had filed an application under Rule 38 for inter-circle transfer.

4. That with regard to paragraphs 8 and 9 the applicant denied the correctness of the same and reiterates the statements so made in paragraphs 9(a) & 10 of the application.

5. That the applicant submits that while his application under Rule 38 was pending one of his contemporary Sri Jyoti Kumar, J.T.O., Shillong Satellite was transferred to Kerala Circle under Rule 38 but his application was not yet considered.

Verification.....

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VERIFICATION.

I, Sri Jyoti Prakash Bhattacharjee, aged about 46 years, s/o. late Jitendra Chandra Bhattacharjee, working as J.T.O. in the office of Divisional Engineer, Microwave, Silchar, do hereby verify that the statements made in paragraphs 1 & 4. are true to my personal knowledge, belief and information and I sign this Verification on this 15/9 day of September, 2001, at Guwahati.

Jyoti Prakash Bhattacharjee

Signature.