

30/100
3
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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4/1/2017
SECTION OFFICER (Judl.)

ORIGINAL APPLICATION NO. 35/2001

S. Dasgupta Applicant.

VERSUS

Union of India & Ors Respondents.

For the Applicant(s) M. Chandra
S. K. Goswami

For the Respondents. C.G.SL.

NOTES OF THE REGISTRY

DATE

ORDER

This application is in form
but not in the consideration
Petition No. 20903/Civ dated
M. 1. 2001
for it.
IPO No. 5G421916
Dated 24.1.2001

Notified
By Register.

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

Hon'ble Sri K.K.Sharma, Member(A).

Issue notice as to why the application
shall not be admitted. Also issue notice as to
why the impugned order of transfer and posting
of the applicant fro 307 Stn Wksp EME to Hq 1
EME Centre, Secunderabad shall not be
suspended. Notice returnable on 8.2.2001.

Meanwhile the operation of the
order No.20903/Civ dated 25.1.2001 shall
remain suspended.

List on 8.2.2001 for further orders.

CCUSharma

Member

h
Vice-Chairman

2.2.2001

1) Service of Notice

Copy Encls fees Rs.5/-

not deposited by
the applicant Advocate

8.2.01

List on 26.2.01 to enable the

respondents to file written statement

CCUSharma

Member

h
Vice-Chairman

2) Enveloped is not
sealed.

8.2.01

List on 19.3.2001 to enable the

respondents to file written statement.

CCUSharma

Member

h
Vice-Chairman

3) Service of Notice and
issued.

1m

26.2.01

List on 19.3.2001 to enable the

respondents to file written statement.

CCUSharma

Member

h
Vice-Chairman

Boi 15.2.2001
Service of Notice
issued to the respondent
dents vide O. No. C02-607
Dated 20.2.2001

Boi

No W/S has been

filed by the Counsel.

V

13

23/2/01

16.3.01

Mr. W/S has been
ferred
for

19.3.2001

One more familiar issue relating to transfer and posting. By order dated 28.9.2000 the applicant was transferred from 307 Station Workshop EME to HQ 1 EME Centre Secunderabad. The applicant sought for deferment of his posting at Secunderabad, more particularly on the ground of education of his children. The respondents turned down his prayer. Hence this application.

Heard Mr M.Chanda, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. The respondents did not file any written statement till now, but Mr Deb Roy submitted that the case of the applicant was duly considered by the authority. But in the public ^{interest} ~~accordance~~ ^{deference} to his prayer.

We have given our anxious consideration on the matter. The transfer order as such cannot be faulted. Mr Chanda also submitted that in due ^{difference} ~~disorder~~ to the transfer order that the applicant is desired to join in the new posting. He further submitted that the examination of the school going children of the applicant are going to be over soon and thereafter the applicant should be accommodated till the end of 31.3.2001.

Considering all the aspects of the matter we dispose of the application with a direction to the respondents to allow the applicant to continue in his present posting till 31.3.2001 and thereafter the transfer order should be given effect to.

The application is accordingly disposed of. No order as to costs.

K. I. Shah
Member


Vice-Chairman

pg

KJ
20/3/01

307 Station Workshop EME
C/O 99 APO

20201/PC/Civ

12 Mar 2001

Mr. Arunesh Deb Roy, Sr.CGSC
Central Administrative Tribunal
Guwahati Bench.

WRITTEN STATEMENT FOR AND ON BEHALF OF THE RESPONDENTS
AGAINST OA 35/2001 FILED BY SRI S DASGUPTA

Dear Sir,

1. Reference O.A. 35/2001 filed by Shri S Dasgupta Vrs UOI as received from CAT, Guwahati under Form No.8 of Tribunal Act on 22 Feb 2001.
2. Parawise draft copy of the above O.A. has already been submitted to Government of India, Ministry of Law, Justice & Company Affairs, Department of Legal Affairs, Branch Secretariat, Calcutta for vetting. In the meantime you are requested to submit the Writ Statement to defend the case with provision to amend at later date if required. We, therefore, enclose a copy of our draft and a photocopy of signal from Respondent No.5 containing some instructions.
2. You are, as such, requested to prepare the same and submit accordingly.

Endo: As above

UK Sarma
(UK Sarma)
Maj
Officer Commanding

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. No. 35 of 2001

(Sri Samarendra Dasgupta

Vs

Union of India & ors).

**WRITTEN STATEMENT SUBMITTED BY RESPONDENTS
No 1,2,3,5 AND 6.**

I, Major UK Sarma, Officer Commanding, 307 Station Workshop EME, C/O 99 APO, does hereby solemnly affirm and state as follows:-

1. That, this answering Respondent does not admit any of the facts, statements, allegations and averments made in the original application save and except those have been specifically admitted hereunder in this written statement.
2. That as regards the context of paragraphs 1,2,3, and 4.1 this answering Respondent does not make any comments.
3. That as regards the contest of paragraph 4.2 of the original application this answering Respondent respectfully states that the statements enumerated are not denied.
4. That as regards the contents of paragraphs 4.3 of the original application this answering Respondent respectfully admits that the applicant having received the order of posting from the Respondent No. 5 represented through his petition dated 4.1.2001 on material grounds of his children education. But due to exigencies of services, his request has been set aside by the Respondent No.5 i.e. EME Records, Secunderabad and ordered to make a forthwith move.
5. That as regards the contents of paragraph 4.4 of the original application this answering Respondent respectfully states that the applicant duly represented through his petition dated 4.1.2001 for a stay till the end of the academic session was denied due to exigencies of services.

.....Contd. p/2-

6

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.**

O.A. No. 35 of 2001

(Sri Samarendra Dasgupta

Vs
Union of India & ors).

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No 1,2,3,5 AND 6.**

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.....Contd. p/2.

6. It may be averred that the applicant himself represented through his application dated 7 Jul 2000 pursuant to orders embodied in Min of Def OM. No. 4(19)83/D(Civ-1) dated 11 Jan 84 and accordingly considered for posting at a choice station. The impugned transfer order was issued on request of the applicant and does not have any nexus with the orders framed under Min of Def letter dated 11 Jan 84. Considering the grounds of representation of the applicant and due to exigencies of services the present posting was sympathetically issued in public interest. As a matter of fact deferment of posting for civilian clerical cadre is extendable upto 90 days only. As such, Respondent No.5 has acted to the extent of his power as framed under rules.

7. It is pertinent to mention that there is no fixed tenure posting for civilian employees working in this department has been framed. But their posting is normally ordered on promotion or on request. The impugned posting order was issued on request and may be cancelled or postponed till the ground is achieved.

8. That as regards the contents of paragraph 5,6,7,8,9,10,11 and 12 of the original application this answering Respondent does not make any comments.

9. The Respondents beg to say that the Hon'ble Tribunal may be please to vacate the interim order so that the order may be given effect.

VERIFICATION

I, Major UK Sarma, Officer Commanding, 307 Station Workshop EME, C/O 99 APO, do hereby solemnly affirm and state that the statements made in this verification including those have been made on paragraphs 1 to 3 of the statement are true to my best of knowledge and belief and these have been made in paragraphs 4,5,6,7,8 & 9 are true to the best of my information which have been derived from the records and the rests are my humble submission before the Hon'ble Tribunal.

And I verify and sign this verifications this 01 Day of March 2001.

Utpal Kumar Sarma
Declarant

-2-

6. It may be averred that the applicant himself represented through his application dated 7 Jul 2000 pursuant to orders embodied in Min of Def OM. No. 4(19)83/D(Civ-1) dated 11 Jan 84 and accordingly considered for posting at a choice station. The impugned transfer order was issued on request of the applicant and does not have any nexus with the orders framed under Min of Def letter dated 11 Jan 84. Considering the grounds of representation of the applicant and due to exigencies of services the present posting was sympathetically issued in public interest. As a matter of fact deferment of posting for civilian clerical cadre is extendable upto 90 days only. As such, Respondent No.5 has acted to the extent of his power as framed under rules.

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9. The Respondents beg to say that the Hon'ble Tribunal may be please to vacate the interim order so that the order may be given effect.

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I, Major UK Sarma, Officer Commanding, 307 Station Workshop EME, C/O 99 APO, do hereby solemnly affirm and state that the statements made in this verification including those have been made on paragraphs 1 to 3 of the statement are true to my best of knowledge and belief and these have been made in paragraphs 4,5,6,7,8 & 9 are true to the best of my information which have been derived from the records and the rests are my humble submission before the Hon'ble Tribunal.

And I verify and sign this verifications this 01 Day of March 2001.

Utpal Kumar Sarma
Declarant

095132

PP DTG 081530

FM EME RECORDS

TO 307 STN WKSP EME

BT

UNCLAS A 4113

POSTING CIV CLK . YOUR Q 8024 FEB 27 . NOTICE CAT GUWAHATI NOT

RPT NOT RECD . DETAILS DA FILED BY S DAS GUPTA NOT RPT

NOT KNOWN . ALL FACTS KNOWN YOUR WKSP . FACTS FOLLOWS

ALFA . APPLICATN SOUGHT POSTING IN TERMS CPRO 16/84 . BRAVO .

POSTING ORDERED FRIST CHOICE STN VIDE 1647/51/CA 3 SEP 28 LAST

YR . CHARLIE . REQUESTED DEFERMENT VIDE DO 20903/CIV OCT 12

LAST YR . DELAT . DEFERMENT THREE MONTHS ACCORDED VIDE

DO 1637/CA 3 OCT 28 LAST YR . ECHO . INDL SOUGHT FURTHER

DEFERMENT UPTO MAR 31 VIDE APPLICATION DEC 08 LAST YR RECD

UNDER YOUR UPTO MAR 31 VIDE APPLICATION DEC 08 LAST YR RECD

UNDER YOUR 20903/CIV DEC 13 LAST YR . FOXTROT . NO FURTHER

DEFERMENT ACCORDED . GOLF . ALSO REF YOUR 20903/CIV JAN 08

AND 25 . HOTEL CGSC MAY BE APPRISED ABOVE FCTS COMMA

REGARDING INDL CARRYING OF ALL INDIA TRANSFER LIBILITY AND LAW

OF HN KIRTAMAN VS UOI JT 198(3) SC 131 AND GUJARAT STATE

ELECTRICITY BOARD VS ATMA RAM SUNGOMAL POSHAMI 1989 (3) JT

SC 30 . APPLICATNT SOUGHT DEFERMENT UPT MAR 31 VIDE APPLICA-

TION JAN 04 . APPLICANT MAY ALSO BE ASKED SUBMIT UNDERTAKING

TO CAT GUWAHATI TO THAT EFFECT . MOVE MAY BE CARRIED OUT

ACCORDINGLY . REQUEST FWD DA FILED BY APPLICANT

BT

CFN A 4113

TOR/ES/GH09/091300/BVS

By

केन्द्रीय प्रसंसिक विधिकरण
Central Administrative Tribunal
144 29 JAN 2001
गुवाहाटी ब्याचनिट
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

(An application under Section 19 of the Administrative
Tribunal Act, 1985)

Title of the case : O.A. No. 35 /2001

Shri Samarendra Dasgupta : Applicant

- Versus -

Union of India and others : Respondents.

I N D E X

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4.	5	Copy of the representation dated 4.1.2001	17-18
5.	6 & 7	Copies of the Hon'ble Supreme Court judgement and letter dated 25.1.2001	19 20

Date:- 29.1.2001

Filed by
Sujit Ghosh
Advocate

Samarendra Dasgupta

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

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O.A. NO.

35

/2001

BETWEEN

Shri Samarendra Dasgupta
Son of Shri Sunil Dasgupta
Working as a UDC
307 Station Workshop EME.
C/O. 99 APO
Guwahati, Assam.

- AND -

1. Union of India
through the Secretary to the
Government of India,
Ministry of Defence,
New Delhi.
2. Adjutant Generals Branch
Army Headquarter
DHQ, P.O. New Delhi -11.
3. Director General of EME
Master General Ordnance Branch
Army Headquarter ,
DHQ P.O. New Delhi-11

Samarendra Dasgupta

Filed by the
applicant through
Sujit Ghosh
Advocate
29.1.2001

4. Commandant
1 EME Centre
Secunderbad.

5. Officer in-charge
EME Records
Secunderbad.
6. Officer Commanding
307 Station Workshop
EME, C/O 99 APO.

DETAILS OF APPLICATION

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

This application is made against the impugned order of transfer and posting issued under letter No. 1637/51/CA 3 dated 28.9.2000 issued by the Senior Record Officer for Officer in-charge Records, EME Records Secunderabad from 307 Station workshop EME C/O 99 APO to Secunderabad and also praying for a direction upon the respondents to allow the applicant to continue in his present place of posting till the Academic Session of the children are over.

2. Jurisdiction of the Tribunal.

The applicant declare that the subject matter of the applicant is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that the application

Damrendra Singh

is within the limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case

4.1 That the applicant is a Citizen of India and as such he is entitled to all the rights, protection and privileges as guaranteed under the Constitution of India.

4.2 That the applicant is working as a UDC in the office of the Civil Adm. of 307 Stn Workshop, EME, C/o 99 APO. The applicant is permanently residing at Guwahati and applicant was posted in this unit during Oct, 1985 under the offices from 507 Army Base Workshop, Kankinara, thereafter applicant was promoted as UDC and completion of 15 years of tenure of posting in the N.E. Region was completed in the year 1999 and thereafter applicant submitted a representation on 4th July 2000 for his choice station posting i.e. (a) Secunderabad (b) Pune (c) Calcutta and thereafter authority was pleased to issued transfer and posting order at Secunderabad vide letter No. 1637/51/CA 3 on 28.9.2000. It is pertinent to mention here that Major after issuing of transfer and posting order, Major U.K. Sarma, Officer commanding wrote a personal letter to the Respondent no.4 where in it was stated that , as Sri S. Dasgupta is a fine Worker and his activities in this unit is very good that until his promotion order is issued he should be retain in the present place of posting for the convenience of the office. Therefore, after received of this letter the Respondent

S. Dasgupta

Respondent No. 4 stayed his transfer and posting order dated 28.9.2000 vide office letter no 1637/CA3 dated 28.10.2000.

Copies of the Representation dated 4.7.2000, transfer and posting order dated 28.9.2000 and letter dated 12.10.2000 and letter dated 28.10.2000 are annexed as Annexure- 1, 2, 3 and 4 respectively.

4.3 That your applicant in view of that stay order of the Respondent No. 4 is continuing to discharge his duties in the same place of posting for to the satisfaction of the Respondents. But unfortunately when the over ^{load} burden of work is over then the Respondents issued a letter on 28.10.2000 to the applicant where in it is stated to carry out the transfer and posting order dated 28.9.2000. Thereafter your petitioner submitted a representation on 27.11.2000 and also on 4.1.2001 wherein it is stated by the applicant that his two children are studying in Army School, Narangi in Class VII and in Rhino Nursery in LKG Student under the CBSE Board. The final examination of the children of the applicant is scheduled to held in the month of March 2001. Wherein the applicant prayed before the respondents that the applicant should be ^{retained} stayed in the pregent place of posting till the final examination of the children ^{are} over unless the Academic Carrer of the children will be effected adversely, if the same is required to be carried out in the middle of the Academic Session.

Copy of the representation dated 4.1.2000 is enclosed as Annexure -5.

Omarendra Daigne

4.4 That in this connection it is stated that Children of the applicant who are presently studying in Army School under the CBSE, course it is a mid session for them, therefore, the impugned order of transfer which is issued in the middle of the Academic Session is not sustainable in the eye of law. If the transfer order is implemented in that event it will cause irreparable loss to the education of the children of the applicant, who likely to appear Annual/Final Examination in the month of March 2001. On that score alone the impugned order of transfer and relieving order are liable to be set aside and quashed.

4.5 That it is settled ~~t~~ by the Hon'ble Supreme Court that during the middle of the Academic Session no employee should be transferred until and unless order of transfer is made due to administrative urgency. In the instant case it is an unilateral transfer and there is no urgency in effecting the transfer order therefore Hon'ble Tribunal be pleased to stay the operation of transfer order dated 28.9.2000 which is going to be effected on 31.1.2000 which is evident from the letter of the Respondent No. 6 dated 25.1.2001. The applicant approached the respondents by submitting a representations for cancellation/modification of the impugned transfer and posting order dated 28.9.2000 for staying the impugned transfer order till the March 2001 i.e. upto the Academic Session is over but the respondents did not consider the case of the applicant, although this impugned order of transfer order dated 28.9.2000 was stayed for about ~~three~~ three months for their administrative exigencies and also for their over load of the work of the 307 station workshop of EME. It is also relevant to mention here that the tenure of

Amarendra Dasgupta

of the applicant competed in the ^{year} 1999 but during that time the ^{applicant} respondents was not transferred, the applicant but now where two months is left for the completion of the Academic Session of the children, in this period the respondents are directed to transferred the applicant to the Secunderabad which is adversely effected the carrier of the children, in this circumstances finding no other alternative the applicant approaching this Hon'ble Tribunal for protection his fundamental and legal rights.

In view of the Hon'ble Supreme Court Judgement reported in 1994

Sub (e) SCC 666 applicant is entitled to retain the present place of posting till the Academic Session is over.

Copies of the Hon'ble Supreme Court Judgement and letter dated 25.1.2001 are enclosed as Annexure - 6 and 7.

5. Grounds for relief(s) with legal provision.

5.1 For that the children of the applicant are studying at Class VII and LKG Student respectively in the School under the CBSE Course at ~~Narengi~~ Narengi Army School and they are appearing Annual Examination during the month of March , April, 2001. As such shifting of the family of the applicant including children at this stage is not possible on the part of the applicant.

5.2 For that it is a settled position of law laid down by the Apex Court that no transfer should be effected

Samarinda Dabghat

till Academic Session/Course is over in the absence of extreme urgency.

5.3 For that the impugned order has been issued in total violation of professed norm and also violated the transfer policy of the Department.

6. Details of remedy exhausted.

The applicants beg to state that there is no other alternative remedy under any rule available before the applicant then to approach the Hon'ble Tribunal by way of filing this Original Application.

7. Matter not pending before any other Court/Tribunal.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court of law or any other authority or any other Bench of the Tribunal and/or any such application writ petition or suit is pending before any of them.

8. Reliefs sought for :

In view of the facts and circumstances stated in paragraph 4 of this application, the applicant prays for the following reliefs :

8.1
8.2 That the Hon'ble Tribunal be pleased to set aside the impugned order of transfer and posting dated 28.9.2000 (Annexure-2) issued under letter No. 1637/51/CA3, so far as the applicant is concerned.

Damodar Dabwagle

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in his present place of posting at 307 Stn Workshop EME, C/O 99 APO till Academic Session is over.

8.3 Costs of the application.

8.4 Any other relief or reliefs to which the applicant is entitled to as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for :

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

9.1 Hon'ble Tribunal be pleased to stay the operation of the impugned order of transfer and posting issued under letter No. 1637/51/CA3 dated 28.9.2000 (Annexure- 2) so far as the applicant is concerned till the Academic session/course of the children are over.

10.

This application is filed through Advocate.

11. Particulars of Postal Order :

- i. I.P.O. No. : 5G 421916
- ii. Date of Issue : 24.1.2001
- iii. Issued from : G.P.O. Guwahati.
- iv. Payable at : G.P.O., Guwahati.

12. List of enclosures :

As stated in the Index.

Xamarendra Dibangpur

VERIFICATION

I, Shri Samarenra Dasgupta, son of Sri Sunil Dasgupta aged about 40 years resident of Guwahati, Assam and working as a UDC 307 Station Workshop EME, C/O 99 APO Guwahati, applicant in this original application do hereby verify that the statements and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 29th day of Janyary, 2001 at Guwahati.

Samarenra Dasgupta
Signature.

To

The Officer-in-Charge,
EME Records,
Secunderabad -21

[Through proper channel]

Subject: - Posting of civilian clerks.

Sir,

With great reverence and humble submission I beg to lay the following facts for your kind consideration and favourable action please.

2. That, I was posted to this unit during Oct 1985 by your good offices from 507 Army Base Workshop, Kankinara. Since that time I remain embraced with the unit.

3. Whereas, in terms of Ministry of Defence OM No 4(19) 83/D (Civ-1) dated 11 Jan 84 tenure of posting in NE Region has been fixed for a maximum period of 6 years or two tenures. I was allowed to avail of the facilities as contained in the letter ibid (copy reproduced in CPRD 16/84).

4. Pursuant to orders contained in Min of Defence OM dated 11 Jan 84, I was expecting a turn over posting but even after a lapse of 15 years I do not foresee any reason for my posting. In the meantime, I have been ordered promotion to UDC and absorbed in situ without any privilege whatsoever defined in the chartered duties of UDC. 307 Station Workshop EME is authorised two civilian clerks and five Combatant clerks as per in Peace Establishment of this workshop while holding two UDCs, two JCOs and one NCO which is not in conformatory to authorised ratio. In other words, my promotion may be defined as an upgradation only.

5. That, with the emerging scenario of NE Region and the burgeoning activities of recalcitrant, it is practically impossible for one to settle down permanently in this region. Moreover, my second upgradation under the present policy of Assured Career Progression Scheme (ACPS) is due in Aug 2003 and if promotion to Assistant Grade is luckily ordered, I should not see any reason for my immediate posting. Under both the circumstances, I am likely to be absorbed against the functional capacity of this wksp finally rendering me good for nothing at old age. With this considerate view I beg of your adjudication on material grounds of humanity and out of turn assistance to an employee for materialisation of turn out posting based on the Min of Def OM dated 11 Jan 84. I make no apology for an aimless and unpleasant tenure in this region.

*Certified to be true wky
Sivill Ghosh
Apoorva*

Contd. 2/-

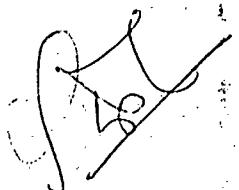
As such, I humbly request you to consider my earnest request and issue necessary posting orders in Public interest to any one of the following places :-

(a) Secunderabad (b) Pune (c) Calcutta

7. Needless to summarise that a long posting at a place where individual interest is apparently nil can hardly yield in proficiency, on the contrary depression engrosses him away with the flow of time leaving one in a dissatisfied and broken state. Therefore, your intervention in this matter could resolve and evolve a pleasant time for me.

Thanking you,

Yours faithfully,



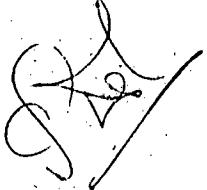
[S Das Gupta, U.D.C.]
307 Station Workshop EME

Place: Guwahati

Date: 6th Jul 2000

Advance copy to: -

O/C EME Records, - for his kind information and necessary action
1 EME Centre, please.
Secunderabad - 21



[S Das Gupta, U.D.C.]

Telephone : 7882321

Vaidyut Aur Yantrik Engineer
Abhilekh Karyalaya
EME Records
Secunderabad - 500 021

1637/ 5 /CA 3

28 Sep 2000

307 Stn Wksp EME
C/O 99 APO

POSTING : CIVILIAN CLERKS

1. Refer to your letter No 20903/Civ dated 06 Jul 2000.
2. The following posting is ordered on permanent duty and move will be carried out within 7 days from the date of receipt of this posting order:-

<u>Ser. No.</u>	<u>Details</u>	<u>From</u>	<u>To</u>
(a)	14690585L UDC Shri S Das Gupta	307 Stn Wksp EME C/O 99 APO	HQ 1 EME Centre / Secunderabad

3. The occurrence will be published in Unit Part II Order. Copy of movement order will be endorsed to this office.

4. The above named individual will travel at state expenses and he will have to make his own arrangement for accommodation at the new station.

5. In case, the above named individual is involved in disciplinary case, his move will not be carried out before finalisation of the case, unless specific sanction of OIC EME Records is obtained.

(Xavier PA)

Major

Senior Record Officer
for Officer In Charge Records

Copy to:-

HQ 1 EME Centre - for information
Secunderabad

Certified to be true copy
Sivaprasad
Advocate



My UK Army
Officer Commanding

20903/CIV

307 Station Workshop EME
C/O 99 APO

12 Oct 2000

Dear Brigadier Sharma,

1. I am approaching you in connection of a transfer order of my clerk Shri S Das Gupta who stands posted to your unit vide EME Records letter No 1637/51/CA 3 dated 28 Sep 2000. Shri Das Gupta was posted to this unit during 1985 and has been found discharging duties very efficiently. He has been right hand and personal assistant to Officer Commanding. Maj. RS Mehta, my predecessor has personally briefed me about this particular person and I have always found him by my side. I was practically very relaxed about civil administration during his stay.
2. On receipt of the posting order most of my employees have sunk into gloomy and approaching me with request to hold him back till his promotion is ordered. They have also mentioned that in case Shri Das Gupta is having any special benefit from the department, my employees will readily relieve him. In fact Shri Das Gupta is not only a fine worker but also a good friend of my civilian employees. I personally feel his departure from the unit will be a great loss. Especially welfare activities of the unit and that of civilian staff would get a serious stopgap.
3. Besides, I am the only Combti officer and cannot afford to go in details to all the matter. Civilian subjects are somewhat complicated and needs sound interpretation as well as proficient action. Shri Das Gupta is very much capable of all the matters relating to civil administration. I may admit that Mr. Arup Das, another officer of the unit is less experience being new appointee and nothing much can be expected from him at this stage.
4. In fact I am having one more civilian clerk besides Shri Das Gupta but being a lady she goes on her own speed and she is also very much dependant on Shri Das Gupta.

Contd.

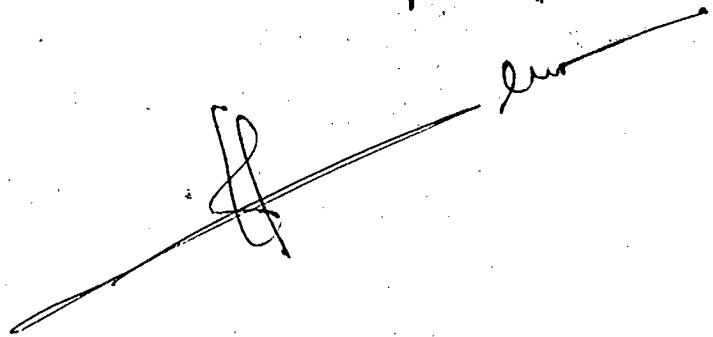
*Certified to be true w/
S. Bhattacharya
Advocate*

6. It is true that Shri Das Gupta has been trying for posting since long and all the OC's have turned down with request. While the present application was forwarded to you when I was on leave and Mr. Arup Das, AEE decided at his own. However, I have personally talked with Mr. Das Gupta who has agreed for a deferment and continue in this wksp. I am enclosing a certificate to this effect from the individual duly signed.

6. May I therefore request you to consider the case sympathetically and defer the posting order of Mr Das Gupta as a special case?

Will soon regards

Sincerely yours



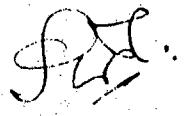
Brig KK Sharma
Commandant
1 EME Centre,
Secunderabad

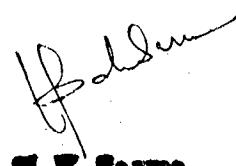
CERTIFICATE

I, No 14690585L UDC S Das Gupta, solemnly state that in the event of deferment of my present posting issued vide EME Records letter No.1637/51/CA 3 dated 28 Sep 2000 I shall have no objection whatsoever and shall continue in this unit by the period the deferment is sanctioned.

Station : C/O 99 APO

Dated : 12 Oct 2000


(S DAS GUPTA, UDC)


U K Barma
Major
Officer Commanding
107 Stn WKSP RMD



विरोधियर कृष्ण कुमार शर्मा
प्रभारी अधिकारी
Brigadier K K Sharma
Officer-in-charge

1637/CA3

विद्युत और यांत्रिक इन्जीनियरी केन्द्र
अभिलेख कार्यालय
सिकंदराबाद (आ.प्र.)-५०० ०२१
EME Records
Secunderabad (A.P.)-500 021

28. Oct 2000

1. Please refer to your DO letter No 20903/Civ dt 12 Oct 2000.

2. In view of your request, posting of 14690585L UDC S Das Gupta has been deferred for a period of three months from the date of issue of posting order ie 28 Dec 2000.

3. Please utilise the period to train whomever you deem fit in your unit and thereafter carry out the posting by the due date ie 28 Dec 2000.

4. Please do not make any individual indispensable, supposing Shri S Das Gupta resigned from his job, the civil adm of 307 Stn Wksp will still continue. Over dependence on any indl is best avoided. Learn to trust in GOD and yourself instead.

Maj UK Sarma
Officer Commanding
307 Station Workshop EME
C/O 99 APO

Certified to be true copy
S. K. Ghosh
Advocate

To

The Officer Commanding
307 Station Workshop EME
C/O 99 APO

Subject:- Deferment of posting

Sir,

With reference to your verbal instruction dated 02 Jan. 2001, I beg to represent as under for your necessary consideration and review of orders please.

That, I had approached OIC EME Records vide my application dated 08 Dec 2000 fwd under this office letter No.20803/Civ dated 13 Dec 2000 on material grounds of education of my two children who are studying in Army School, Narangi in Class VII and in Rhino Nursery School in LKG Std and their school session is completing in Mar 2001. Obviously both are minor and need constant care and guidance from both the parents. As a civilian employee I had always been privileged to keep my family with me making my children solely dependent on me for each and every thing. Parting at this period especially on the eve of their final examination would adversely affect them mentally and physically leading to irreparable loss. This is a vital point of consideration and sensitive to materialize my move directly being attributable to depression and agony of my children.

That, the second problem of accommodation is still unresolved respite my formal approach vide application dated 27 Nov 2000 forwarded to Station HQ, Narangi vide this wkspl letter No.20201/Civ. dated 30 Nov 2000. In the meantime, the court case on this behalf filed by a group of civilian employees of this area came to an end unfinished for want of jurisdiction with direction to approach appropriate forum. It is, due to this reason perhaps the allotting authority is maintaining a role of silent spectator gazing for an opportunity. In view of the present situation raised by court case I dare to take any risk on assumption of retention being sanctioned and/or shall not be evicted from accommodation merely on humanitarian sake firmly knowing that an ego has replaced the contention of humanity. I enclose hereunto a photocopy of the verdict passed by Central Administrative Tribunal, Guwahati Bench as evidence.

That, disturbance is still prevailing outside the camp area and in the meantime, a number of assassinations have taken place. The recalcitrance is overactive and going on their own line of action increasing the number of assassins. As such, lives outside Narangi Camp is thoroughly insecure and for me it would be practically impossible to adjust at this fag end especially when random assassins are taking place.

That, the Special Duty Allowance as sanctioned to the employees from other region has been refused to me by CDA, Guwahati despite there being a clear verdict from the court of law. This has added further to my problems and without materialization of eligibility my departure from this region would succumb to a comprehensive loss of about Rs.30, 000/- I enclose hereunto a photocopy of the verdict passed by Central Administrative Tribunal, Guwahati.

.... Contd. 2/-

*Certified to be true copy
S. N. Chakrabarty
Advocate*

That, honestly admitting I am bewildered to notice the accelerated action being taken for materialization of my posting. Presently, the Union of India has very kindly sanctioned deferment of posting to all walks of employees till the end of academic session and the same has been made applicable even in the case of combatant staff. Para (e) of AG's Branch letter No A/00880/Org -2 (I of R)(a) dated 11 Aug 89 refers in this context. I enclose a photocopy of the same for your perusal please. As such denial of deferment till the end of the academic session is quite unnatural and surmounts to harassment because of my exposed smartness in initiating a case for posting.

I had succeeded this posting after a long persuasion and this is due to this reason I would like to avail of the sanctioned privilege but cannot go beyond the cost of myself. Under the circumstance, I would again pray in humble submission that a deferment till the end of the academic session ending on March 31, 2001 be got accorded on humanitarian grounds invoking natural justice to my family and children. I do not foresee any reasons of being indispensable to my new office of posting.

To conclude the above I sum up in nut shell that my move at this point of time would make me supine inasmuch as impending loss is apprehended. I am afraid that present move would rob my peace of mind with an inexorable loss from all angles. As such, I would humbly request you to take up a case with the competent authority to get a deferment till 31 Mar 2001 in recognition to genuine and natural justice.

Thanking you,

Yours faithfully,



(S Das Gupta, UDC)
307 Station Wksp EME
C/O 99 APO

Dated, 04 Jan 2001

were being paid special pay in addition to their pay but the direct recruits were denied this privilege. This Court held that the denial of special pay to Class I direct recruits amounted to violation of Articles 14 and 16 of the Constitution and that they were entitled to special pay at the same rates at which it is paid to the transferred officers working in the Centre.

4. The learned counsel for the appellants has sought to distinguish this case on the ground that in that case this Court found that the special pay was not being paid to the transferred officials for compensating their displacements or for their qualifications but was being paid for the arduous and special nature of the functions to be discharged in the Telecommunication Research Centre. It has been urged that in the present case special pay was being paid to the officials appointed by way of transfer to enable them to encounter the problems due to the disturbance involved. The said explanation that has been put forward for grant of special pay to transferee officers cannot, however, be accepted. In Rule 1307 [FR 9 (25)] of the Indian Railway Establishment Code, Volume II, the expression "special pay" has been defined as under :

"Special pay. — Means an addition, of the nature of pay, to the emoluments of a post or of a railway servant, granted in consideration of :—

- (a) the specially arduous nature of duties; or
- (b) a specific addition to the work or responsibility and includes non-practising allowance granted to doctors in lieu of private practice."

Moreover, the High Court has found that the averment in the writ petition with regard to the posts having arduous nature of duties was not controverted in the affidavit that was filed on behalf of the appellants in the writ petition in the High Court. In these circumstances, we find no basis for distinguishing the instant case from the case of *Telecommunication Research Centre Scientific Officers' (Class I) Assn.*

5. We, therefore, find no merit in this appeal and it is accordingly dismissed. No order as to costs.

1994 Supp (2) Supreme Court Cases 666

(BEFORE P.B. SAWANT AND N.P. SINGH, JJ.)

DIRECTOR OF SCHOOL EDUCATION,
MADRAS AND OTHERS

Appellants;

versus

O. KARUPPA THEVAN AND ANOTHER

Respondents.

Civil Appeal No. 546 of 1994, decided on January 31, 1994

A. Service Law — Transfer of employee — Transfer for exigencies of administration — Affording prior hearing in case of — Held, not necessary — Administrative Law — Natural justice — Hearing — Inapplicability of the principle of (Para 2)

B. Service Law — Transfer of employee — Employee's children studying in school — Transfer of such employee during mid-academic term — Propriety — In

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by [Signature]

absence of urgency such transfer restrained from being effected till the end of that academic year (Para 2)

H-R/13371/SLA

Appeal allowed

ORDER

1. Leave granted. Heard both counsel.
2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs.

1994 Supp (2) Supreme Court Cases 667

(BEFORE S.C. AGRAWAL AND M.K. MUKHERJEE, JJ.)

A.M. VADI

Appellant;

versus

INDIA TRADE PROMOTION ORGANISATION
AND ANOTHER

Respondents

Civil Appeal No. 713 of 1994 in SLP (Civil) No. 20597
of 1993, decided on February 4, 1994

A. Service Law — Appointment — Selection — Non-selection to a post abroad for want of adequate balance service to fulfil the condition to serve the employer for the requisite minimum period (two years in this case) after completing the normal tenure of such posting (three years in this case) abroad — High Court's interference in exercise of its writ jurisdiction, with such a decision of the Selection Committee — Held, the High Court could not find fault with the Selection Committee's decision for not curtailing the period of foreign service for a few months to accommodate the writ petitioner (herein Respondent 2) — Further, in a writ petition against non-selection on the said ground, the High Court could not examine the eligibility of the selected candidate — Constitution of India, Art. 226

B. Service Law — Appointment — Selection — Non-selection — Selection Committee's decision regarding — Scope of judicial review — Constitution of India, Art. 226
Held:

The High Court in exercise of its jurisdiction under Article 226 of the Constitution was not justified in finding fault with the decision of the Selection Committee because in rejecting the candidature of Respondent 2 the Selection

307 Station Workshop EME
C/O 99 APO

20903/Civ

25 Jan 2001

Sri S Dasgupta, UDC
307 Station Workshop EME
C/O 99 APO

POSTING : CIVILIAN CLERKS

1. Refer your application dated 04 Jan 2001.
2. Your case for deferment of posting upto 31 Mar 2001 was taken up with EME Records, Secunderabad vide this office letter No. 20903/Civ dated 08 Jan 2001. EME Records has not accepted, the case and ordered to carry out move forthwith. As such, you are hereby directed to be ready to move at the earliest. You will be accordingly relieved on 31 Jan 2001.
3. Ack receipt.


IJK SARMAJ
MAJ
OFFICER COMMANDING

COPY TO:-

HQ 1 EME CENTRE,
SECUNDERABAD - 500087

FOR INFO. ETA WILL BE INTIMATED ON A LATER DATE.

EME RECORDS
SECUNDERABAD - 500 021

FOR INFO WITH REFERENCE TO YOUR SIGNAL A-4198
DATED 22 JAN 01.

*certified to be true copy
S. Dasgupta
Advocate*