

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 128/2001

R.A/C.P No.

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SECTION OFFICER (Judl.)

FORM NO.4
(See Rule 42)

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

ORDER SHEET
APPLICATION NO 128/2001/200

Applicant (s) *Shri Durgu Pleased Jeye*

Respondent(s) *Union of Indias*

Advocate for Applicant(s) *Mr. A. Ahmed.*

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

Notes of the Registry	Date	Order of the Tribunal
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2.4.2001

Heard Mr A. Ahmed, learned counsel for the applicant. Issue notice as to why the application shall not be admitted, returnable by six weeks. List for orders on 14.5.01.

Heard Mr Ahmed on the interim order. Issue notice as to why the impugned order No.100/131322/2/2000/JE(QS&C)/119/ENGRS/EIC/1 dated 7.12.2000, Annexure A, so far posting and transfer of the applicant as CE EC, Calcutta from GE(AF), Shillong as well as the order bearing No.131322/2/2000/JE/(QS&C)/202/ENGRS/EIC/1 dated 21.3.2001, Annexure E, rejecting the representation of the applicant shall not be suspended, returnable by four weeks. Meanwhile the aforementioned orders shall remain suspended until further orders.

U. S. Khan
Member

h
Vice-Chairman

nk m

193
2/4/01

Form
Station
and vide
C.F.
Dated..... 2.4.2001

1/ed. Registrar, 2/4/2001
A

1) Register copy filed.

2) Mention case

4.4.2001

Service of notice
issued to the respon-
dents vide D.No.1332-
34. Dt. 3.4.01.
Baro

14.5.01

Heard learned counsel for the parties.

Application is admitted. Issue notice on the respondents. Call for records. Returnable by 4 weeks. List on 13.6.01 for orders.

In the meantime the order dated

2.4.2001 shall continue.

IC Usha
Member

[Signature]
Vice-Chairman

Notice issued vide
S/No. 1332 dtd 3/4/01
Order dtd. 14/5/01 Communicated
to the Respondent

gib

Written Statement filed
has been filed Mr. A. Deb Roy
Sr. C.A. on behalf of the
respondent page No 36 to 40
do
29/5/01

lm

VS
14/5/01

13.6.01

① Service report are
still awaited.

None appears for the applicant.
Written statement has been filed.
The applicant may file rejoinder if any,
within 3 weeks. List on 4.7.01 for
hearing.

VS
12.6.01

IC Usha
Member

lm

① Written statement has
been filed.

11.7.2001

② No. rejoinder has been
filed.

Heard the learned counsel for
the parties. Hearing concluded.
Judgment delivered in open court,
kept in separate sheets. The
application is allowed. No order as
to costs.

VS
10.7.01

31.7.2001

Copy of the Judgment
has been sent to the D.P. for
issuing the same to
the applicant as well
as to the Sr. C.A. for
the Respondent.

nkm

[Signature]
Vice-Chairman

HS

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./~~XXX~~. No. . . 128 of 2001

DATE OF DECISION 11.7.2001

Shri Durga Prasad Taya

APPLICANT(S)

Mr A. Ahmed

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

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 ?

5.

Judgment delivered by Hon'ble Vice-Chairman



5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.128 of 2001

Date of decision: This the 11th day of July 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

Shri Durga Prasad Taye,
MES 243653, J.E. (QS & C),
Office of the Garrison Engineer (Air Force),
Shillong.Applicant
By Advocate Mr A. Ahmed.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Defence,
New Delhi.
2. The Chief Engineer, Head Quarter,
Eastern Command,
Engineer Branch,
Fort William, Kolkata.
3. The Garrison Engineer,
(Air Force), Shillong,
Elephant Falls Camp,
P.O.- Nonglyer,
Shillong.Respondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The present proceeding pertains to the legitimacy of the order of transfer and posting of the applicant vide order dated 7.12.2000. The applicant belongs to the ST community and is working for gain as Junior Engineer (QS & C) under the Garrison Engineer, Airforce, Shillong. By the impugned order dated 7.12.2000 the respondents issued posting/transfer on tenure turnover of Junior Engineer,

which also included the applicant, who was transferred from Garrison Engineer(AF), Shillong to CE EC, Calcutta forthwith. In this applicant the applicant has stated and contended that the impugned order of transfer is contrary to the policy of the respondents pertaining to turnover posting. The applicant also stated and contended that he being from the ST community is also entitled for the benefit of the guidelines issued by the Ministry for posting and transfer of SC/ST employees.

2. Heard Mr A. Ahmed, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. Mr Ahmed cited a number of Government policies for posting of the employees in their choice place of posting. It was contended, inter alia, by the applicant that he by his representations, specifically sought for posting against vacancies either in GE, Narangi or GE, Guwahati or GE (AF), Tezpur, but the respondent authority without considering his claim passed the order by transferring him to Kolkata contrary to the transfer policy guidelines of the respondents communicated vide Memo No.131322/2/TO/94/01/Engrs/EIC(I) dated 30.6.1994.

3. Mr A. Deb Roy, learned Sr. C.G.S.C., on the other hand, submitted that the applicant had no vested right to be posted in a particular place. Mr Deb Roy submitted that the respondent authority acted as per the transfer policy and guidelines and after considering all the pros and cons the transfer order was issued.

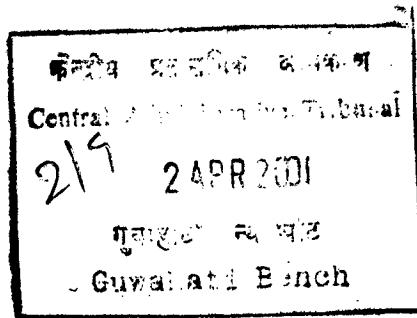
4. Posting and transfer is, no doubt, within the domain of the respondents as was contended by the learned Sr. C.G.S.C., but, at the same time the respondents are to post and transfer persons in conformity with the avowed policy (deviation from the norm may, however, be made on good reason) keeping in mind the public interest and also the convenience.....

convenience or inconvenience of their employees and for that purpose the concerned authority has already issued the guidelines. The authority is the best Judge to determine the place of posting of the applicant. The applicant has already submitted his representation.

5. In the circumstances, upon hearing the learned counsel for the parties, I am of the opinion that ends of justice will be met if a direction is issued to the applicant to submit a detailed representation narrating all the facts before the competent authority within three weeks from the date of receipt of the order. If such representation is made by the applicant within the period specified the respondents shall consider the same as early as possible, preferably within three months from the date of the representation alongwith the order of this Tribunal and pass a reasoned order in the matter. The applicant will be free to urge all the issues raised in this application and the respondents will also be free to consider the application in its right perspective irrespective of the stand taken in this proceeding. It is ordered accordingly on the respondents to pass a reasoned order as per law. Till completion of the aforementioned exercise and communication of the reasoned order the interim order passed on 2.4.2001 in this proceeding shall remain operative.

6. The application is allowed to the extent indicated. There shall, however, be no order as to costs.


(D. N. CHOWDHURY)
VICE-CHAIRMAN



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

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 128 OF 2001.

Sri Durga Prasad Taye

-Applicant.

-Versus-

Union of India & Others

-Respondents.

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Filed by

Advocate.

(Asif Ahmed)

a

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.**

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. *128* OF 2001.

B E T W E E N

Sri Durga Prasad Taye
MES 243653, J. E. (QS & C)
Office of the Garrison
Engineer(Air Force) Shillong,
Elephant Falls Camp, P.O.-
Nonglyer, Shillong-793009.

- Applicant.

-AND-

- 1] The Union Of India,
represented by the Secretary
to the Government of India,
Ministry of Defence,
New Delhi.
 - 2] The Chief Engineer, Head
Quarter, Eastern Command,
Engineer Branch, Fort
William, Kolkata-21.
 - 3] The Garrison Engineer,
(Air Force) Shillong,
Elephant Falls Camp,
- /

P.O.- Nonglyer,
Shillong-793009.

-Respondents.

DETAILS OF THE APPLICATION:

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

This instant application is directed against illegal and arbitrary transfer of the applicant vide Posting Order No. 100/131322/2/2000/JE/(QS&C)/119/ENGRS/EIC/1 date 7-12-2000 issued by the Office of the Respondent No. 2 and also rejection of the Representation of the applicant vide Office order No. 131/322/2/2000/JE/(QS&C)/202/ENGRS/EIC/1 dtd. 21-03-2001 issued by the Office of the Respondent No. 2.

2. JURISDICTION OF THE TRIBUNAL

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

3. LIMITATION

The applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE

Facts of the case in brief are given below:

4.1 That your humble applicant is a citizen of India and as such, he is entitled to all the rights and privileges and protection granted by the Constitution of India.

4.2. That your applicant begs to state that he belongs to Scheduled Tribe Community. Now he is working as Junior Engineer (QS & C) Under the Garrison Engineer, (Air Force) Shillong. Earlier he was posted at Head Quarter 137 CWE, G.E. Umroi, G.E. Barjhar. He joined at Shillong on 26-12-97. During his service period he discharged his duties with full satisfaction to the higher authority.

4.3. That your applicant begs to state that he has been transferred to Kolkata from Shillong vide posting Order No. 131322/2/2000 /JE/(QS&C)/119/-ENGRS/EIC(1) dated 07-12-2000 issued by the Office of the Respondent No. 2. It may be stated that he has completed full tenure at Shillong (3 years) as per posting /transfer policy: Group C & D personnel of the MES vide Office Letter No. 131306 /1/89/ ENGRS/EIC/(1) dated 31-01-1996 issued by the Respondent No. 2. As per this transfer policy Shillong is listed as Tenure Station as per Appendix 'A' and those who have completed fix tenure posting they will be eligible three choice place of posting, if in the case of

non-availability of vacancy in any of the three choice station the affected person due for turn over may be allowed to remain in the tenure station till a vacancy arises in his choice station.

Annexure- A is the photocopy of transfer order No. 131322/2/2000 /JE/ (QS&C)/119/ EnGRS/EIC(1) dated 07-12-2000 issued by the Respondent No. 2.

Annexure- B is the photocopy of Transfer Policy No. 131306 /1/89/ ENGRS/EIC/(1) dated 31-01-1996 issued by the Respondent No. 2.

4.4 That your applicant begs to state that as per Ministry Personnel (Public grievances & Pensions) (Department of Personnel & Training) circular dated 24-06-1985 it has been stated that SC/ST Officer should not be posted at far of places from their native places. The relevant portion of the said Notification has been reproduced below:

Ministries/Departments are aware that the Government, as a part of the programmer for the general welfare of the persons belonging to the SC/STs, have provided reservation in Central Government Services accompanied by various other benefits, concessions and relaxations. The main objective for providing reservation for Scheduled Castes and Scheduled Tribes

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in appointment to Civil posts and services of the Government is not just to give jobs to some persons belonging to these communities and thereby, increase their representation in services but to uplift these people socially and merge them in the mainstream of the nation.

2] It has, however, been pointed out of this Department that the Scheduled Castes and Scheduled Tribes Officers, after appointment, are subject to harassment and discrimination on grounds of their social origin. It has been pointed out that SC/ST officers are sometimes transferred to far-off places and also been stated that these officers are not accepted at their places of postings by the concerned superior officers in some cases.

3] In this connection, it is emphasized that servants should desist from any act of discrimination against members SC/ST communities on grounds of their social origin. It is also requested that senior Officers, including the Liaison Officers of the Ministry/Department, should keep a close watch to ensure that such incidents do not occur at all. However, if any such incident comes to the notice of the authorities, action should be taken against the erring officials promptly.

BM

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4] Ministry of Finance etc. are accordingly requested to bring the contents of this Office Memorandum to the notice of all concerned.

Directions were given in the circular of 1985 that Government servants should desist from any act of discrimination against members of SC/ST communities on grounds of their social origin. Further directions have been given if any incident comes to the notice of the authorities, action should be taken against the erring officials promptly.

4.5 That your applicant begs to state that as per O. M. No. AB/14017/27/89-Estt(RR) dated 20 June 1989 issued by the Ministry of personnel P G & Pension Department the Scheduled Castes & Scheduled Tribes employee of Group C & D are to be posted in their native place within the Region.

Annexure- C is the photocopy of the extract of the said O.M. No. AB/14017/27/89-Estt(RR) dated 20 June 1989 issued by the Ministry of personnel P G & Pension Department.

4.6 That your applicant begs to state that after receiving the impugned transfer order dated 07-12-2000 your applicant sent representation dated 20-12-2000 to the Respondent No. 2 stating all the facts and circumstance for modification of his transfer order and also for posting in any 3 (three)

21/1

choice place of posting. But the same was rejected by the Office of the Respondent No. 2 vide his letter No. 131322/2/2000/JE(QS & C) /202/ENGRS/EIC(1) Dated 21-03-2001.

Annexure- D is the photocopy of representation dated 20-12-2000 submitted by the applicant before the Respondent No. 2.

Annexure- E is the photocopy of rejection letter issued by the Respondent No.2 vide his letter No. 131322/2/2000/JE(QS & C) /202/ENGRS/EIC(1) Dated 21-03-2001.

4.7] That your applicant begs to state that he is suffering from Sctica pain and low blood pressure. He is unable to travel a long distance. He is now under medical treatment at Guwahati since 28-03-2001. It may be stated that your applicant is on medical leave from 27-03-2001 till day.

. Annexure- F is the medical certificate issued by the concerned Doctor.

4.8 That your applicant begs to state that Respondents, particularly, the Respondent No. 2 had transferred your applicant with a motive behind and also with a mala fide intention.

4.9 That your applicant begs to state that he being a poor Group - C employee and

also belongs to Schedule Tribe Community and the Government of India has issued various office Memorandum and directions for upliftment of Scheduled Tribe Community. In this regard the Government of India has instructed to all concerned not to disturb the Scheduled Tribes community from their place of posting in their native place. But the Respondents by using colorable exercise of power harassed your applicant by posting him at far place from his native place.

4.10 That the applicant submits that the Respondents have willfully not implemented their own transfer policy regarding choice station after completion of fixed tenure in case of your applicant for the reasons known to them.

4.11 That your applicant begs to submit that your applicant may be relieved from Shillong at any time by the Respondents. Hence, he has filed this Original Application before the Hon'ble Tribunal for seeking justice and also for quashing the impugned transfer order dated 07-12-2000.

4.12 That your applicant begs to submit that he along carried out his transfer order ever since his entry to the Department and he is serving the Department with ought most sincerely and with full satisfaction to the authority concerned.

2/11

4.13 That your applicant begs to submit that the Respondents have issued the Transfer Order dated 7th December 2000 against the Government Circular and Transfer Policy. Your applicant has got reason to belief that the Respondents are resorting the colorable exercise of power to accommodate their interested person.

4.14 That your applicant begs to submit that the procedure adopted by the authority in the case of the applicant is improper, mala fide, illegal and without jurisdiction.

4.15 That in view of the facts and circumstances it is a fit case for passing an interim order protecting the interest of the applicant and his family members.

4.16 That this application is filed bona fide and for the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, due to the above reasons narrated in details the passing of the transfer order of the applicant in prima facie is illegal, mala fide, arbitrary and without jurisdiction and hence the same is liable to be set aside and quashed.

5.2 For that, the action of the Respondents is arbitrary, mala fide and discriminatory with an ill motive and as such,

the impugned transfer order at Annexure-A is liable to be set aside and quashed.

5.3 For that, the Impugned transfer order is bad in the eye of law and is liable to be set aside and quashed.

5.4 For that, the applicant's case is genuine and need to be considered by the Respondents due to facts and circumstances narrated above and as such the impugned transfer order of the applicant to Kolkata at West Bengal to be set aside and quashed.

5.5 For that, similarly situated persons who are given the benefit of choice place of posting after completion of tenure the Respondents being model employer cannot deprive the benefit to the applicant without any reasons or causes. As such, the applicant's transfer order is illegal, arbitrary, mala fide and with a motive behind. Hence, it is liable to be set aside and quashed.

5.6 For that your applicant being a Group-C Scheduled Tribe employee and the Government of India has given reliefs to the Scheduled Tribe Employees regarding transfer in their own native place. Hence, the Respondents cannot deny the benefit to your applicant.

[Signature]

5.7 For the, in any view of the matter the action of the respondents are not sustainable and hence the same is liable to be set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

That the applicants further declare that they have not filed any application, writ petition, or suit in respect of the subject matter of the instant application before any other Court, 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 applicants most respectfully prayed that your Lordship may be pleased to admit

this petition and may be direct the respondents to give the following reliefs.

8.1 That the impugned order of Transfer dated 07-12-2000 at Annexure-A transferring the applicant from Shillong to Kolkata is liable to be set aside and quashed.

8.2 To direct the Respondents to give him the benefit of choice place of posting as per posting and transfer policy laid down by themselves and till completion of the aforesaid exercise the applicant may not be disturbed from present place of posting at Shillong.

8.3 Cost of the application.

8.4 To pass any other relief or reliefs to which the applicant may be entitled and as may deem fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the Original Application the applicant most respectfully prays for interim order by way of suspending the order of Transfer dated 7th December 2000 at Annexure-A.

10. Application Is Filed Through Advocate.

6/12/00

11 Particulars of I.P.O.:

I.P.O. NO. 29 503688

Date Of Issue 26.2.2001

Issued from Guwahati G.P.O.

Payable at Guwahati G.P.O.

12. LIST OF ENCLOSURES:

As stated above.

.. Verification.

Qm

VERIFICATION

I, Sri Durga Prasad Taye, MES 243653,
J. E. (QS & C) Office of the Garrison
Engineer(Air Force) Shillong, Elephant Falls
Camp, P.O.- Nonglyer, Shillong-793009do hereby
solemnly verify that the statements made in
paragraphs 4.1, 4.2, 4.6, 4.8, 4.9
are true to my knowledge those made in
paragraphs 4.3, 4.4, 4.5, 4.7,
are being matters of records are true to my
information derived therefrom which I believe
to be true and those made in paragraph 5 are
true to my legal advice and I have not
suppressed any material facts.

And I sign this verification today on this
the 2nd day of April 2001 at Guwahati.

Sri Durga Prasad Taye

Declarant

CWE Shillong

Tele: 222-2700

POSTING ORDER NO. 1110

Mukhyalaya Purvi Va.
HQ Eastern Command
Abhiyanta-Chakha
Engineers Branch
Fort William, Calcutta

131322/2/2000/JE (QS&C)/1110/Engns/EEC(1)

07 Dec 2000

- CE Calcutta Zone
- CE Siliguri Zone
- CE Shillong Zone
- CE (AF) Shillong Zone

POSTING/TRANSFER ON TENURE TURNOVER: JE (QS&C)

1. The following posting/transfer are hereby ordered in the interest of State :-

Sl No	MES No & Name	Posted		Move date
		From	To	
1	2	3	4	5
1.	229603 Shri Hirak Chatterjee	GE (P) (I) Teliamura	GE (AF) Borjar	Forthwith
2.	238713 Shri Paban Ch Paul.	GE (P) (I) Teliamura	GE (I) (AF) Tezpur	-do-
3.	238822 Shri B K Baidya	GE (AF) Borjar	HQ 136 WE	30-1-2001
4.	231003 Shri A K Doley	GE (AF) Borjar	GE (I) (AF) Jorhat	Forthwith
5.	209692 Shri RN Dutta	CEEC Calcutta	GE (P) (I) Teliamura	-do-
6.	270603 Shri KC Naskar	CE Siliguri Zone	GE (N) Calcutta	-do-
7.	26336 Shri B Mani	CWE Bengdubi	GE (Fy) Dolangir	31-1-2001
8.	268007 Shri Rahul Chowdhury	CE Siliguri Zone	GE 868 EWS	23-2-2001
9.	213433 Shri AS Das	GH Khaprail	CE Shillong Zone	30-4-2001
10.	214705 Shri A B Deb	HQ 136 WE	GE (C) Calcutta	30-4-2001

Contd...2/-

[Handwritten signature]
Advocate

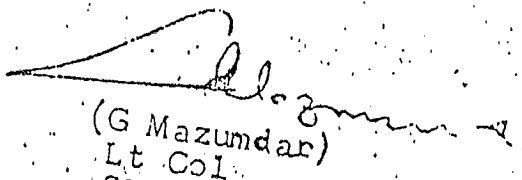
Sl No	MES No & Name	From	Posted To	Move date
11	210777 Shri Debabrata Paul	GE (AF) Hasimara	GE Binnaguri	31-1-2001
12	263335 Shri Partha Pratim Deb	GE (AF) Hasimara	HQ. 136 WE	23-2-2001
13	243653 Shri DP Thaye	GE (AF) Shillong	CE EG Calcutta	Forthwith
14	229106 Shri K Dhar	CE Shillong Zone	GE (I) AF Jorhat	31-5-2001
15	213982 Shri Mukul Mitra	(Attached with GE Silchar) GE (AF) Tezpur	GE Khaprail	30 Apr 2001
16	229640 Shri Aniram Mech	GE (AF) Tezpur	GE (I) AF Chabua	Forthwith
17	231011 Shri Abdur Rahim	GE (AF) Jorhat	GE (P) (I) Teliamura	Forthwith
18	204590 Shri Manik Mazumdar	CWE Dinjan	GE (A) Calcutta	Forthwith
19	264591 Shri Bikash Paul	CWE (AF) Guwahati	GE (I) AF Tezpur	28-2-2001
20	232932 Shri SS Das	AGE (I) Charduar	GE (I) (AF) Hasimara	23-2-2001
21	209932 Shri DW Bhutia	CWE Shillong	GE Bengdubi	Forthwith
22	204270 Shri Swapn Sengupta	GE 872 EWS	GE Barrackpore	28-2-2001
23	254655 Shri AK Das	CE Khaprail	GE (N) Calcutta	Forthwith

(Total twentythree individuals only)

Contd...3/-

Attd
Signature
Date

2. Your attention is drawn to this HQ letter No. 131306/1/35/ Engrs/EIC(1) dt 31 Jan 96 as amended from time to time for strict compliance. All concerned may be informed accordingly.


(G Mazumdar)
Lt Col

SOI (Pers)
for Chief Engineer

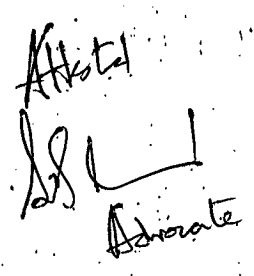
Copy to :-

- CWE Calcutta
- CWE (S) Barrackpore
- CWE (P) Calcutta
- HQ 136 WE
- CWE Bengdubi
- CWE Shillong
- HQ 137 WE
- CWE Dinjan
- CWE (AF) Borjar
- CWE (AF) Guwahati

- GE (P) (I) Teliamura
- GE (AF) Borjar
- GE (AF) Tezpur
- GE (I) (AF) Jorhat
- GE (N) Calcutta
- GE FY Bolangir
- GE 868 EWS
- GE Khaprail
- GE (C) Calcutta
- GE (AF) Hasimara
- GE Binnaguri
- GE (AF) Shillong
- GE (I) (AF) Chabua
- GE (A) Calcutta
- GE Bengdubi
- GE 872 EWS
- GE Barrackpore
- AGE (I) Charduar
- CE SILCHAY

Internal :-

S-T, EIA, EIM, EDA, Call M/F
and office copy.


Adhikari

- 18 -

ANNEXURE-B

30/Engns/EIC(I)

31 Jan 96

Chief Engineers

Calcutta Zone, Calcutta
 Siliguri Zone, Siliguri
 Shillong Zone, Shillong
 (AM) Shillong Zone, Shillong
 (CEB) Calcutta
 Gmd. SCD Kankinara

POSTING/TRANSFER POLICY : GROUP 'C' AND 'D'
PERSONNEL OF THE MES

1. The posting/transfer policy of all Group 'C' & 'D' personnel of the MES of this Command is prepared based on certain guidelines contained in Govt of India, Min of Defence letter No 3(3)/92/Engns(I) dated 23 Jan 94 and E-in-C's branch, AHQ letter No 3000/Eng(I) dated 31 Aug 94.

2. The broad principles, under which transfers of Group 'C' and 'D' civilian subordinates are to be carried out, are stipulated in Min of Def OM No 13(1)/70/D(Appts) dated 29 Nov 72 and 71(4)/73/D(Appts) dated 21 May 75.

3. Posting of Group 'C' and 'D' individuals less industrial personnel will be issued by this HQ on the following grounds :-

- (a) Administrative
- (b) Adjustment of surpluses and deficiencies
- (c) Posting to tenure stations
- (d) Promotion
- (e) Mutual/compassionate grounds
- (f) Local turnover

POSTING ON ADMINISTRATIVE GROUNDS

4. No individual will normally be posted to tenure stations or other normal stations on administrative grounds. Where it is considered that such a step is absolutely essential, prior approval of CE/Addl CE Command will be obtained. The proposal should be forwarded to this HQ with a statement of case signed by CE Zone/Comdt. If the individual to be posted out on administrative grounds happens to be due for posting to a tenure station, he will be posted out to such station, even if this involves posting out of turn. This HQ will keep E-in-C's branch informed of such cases. In case the individual is protected against transfer, prior approval of E-in-C's branch will be obtained.

.....2/-

Advocate

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ADJUSTMENT OF SURPLUS/DEFICIENCIES

5. In all cases where staff are rendered surplus by reduction in the authorised strength and their re-adjustment within Comd becomes necessary, the longest stayee in the station/complex stations will be posted out. In the case of posting involving inter-Command transfers, the junior-most person in the grade within the Command will be declared surplus.
6. In the exigencies of service, situations may arise when offices/works units are asked to move enbloc to other location. In such cases, the personnel to be moved should be selected based on their length of service in the station/complex station i.e. the longest stayee should be moved by making local adjustments.
7. In determining the longest stayee in a station/complex station, all MES Units located in that station/complex stations including satellite stations will be taken into consideration. The seniority in that station/complex station will be decided by the CE Command. Grouping of various units in a station including complex stations have already been done vide this HQ letter No 131306/1/63/Engrs/ElC(I) dated 16 Dec 63. Volunteers, if any will, however, be given preference in all such cases.
8. Where units/formations are closed down due to reduction in workload, the adjustment of surplus staff will first be done in the residual formations in matter of filling up of deficiencies within overall manning level. Thereafter the remaining surplus staff will be adjusted outside the stations as per seniority on the basis of three choices of the individuals as far as possible.

TURN OVER TENURE STATION

9. A list of tenure stations in this Command is attached as Appx 'A'. In case a station is tenured or de-tenured its effect will not be made applicable from retrospective dates. The exercise of de-tenuring of existing tenure station in view of its improved living conditions should continue as at present. A tenure station once de-tenured may not be declared a tenure station again except in exceptional circumstances. However, declaring of any station tenure or non-tenure will be decided by CE Command only.
10. The following guide lines will be strictly followed while nominating the subordinates for posting to tenure station :-
 - (a) Volunteers, preferably those who have completed 3 years in a station will be given preference.
 - (b) Personnel who have not done service in a tenure station since joining the MES, provided the individual have completed 3 years stay in the station.

Asst
Asst

(c) Personnel posted to the MES under adjustment of surplus/deficiencies scheme reckon seniority for the purpose of promotion/confirmation from the date they join duty in the MES. Their seniority for posting to tenure station will also reckon from the date of joining MES.

(d) Every individual nominated for service in tenure station must complete his full tenure before being posted back to one of his choice stations. For the purpose of determining the period of stay in a tenure station, an individual must be physically present in that office for the full period of tenure excluding the period of absence of leave or otherwise. If for reasons, due to illness or extreme compassionate grounds, an individual is repatriated prior to completion of his tenure, he may again be posted to tenure station after an expiry of 3 years of service. His tenure would start afresh and he is to complete the tenure of 3 years at one stretch and not for the left over period only. Unit will submit proforma particulars as per Appx 'B' attached in respect of individuals who have actually completed/will be completing their full physical tenure service upto 30 Jun and 31 Dec of the year. These facts should be checked thoroughly and certified by an officer under his signature just below the statement of nominal roll.

(e) While calculating the physical stay at a tenure station, the period of leave availed to the extent of leave earned during stay at the tenure station will be included in the tenure period for determining the physical stay.

(f) Nomination of persons who have already done a tenure will be done strictly on the basis of their last date of return from tenure stations.

(g) The normal age limit for tenure station posting is 50 years. Subordinates over 50 years may also be posted for a shorter tenure but none will be retained in tenure station beyond the age of 53 years. Subordinates above 50 years of age will not be posted to high altitude/snow bound areas and to tenure stations where the tenure is 2 years. The age for such postings will be considered as on date of signing of posting in the office of CE Command.

(h) Those posted from other Commands to this Command on compassionate grounds will not be nominated until completion of 3 years service in the choice station. This protection is not applicable to persons who have moved on mutual posting.

(j) Persons posted from other Commands on promotion will not be turned over till completion of 3 years physical stay or as per status of the tenure station. Their repatriation proforma for turn over to their parent Command will be forwarded by indicating three or more choice stations 4 months in advance before completion of stipulated tenure period for processing with their parent Command.

Attested
[Signature]
Annate

(k) For individuals serving in executive offices in tenure station, maximum one year extra will be given in two spells and if they want to extend another tenure, they will be shifted within the station/complex station/satellite station on staff appointment.

(l) If an individual does not apply for turn over/extension on completion of tenure liability, the tenure station where he has been serving will be treated as his choice station and thereafter he will be posted to a tenure station as per seniority of that station/complex station.

11. CE Zone/Comdt will forward the names of volunteers for postings to tenure stations. The volunteers will be given preference. Seniority of personnel in each category will be prepared by this HQ for posting to tenure stations.

12. Disabled/handicapped persons should not be posted to a tenure station if the disability prohibits his free movement/functioning. The case shall be decided by CE Command on merits. However, if a disabled individual is willing to go to a tenure station voluntarily he would be allowed such postings.

13. An individual serving in a tenure station may submit his choice of posting, six months before completion of his tenure, for any three stations where staff as well as executive offices are located & in three distinct places/complexes separated by at least 20 KMs. The three stations so indicated by the individuals on completion of his tenure service will be treated as non-tenure station for him being his own choice stations irrespective of the location/station i.e. tenure/peace.

14. On completion of tenure, the individual will be adjusted in any one of the three choice stations given by him in the Repatriation proforma. In the case of non-availability of a vacancy in any of the three choice stations, the affected person due for turnover may be allowed to remain in the tenure station till a vacancy arises in his choice station. Such employees may be given the benefit of deferment for his reposting to tenure station in his next turn for such posting. The exact period for which the benefit is to be given will be decided by CE Command, based on the following norms :-

(a) Upto 6 months stay in excess of the tenure. No benefit to be given.

(b) Excess stay of more than 6 months but upto 12 months. Deferment @ 50% of excess time (months) spent.

(c) Excess stay of over 12 months and above. Deferment 75% of excess time (months) spent.

Advocate

15. In case an individual who has completed his tenure does not want to continue at the tenure station, he may be repatriated to one of his three choice stations. The longest stayee from one of the choice stations who has completed three years or a volunteer may be moved out to a nearer station/choice station as far as possible, where a vacancy exists to make a room for the tenure completed employees. The longest stayee in that particular category will be determined by clubbing the three choice stations of the repatriated. The longest stayee moved from a peace station for making room for adjustment of a tenure completed individual will be brought back to the same station after completion of 3 years in the new station.

16. The recruitment sector of the individuals i.e. West Bengal, North Bengal & NEA will not be interchangeable for posting while considering moves from tenure station. The individuals serving in tenure stations in sectors of recruitment will give choice stations in these sectors only. In case posting to another sector is desired, it will only be done under compassionate grounds duly approved by compassionate board held every six months at this HQ.

POSTING FROM PEACE TO PEACE STATION

17. An individual who is to move from one peace station to another peace station to make room for a tenure completed repatriate, should be posted to one of his three choice stations, as far as possible. This facility will not be available to other types of posting like posting on administrative grounds, promotion and so on mentioned in para 4 above. Posting Zones for peace to peace station should be delimited preferably Statewise, to the extent possible.

POSTING ON LOCAL TURNOVER

18. The local turnover posting has already been decentralised vide this HQ letter No. 131306/1/63/Engrs/ELC(I) dated 16 Dec 92. Posting from one unit/formation to other unit/formation, where only one unit is functioning in a station will be done by this HQ. CE Zone will forward the names of the personnel who have completed their mandatory period of 3 years in such cases. Turnover within the unit should, however, be done every 3 years by unit Ctrs.

POSTING ON PROMOTION

19. Staff on promotion will be adjusted in the same station (not necessarily in the same unit) provided vacancies are available based on manning level. However, if no vacancies are available in the station then the promotees will be adjusted in one of the three choice stations as far as possible. In case no vacancies are available in the choice stations, the individuals can be moved to other stations based on availability of vacancies/manning levels. In case inter Command move is necessitated, the junior most promotees will be moved out.

.....3/-

Asst
Advocate

COMPASSIONATE POSTING/MUTUAL TRANSFER

20. Following guidelines for compassionate & mutual postings will be followed :-

- (a) Individuals should themselves apply for compassionate postings through proper channel. Applications from relatives or those received directly would be rejected and attempts to bring outside pressure discouraged.
- (b) Applications on domestic grounds should be verified, if required, in consultation with civil authorities, if the CC/CE Zone is not satisfied of the genuineness of the grounds.
- (c) Application on medical grounds should be accompanied by appropriate medical certificates from Authorised Medical Attendant (where AMA is not available, from registered Medical Practitioners) indicating the nature of illness and justification for transfer of the individual. No cases recommended with replacement will be forwarded.
- (d) This HQ will order a Board of Officers to assemble every 6 months in Jan & Jul to screen the applications.
- (e) Compassionate postings shall only be affected against clear vacancies, failing which, against volunteers if any.
- (f) To avoid grant of undue benefit, it will be ensured (before compassionate/mutual transfers are accepted and orders issued) that affected persons are not due for posting to tenure stations.
- (g) All mutual postings and those on compassionate grounds will be at the expense of the individual.
- (h) Approval for inter-Command posting on compassionate grounds/mutual basis will be issued by C-in-C's Branch.
- (j) Mutual transfer is not to be treated as a compassionate posting and no protection can be claimed by the individual.
- (k) The period of posting on compassionate grounds will be restricted to 3 years so as to accommodate other compassionate posting cases.
- (l) Travelling allowances can be paid to the individuals posted on last leg compassionate grounds at the time of retirement, only to his/her home town/selected place of residence, subject to approval of the transferring authority who will record reasons for such postings.
- (m) The compassionate postings will be ordered to a non-sensitive appointment as far as possible.

Attd
S/S
Advocate

TIMING OF TRANSFERS

21. Care will be taken to ensure that transfers during the middle of the academic year are avoided as far as possible. Exceptions should only be to meet an emergent requirement in the exigencies of service. It will be desirable to give two months time in the posting order for completion of the move to enable an individual to sort out his personal administration. However, moves on administrative grounds may be ordered giving lesser time.

AGE FACTOR

22. Persons having attained the age of 55 years prior to the date of move mentioned in the posting order will not be transferred except at their request to stations of their choice. However, if they have to move on promotion and if there is no clear vacancy in the station where they are serving, they may still be moved irrespective of the consideration of age as per instrs on move on promotion (para 19).

FEMALE EMPLOYEES

23. The female employees will also be covered by the above policy subject to the under mentioned concessions :-

(a) Female employees are exempted from posting to the tenure stations.

(b) They would not be posted to long distance stations even in the case of peace to peace station transfers unless female employee gives her choice of a station at a distant place.

(c) They will be transferred from one peace station to another peace station on tenure basis (within 600 Kms approx at the rail/head/bus terminus) on the analogy of tenure system adopted for the male employees. Their stay will be for a minimum period of 3 years and these employees would have the privilege of exercising three choices for their posting on return from that station including the home station.

(d) Widows, employed on compassionate grounds appointment, would be exempted from these provisions.

VACANCIES

24. All posting orders will be issued by this HQ against clear vacancies. To ascertain a clear vacancy, the authorisation of particular category or ceiling on holding whichever is less will be taken into account. Vacancies will be based on sanctioned authorisation/ceiling and manning levels based on functional authorisation.

.....3/-

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Advocate

DECLARATION OF HOME TOWN

25. As per the above policy a new recruit should not be posted to a tenure station on first appointment, but in case he is a volunteer or he belongs to that area he can be posted there. In case he belongs to that area, this stay will not be counted towards his tenure posting, but if he is a volunteer that will be so counted.

REPRESENTATION

26. Representations, if any, against the posting order, will be made by the affected individual within 21 days of the receipt of posting order in the concerned office who will ensure that the same is notified to the individual immediately. When the representation received through proper channel is considered and rejected by the CE Command, the concerned individual will move without any further delay. The second representation will be disposed off by the CE Zone/Comdt. if no new facts/reasons i.e. other than those included in the first application are brought out. If CE Zone considers that the application is required to be forwarded to this HQ, this will be signed by CE/ACZ(ks) with their specific recommendations. Thereafter once decision is given by CE Command no further representation will be entertained and the individual will be SOS within 15 days from the date of receipt of the decision of this HQ. If the individual is not satisfied with the decision of this HQ, he may represent his case to E-in-C's Branch, AHQ through proper channel. However, the move of the individual will not be held up for decision from E-in-C's Branch. In case the decision is pronounced in favour of the individual by E-in-C's Branch, the individual will be moved at the Govt expense in the first available vacancy occurring at the station mentioned in the decision of E-in-C's Branch.

27. This HQ letter No 131306/1/2/Enjrs/EIC(I) dated 27 Sep 91 stands superseded with the issue of this letter.

23. Please acknowledge.

(Signature)
(MG Koshy)

Brig
All Chief Engineer
for Chief Engineer

Encls : (Three)

Copy to :-

All CSWE/GEs *GE (AR) Shillong*

Attd
Advocate

- 26 -
Appendix A'

(Ref to Hq Eastern Command,
Engrs Branch letter No 131306/
1/39 /Engrs/EIC(I) dated
31 Jan 96).

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LIST OF TENURE STATIONS OF CHIEF ENGINEER EASTERN COMMAND

S/No	Name of the station	Name of concerned C/E/CE Zones	Date from which the stn has declared as tenure stn	Auth of declaring tenure stn
1	2	3	4	5
1.	All stations in Nagalans, Mizoram, Tripura, Arunachal and Manipur states. (2 years)	CE Shillong Zone	01.01.33	CSEC letter No 131306/1/293/ Engrs/EIC(I) dated 10 Dec 32.
2.	Borjar (3 years)	CWE Gauhati/ CE Shillong Zone	01.01.33	-do-
3.	Chabua (3 years)	CWE Dinjan/ CE Shillong Zone	01.01.33	-do-
4.	Charduar (3 years)	CWE Tezpur/ CE Shillong Zone	01.01.33	-do-
5.	Balipara (3 years)	CWE Dinjan/ CE Shillong Zone	01.01.33	-do-
6.	Digaru (3 years)	CWE Gauhati/ CE Shillong Zone	01.01.33	-do-
7.	Dinjan (3 years)	CWE Dinjan/ CE Shillong Zone	01.01.33	-do-
8.	Gauhati (3 years)	CWE Gauhati/ CE Shillong Zone	01.01.33	-do-
9.	Jorhat (3 years)	CWE Jorhat/ CE Shillong Zone	01.01.33	-do-
10.	Kumbhigram (3 years)	HQ 137 WE/ CE Shillong Zone	01.01.33	-do-
11.	Lakhapani & Lekhabali (3 years)	CWE Dinjan/ CE Shillong Zone	01.01.33	-do-

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Signature

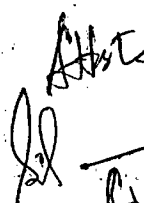
1	2	3	4	5
12.	Missamari (3 years)	CWE Tezpur/ CE Shillong Zone	01.01.33	CEEC letter No 131306/1/293/ Engrs/EIC(I) dated 10 Dec 32
13.	Missa (3 years)	CWE Tezpur/ CE Shillong Zone	01.01.33	-do-
14.	North Lakhimpur (3 years)	-do-	01.01.33	-do-
15.	Narangi (3 years)	CWE Gauhati/ CE Shillong Zone	01.01.33	-do-
16.	Rangiya (3 years)	-do-	01.01.33	-do-
17.	Silchar (3 years)	HQ 137 WE/ CE Shillong Zone	01.01.33	-do-
18.	Shillong (3 years)	CWE Shillong/ CE Shillong Zone	01.01.33	-do-
19.	Tezpur incl Solmara (3 years)	CWE Tezpur/ CE Shillong Zone	01.01.33	-do-
20.	Amarbari (3 years)	-do-	01.01.33	-do-
21.	Bhalumara (3 years)	CWE Jorhat/ CE Shillong Zone	01.01.33	-do-
22.	Bagrakot (3 years)	CWE Benglubi/ CE Siliguri Zone	01.01.33	-do-
23.	Hasimara (3 years)	CWE Binnaguri/ CE Siliguri Zone	01.01.33	-do-
24.	Pedong (3 years)	CWE Benglubi/ CE Siliguri Zone	01.01.33	-do-
25.	Gangtok (3 years)	CWE Benglubi/ CE Siliguri Zone	01.01.33	-do-
26.	Singarshi (2 years)	CWE Barrackpore/ CE Calcutta Zone	01.01.33	-do-

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27. Bagdogra (3 years)	CWE Bengdubi/ CE Siliguri Zone	01.04.37	CEEC letter No 131306/1/492/ Engrs/EIC(I) dt 30 Mar 37
28. Bengdubi (3 years)	-do-	01.04.37	-do-
29. Coach-Bihar (3 years)	-do-	01.04.37	-do-
30. Katihar (3 years)	-do-	01.04.37	-do-
31. Khaprail (3 years)	HQ 136 WE/ CE Siliguri Zone	01.04.37	-do-
32. Kishanganj (3 years)	CE Siliguri Zone	01.04.37	-do-
33. Kurseong (3 years)	CWE Bengdubi/ CE Siliguri Zone	01.04.37	-do-
34. Purnia (3 years)	-do-	01.04.37	-do-
35. Siliguri (3 years)	CWE Bengdubi/ CE Siliguri Zone	01.04.37	-do-
36. Darjeeling (3 years)	CWE Bengdubi/ CE Siliguri Zone	01.04.37	-do-
37. Sukhna (3 years)	HQ 136 WE/ CE Siliguri Zone	01.04.37	-do-
38. Sevoke Road (3 years)	CWE Bengdubi/ CE Siliguri Zone	01.04.37	-do-
39. Taibpur (3 years)	CE Shillong Zone	01.04.37	-do-
40. Dimapur (3 years)	HQ 137 WE/ CE Shillong Zone	01.01.33	CEEC letter No 131306/1/293/Engrs/ EIC(I) dt 10 Dec 32.


 Advanta

Appendix 13
 1. Per to CE case in Command
 No 131306/1/89/Engrs/ELE(I)
 31 Jan 86.

LIST OF PERSONNEL DUE FOR TURN OVER FROM TENURE STATION

S/N	MES No, Name & Designation	Date of birth	Fmn served during last 10 years			Home Dist	Three choice stns	Period of absence from tenure station (on leave/course/trg except casual leave and temp duty)	Reasons for posting to existing unit/station	Remarks
			Fmn	From	To					
1	2	3	4	5	6	7	8	9	10	11

"Certified that the above information have been verified from the official documents and found correct".

(Signature of the offic

Station :

Dated :

Handwritten signature and initials

/COPY/

38

Copy of Ministry of personnel PG & Pension Deptt of Personnel and Training OM No. AB/14017/27/89-Estt (HR) dated 20th June 1989.

The under signed is directed to say that a Committee of members of Parliament, which examined matters relating to representation of Scheduled Castes and Scheduled Tribes in Government services has recommended that " Tribals should , as far as possible, be posted near their native place.

2. The recommendation has been examined carefully, it may not be possible or desirable to lay down that holders (Belonging to SC/ST) of group 'A' or Group 'B' (posts who have all India transfer liabilities) should be posted near their native places. It has, however, been decided that in the case of holders of Group 'C' and Group 'D' posts who have been recruited on regional basis and who belong to Scheduled Tribes may be given posting as far as possible, subject to administrative constraints near their native places with the region.

3. Suitable instructions may be issued to all subordinate units.

sd/- x x x
(SK Parthasarthy)

Atst
Associate

From : MES/243653
Shri DP Taye
JE (QS & C)
Garrison Engineer(AF)
Shillong

To : HQ, Chief Engineer (Through Proper Channel)
Eastern Command
Fort William,
Calcutta - 21

Subject : POSTING/TRANSFER ON TENURE TURN OVER
JE (QS & C)

Respected Sir,

1. Reference your HQ Posting Order No.100 issued under your No 131322/2/2000/JE (QS & C)/119/Engrs/E1C(I) dt 07 Dec 2000.
2. In connection with the above Posting Order, I beg to lay the following few lines for your consideration and sympathetic favourable action please :-
 - (a) I was posted to GE (AF) Shillong on turnover posting on 26.12.97 and on completion of my tenure I had submitted my choice posting to the following Stations :-
 - (i) GE Narangi (ii) GE Guwahati (iii) GE (AF) Tezpur
 - (b) But to my surprise I have seen that I have been posted to HQ CEEC Calcutta, which was not mentioned in my choice station and not in accordance with the laid down policy of your HQ letter No 131306/1/89/Engrs/E1C(I) dt 31 Jan 96.
 - (c) In this context, I would like to mentioned that I am a sick patient and due to which excess movement of travelling is to be restricted and which will not be possible in case I move to my new formation.
 - (c) I would also like to draw your Esteem HQ's attention to Govt of India, Ministry of personnel PG & Pension Deptt of Personnel and Training OM No AB/14017/27/89-Estt(RR) dt 20 Jun 89 wherein it has been clearly stipulated that holders of Group 'C' & 'd' belonging to ST/SC community should be posted near to their native place. As such my posting should have been considered for Guwahati area or near by.
 - (d) Your Honour's attention is also drawn to CAT case NO 548:1993(I) ATJ 548 (Jodhpur) date of judgement being 18.9.92 where it has also been ruled out that persons of ST/SC should be transferred very rarely and that also for very strong reasons only.

Attd
Sel
Advocate

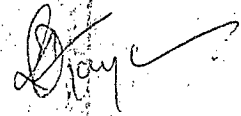
(e) Lastly I would like to add that as I am not drawing SDA, I do not have "All India transfer liability" and my posting should have been considered for NE region only.

3. In view of the above, I request your kind honour to review the above Posting Order and consider my posting to the following where vacancy also exists or till such time vacancy arises my posting be deferred :-

(a) GE Narangi (b) GE Guwahati (c) GE (AF) Tezpur

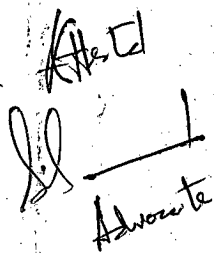
For Your above act of Kindness, I shall ever remain duty bound.

Yours faithfully,



(D. P. Jeye)
JE (QS&C)

Station : Shillong
Dated : 20 Dec 2000


Advocate

particular individual manifests discrimination. The principles of these decided cases are applicable in the instant case. In the matter of considering transfer of an individual officer, the O.M., dated 3-4-1986, educational dislocation of the children and health ground, if all present, deserve special considerations not to pass the order.

In view of the above facts and circumstances and findings, it is held unhesitatingly that the transfer order in respect of the applicant was *mala fide* and liable to be quashed.

[S.L. Abbas v. Union of India and others, 1993(1) SLJ (CAT) 206 (Gujahati) date of judgment 13-7-1992.]

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✓ Impermissible to transfer SC/ST employee on administrative exigencies only

Held: As far as the question of posting and transfers of the members of the SC/ST is concerned, this stands on a different footing and unless there are strong and exceptional reasons of public interest and administrative exigency, the transfers of SC/ST officials away from their native places should not be made. In the instant case, the learned counsel appearing on behalf of the Railways, has not brought to the notice of the Bench what were the compelling circumstances and compelling administrative exigencies to transfer the applicant from Jaipur to Bombay. Mere submission that the applicant has completed three years cannot be valid ground for transfer of a person of SC/ST.

Under Article 16 of the Constitution of India, some special rights have been given to the members of the SC/ST. The framers of the Constitution considered it proper that by way of compensation for the exploitation and to fulfil the requirement of equal development and equal opportunity, some exception should be carved out in favour of the ST and SC so that the dream of the Father of the Nation about equality of all

citizens in fact and not on paper may come true. The objective enshrined in Art. 16 of the Constitution and also Chapter IV of the Constitution has a special bearing in favour of the persons of the ST and SC to compensate them for the loss which they have sustained being the members of the SC and ST on account of past exploitation by the upper classes.

In the case of persons of the ST and SC, there is prohibitory as well as mandatory directions. Officers have been directed that the employees belonging to the SC and ST should be transferred very rarely and for very strong reasons only. Thus there is a prohibition that there should not be general transfers of the officials of the ST and SC and, if at all, they have to be transferred they should be transferred for very strong reasons. Very strong reasons stand on a higher pedestal than sufficient reasons or administrative exigencies. Persons of the ST and SC cannot be transferred on administrative exigencies only or on sufficient grounds but they can only be transferred when there are very strong reasons compelling the administration to transfer them.

The learned counsel for the respondents submits that guidelines are not binding as decided by the Supreme Court. Guidelines may not be binding on the courts but the authorities issuing the guidelines cannot say that the guidelines issued by the Government are not binding on them. Doctrine of estoppel will apply. The standing policy of the Railway Board and the Railway Ministry is that the circular, dated 14-1-1975, which was issued by the Railway Board on a pious day of Makara Sankranti should be followed for the purpose of "Uttarayan" of the members of the SC and ST.

Accordingly, the order of transfer of the applicant, a Scheduled Tribe Railway employee, from Jaipur to Bombay has to be quashed.

[B. S. Verma v. Union of India and others, ATR 1993 (1) CAT 548: 1993 (1) ATJ 548 (Jodhpur) date of judgment 18-9-1992.] ✓

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—The Editor

Swamysnews
for the month of Sep 93
This is a monthly Magazine.

Attetd
1
Attetd

34

ANNEXURE - E

222-2525

Mukhyalaya Purvi Kaman
HQ Eastern Command
Abhiyanta Shakra
Engineers Branch
Fort William, Cal-21

222/2/2000/GE(QS&C)/202/Engrs/EIC(1)-2) Mar 2001

GE (AF) Shillong

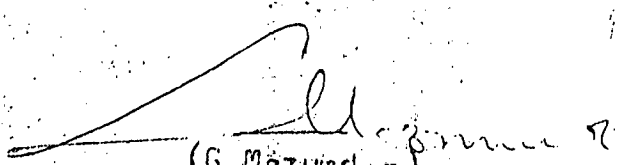
No vac

POSTING/TRANSFER: JE(QS&C)

Ref your letter No 81006/9/SA/329/EIC(1) dated
Mar 2001.

Application dt 20 Dec 2000 in respect of MES-243653
Shri DP Taya, JE(QS&C) of GE (AF) Shillong has been con-
sidered sympathetically and examined in its entirety with
view to ensure that no natural justice is denied to the
individual. However, it lacks substance and has been
rejected by the appropriate authority of this HQ.

Please instruct CUE (AF) Borjar and GE (AF) Shillong
to despatch the individual to this HQ by 31 Mar 2001.
In this connection this HQ Fax Nos 131322/2/2000/GE(QS&C)/
202/Engrs/EIC(1) dt 13 Mar 2001 and 131322/2/2000/GE(QS&C)/
202/Engrs/EIC(1) dt 19 Mar 2001 refers.


(G Mazumdar)
Lt Col
SO-I(Pers)
for Chief Engineer

Copy to:-
CUE (AF) Borjar
GE (AF) Shillong

For information and necessary action
please.

Attd
Shore

- 35. -

ANNEXURE-F

43

DR. BIRENDRA NATH DEKA
B.Sc. M.B.B.S.
Ex-Senior House Surgeon, G.M.C.H.

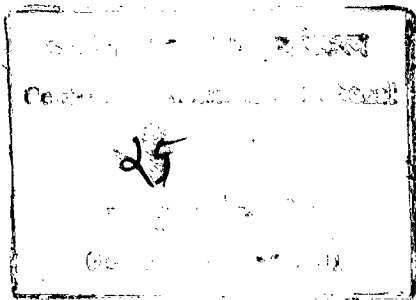
BELTOLA POLY CLINIC
Beltola-28
RESIDENCE
Piyali Phukan Road,
Rehabari, Guwahati-781 008

Date... 21/3/2001...

This is to Certify that -
Sri Durga Prasad Taya is
under my treatment since
28/3/2001. He is suffering
from Severe & Low Blood
Pressure. He is unable to walk
long distance at present and
advised to take rest till
further instructions.

Dr. B. N. Deka
Regd. No. 8467 (AMC)
Beltola Polyclinic, Gt-28

Attest
Signature
Advocate



36

44
Re-Q 27
24/12/01
S.C. 9.50

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 128 OF 2001

Shri Durga Prasad Taye

- Vs -

Union of India & Others.

- And -

In the matter of :

Written Statements submitted by the
Respondents

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

(BRIEF HISTORY OF THE CASE)

MES/243653 Shri Durga Prasad Taye, JE (QS & C),
who is serving under GE (AF) Shillong w.e.f. 26 Dec 97. The
individual has been posted out to GE Eastern Command on com-
pletion of his normal 3 years tenure in this station by Chief
Engineer Eastern Command vide Posting Order No. 131322/2/2000
/JE QS&C/119/Engrs/EIC(I) dated 07 Dec 2000. The individual
has accordingly been informed and get him noted as a token
of receipt.

The individual has submitted a representation
dated 20 Dec 2000 against the Posting/Transfer Order and the
same was forward to CE Eastern Command duly recommended

by GE (AF) Shillong through proper channel for consideration or otherwise.

The individual's application has been examined thread back by highest level at CE Eastern Command and rejected vide their letter No. 131322/2/2000/JE(QS&C)/202/Engrs/EIC(I) of 21 March 2001. And directed to relieve the individual by 31 Mar 2001. In accordance with instruction issued by CE Eastern Command the individual has been served Movement Order with SOS date 12 April 2001 (AN).

The individual submitted an application for 6 dys leave on medical ground on 27 Mar 2001 and left the station. As per existing instruction in force, copy of MO were forwarded to his home address under a Registered Post and one copy of MO pasted at the door of his local Resident (Govt Accn) allotted to him.

PARAWISE STATEMENTS

1. That with regard to para 1, the respondents beg to state that the individual's plea is not correct. Posting/Transfer, posting of all Group C and D Personnel of Eastern Command is prepared based on guidelines contained in Government of India, Min. of Defence letter No. 8(3)/92/D (Appts) of 28 Jan 1994 and E-in-C's Branch No. 79040/EIC(I) of 31 Aug 94 as such the individual has been correctly posted with in the command, since the posting/transfer of grup 'C' & 'D' (Basic Categories like JE (QS&C) JE(CIV), JE (E/M) post etc is controlled by HQ CEEC Calcutta.
2. That with regard to para 2, 3 and 4.1, the respondents beg to offer no comments.

3. That with regard to para 4.2, the respondents beg to state that the matter of facts.

4. That with regard to para 4.3, the respondents beg to state that the statement brought out in para 4.3, of the petition is matter of fact is being related policy in vogue. All out efforts have been made to post the individual as par as near to his native place. Therefore there is no specific comments in offer except to statement that implementation of the move of the personnel posted to choice station after having completed tenure of three years in their present formation is been implemented only after ascertaining the existence of vacancy.

5. That with regard to paras 4.4 and 4.5, the respondents beg to state that the contention of the individual is not correct. As per Govt. of India, Min of Defence letter dated 20 Jun 89 as far the holder of Group C & D post who has been recruited on regional basis and belongs to SC/ST community may be given posting to within the regional basis as per as the posting is concerned the said posting order is issued keeping the said guideline within the region as such individual's plea is not tenable and rejected.

6. That with regard to para 4.6, the respondents beg to state that the application submitted by the individual has been forward duly recommended for consideration. The case of the individual has been examined in details at highest level i.e. HQ CE Eastern Command Calcutta and reject on administrative constrains and in the interest of the state.

7. That with regard to para 4.7, the respondents beg to offer no comments.

8. That with regard to para 4.8, the respondents beg to state that the individual's contention is infructuous and figment of imagination and hence not agreed to. Posting/transfer is based on guidelines issued by the Govt. from time to time.

9. That with regard to para 4.9, the respondents beg to state that the individual's contention is not correct being a technical cadre of Group C Employee who is in receipt of Rs. 9667/- including all allowances. In this instance case, making himself as a poor employee with malafide intention to mislead judiciary.

10. That with regard to para 4.10, the respondents beg to state that the contention made by the petitioner vide this para is the submission of his own and does not incorporated with the facts with regards to implementation of move of effected personnel once their posting order are issued, therefore no cognizance shall be taken and the petition to this effect be rejected into.

11. That with regard to para 4.11, the respondents beg to state that the contention made by this para is not clear and no specific to the point raised therein. Hence no comments can be offered except to state that the instant case of the individual has been informed well in advance in order to enable him to keep readiness for move within a short notice therefore question of relieving him in hurry does not arise.

12. That with regard to para 4.12, the respondents beg to offer no comments.

13. That with regard to para 4.13, the respondents beg to state that the allegation made against the Govt. vide para is not agreed in to-to, hence no cognizance shall be taken so far as the aspect of the petition is concerned. In this connection, it is stated that though there is a Govt. policy restraining the Department consider posting out of the personnel belonging to SC/ST community outside their choice station ~~the~~ this applicability of such order for each and every cases does not serve the purpose/interest of the state, as such posting are being issued in the larger interest of the state.

14. That with regard to para 4.14, the respondents beg to state that the contention made vide this para is not agreed to bring mere allegation having no basis.

15. That with regard to paras 4.15 and 4.16, the respondents beg to state that the petitioner filed the instant petition seeking protection and right is to serve his own interest and the interest of the department involved in issuing posting order push to the back burner. Therefore, admittance of the petition of the petitioner would set a precedents whereby implementation of move of each and every personnel would be a difficult task resulting in rejecting the purpose of the Government for which posting order are being issued.

In this connection for your further perusal, an extract of the Supreme Court order No. AIR 1995 SC 813 is appended below :-

"The power of judicial review in respect of orders of transfer is very restricted. The transfer of a holder of a transferable post can not be challenged notice could be the subject matter of judicial review in the absence of legal or statutory right of the transferee as has been held by the Supreme Court in Chief General Manager (Telecom) Vs Rajendra Chandra Bhattacharya (AIR 1995 SC 813)".

The petitioner who holds a transferable post could always be transferred when the administrative interest or exigency warrants and it is for the administration to decide as to which place the petitioner or any other officer to be posted or in which post he has to be placed and court can not substitute their views. It can not be said that the order of transfer is either arbitrary or it is an abuse of power nor it is vitiated by material misdirection's. The guidelines referred to be the petitioner will in no way take away the powers of transfer by the competent authority.

Keeping in view of the order of Hon'ble Supreme - Court, the petition of the petitioner may please be ~~quashed /~~ rejected/^{any}vacated at the admission stage itself and ~~allow the~~ department ^{be allowed} to go ahead to implement the posting order of the petitioner keeping in view larger interest of the state department

Verification

(142)

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-7-

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

I, Shri MAJ JS CHHAKRA

Major being authorised do hereby verify and declare that the statements made in this written statement are true to my knowledge, information and relieve and I have not suppressed any material fact.

And I sign this verification on this 12th day of May, 2001.


Declarant.