

30/100

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

(DESTRUCTION OF RECORD RULES, 1990)

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Disposal Date-12/02/01

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SECTION OFFICER (Judl.)

FORM NO. 4

( See Rule 42 )

# In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 53/2001 OF 199

Applicant(s) Sri D. Hara Prasad.

Respondent(s) U.O. 1.2.005

Advocate for Applicant(s) Mr. B.K. Sharma & Mr. S. Sarma & Mr. U.K. Goswami

Advocate for Respondent(s) CGSC.

Notes of the Registry

Date

Order of the Tribunal

Mr S. Sarma Ld.  
Advocate filed an  
application with 6  
copies & Rs. 50/- P.O.

Laid before  
Court for orders.

1/2/2001  
SO (J)

2.2.01  
(Shillong)

Present : The Hon'ble Mr Justice D.N.  
Chowdhury, Vice-Chairman.  
The Hon'ble Mr K.K. Sharma,  
Administrative Member

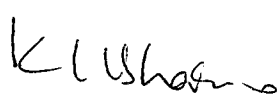

Heard Mr S. Sarma, learned counsel  
for the applicant, Mr A. Deb Barua, learned  
Sr.C.G.S.C for respondent No.1 and Mr  
D.K.Das, learned counsel appearing for  
caveator.

Application is admitted. Issue usual  
notice. Call for the records.

Mr Sarma prays for an interim order.  
Also heard Mr D.K.Das, learned counsel  
for the caveator for interim direction.  
As it appears that the applicant is yet  
to hand over the charge. Mr Das produced  
the communication dated 1.1.2001 and also  
communication sent by the Principal  
Secretary, Government of Assam vide D.O.  
No.FRE.51/96/Pt.I dated 30.1.2001

contd..

pg

Notes of the Registry	Date	Order of the Tribunal
	2.2.01 (Shillong)	<p>addressed to the Principal Chief Conservator of Forests, Assam. Place the same on record. Mr Das has opposed the interim prayer for stay.</p> <p>Considering the facts and circumstances at this stage we are of the view that notice may be issued to the respondents and accordingly we issue notice on the respondents to show cause as to why an interim direction shall not be given. Returnable by 12.2.2001. Meanwhile, the operation of the order dated 12.1.2001 so far the transfer and posting of the applicant from Jorhat to Guwahati shall remain suspended till the returnable date.</p> <p>List on 12.2.2001 for further order.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div data-bbox="813 1303 1093 1438" style="text-align: center;">   Member </div> <div data-bbox="1300 1303 1572 1438" style="text-align: center;">   Vice-Chairman </div> </div>
<p>9.2.2001</p> <p><i>Reply has been filed by the Respondent No. 5 for vacation modification of the interim order dated 2.2.2001.</i></p> <p style="text-align: right;"><i>27/2</i></p>	pg 12.2.01	<p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.</p> <p>The issue relates to posting and transfer of the applicant vis-a-vis respondent No.5. By order dated 12.1.2001 the applicant who was holding the post of Conservator of Forests, Eastern Assam Circle, Jorhat was transferred as Conservator of Forests (Wildlife) attached to the Chief Conservator of Forests (Wildlife Assam, Guwahati. The applicant did not seriously challenge the legality of the order of transfer from Jorhat to Guwahati. He sought for a direction on the respondents to allow him to continue to hold the present post at Jorhat till the conclusion of the annual examination of his children, and accordingly sought for a direction to continue at Jorhat till</p>

Notes of the Registry	Date	Order of the Tribunal
	12.2.01	<p>the completion of the examination in question. As a matter of fact he submitted a representation before the authority to allow him to continue to hold the post at Jorhat. It appears now from the Misc.petitions filed that the authority considered his application to allow him to continue at Jorhat and rejected his plea to continue in his present posting at Jorhat, but allowed the applicant to occupy the official residence till 31.3.2001 upto completion of the annual examination of his children.</p> <p>Heard Mr B.K.Sharma, learned Sr. counsel for the applicant. Dr Y.K.Phukan, learned Sr.Government Advocate, Assam has submitted that the respondent authority took care of the situation and allowed his family to occupy the official residence and therefore question of giving further direction does not arise. Mr N.Dutta, learned senior counsel for respondent No.5 submitted that the respondent No.5 has already assumed charge and therefore for fitness of things he should be allowed to discharge his duty at Jorhat. More so in view of the order passed by the State Government allowing the applicant to occupy the quarter till 31.3.2001. Mr B.K.Sharma, learned counsel for the applicant submitted that his case was not duly considered by the competent authority. Mr Sharma further submitted that had his case been placed before the competent authority in that event his case would have been duly considered in proper perspective permitting him to continue to work at Jorhat by giving due weight to the claim of the applicant for completion of the period till the annual examination. Mr Sharma submitted that transfer of a person in the mid academic session is not proper and in fact the</p>

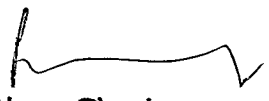
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Notes of the Registry	Date	Order of the Tribunal
	12.2.01	<p>respondent No.5 was given the similar benefit by the High Court in Writ Petition(Civil) No.3300 of 2000 disposed of on 7.9.2000.</p> <p>I have heard the parties at length through their learned counsel. It is found that the applicant is allowed to occupy the quarter till the completion of the examination. In the circumstances it would not be appropriate for this Tribunal to issue further direction on the matter. A part of the grievance of the applicant is already taken care of by the action of the respondents by allowing him to occupy the quarter till the completion of the examination. In view of the subsequent order dated 2.2.2001 no further direction is called for.</p> <p>Mr Sharma, learned counsel submitted that allowing to occupy the quarter till 31.3.2001 but shifting the applicant from the Jorhat at the time of examination is likely to affect the studies of the children and therefore till the end of the examination the applicant also may be retained at Jorhat and for that purpose a direction need be issued on the authority to allow him to continue in the post. I am not inclined to issue any direction on the authority concerned but it would be open to the applicant to make such prayer before the authority, notwithstanding the order passed by the respondents on 2.2.2001 and if such application is made for fitness of things the respondents should consider the same fairly and as per law. The interim order dated 2.2.2001 passed by this Tribunal shall continue till 17.2.2001 to enable the applicant to submit an appropriate application and move the competent authority for that purpose. He is allowed</p>

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v

Notes of the Registry	Date	Order of the Tribunal
<p>27.2.2001</p> <p>Copy of the order has been sent to the D/Sec for issuing the same to the L/Advocates for the parties.</p> <p>HS</p>	<p>12.2.01</p> <p>pg</p>	<p>time till 17.2.2001 and till then the interim order shall continue and thereafter it shall stand vacated unless any further order is passed by the competent authority for continuing or extending the stay of the applicant at Jorhat.</p> <p>The O.A thus stands disposed of.</p> <p>No order as to costs.</p> <p> Vice-Chairman</p>

4

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Title of the case :

DA No. 58/2001

BETWEEN

Shri D. Haraprasad,

... Applicant

- versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by :

U. K. Goswami

Advocate

File : WS4\uk\oa1



Filed by:  
the Applicant  
through  
Vijal Kr. Goswami  
Advocate  
11/2/2001

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

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

O.A. No. 52 of 2001

BETWEEN

Sri D. Hara Prasad,  
IFS, Conservator of Forest, Eastern  
Assam Circle, Jorhat.

... Applicant

AND

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Environment and Forest, New Delhi.
2. The State of Assam, represented by the Principal Secretary, Dept. of Forest, Government of Assam, Dispur, Guwahati-6.
3. The Principal Secretary, Dept. of Forest, Government of Assam, Dispur.
4. The Principal Chief Conservator of Forest, Assam, Rehabari, Guwahati-8.
5. Sri Bikash Brahma, IFS, Conservator of Forest, (on leave), C/o PCCF Assam, Guwahati-8.

... Respondents

DETAILS OF APPLICATION

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

The present OA is directed against an order of transfer issued vide notification dated 12.1.2001 transferring the Applicant from his present place of posting as CF (Wild Life) attached to CCF (Wild Life),

D. Hara Prasad

Assam, Guwahati.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

The Applicant declares that the present application have been filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India and laws framed thereunder.

4.2 That the Applicant belongs to the 1984 batch of IFS and is allocated to the Assam-Meghalaya Joint Cadre and posted to the Assam wing of the said Cadre.

4.3 That presently the Applicant is posted as Conservator of Forest, Eastern Assam Circle, Jorhat. He is functioning as such to the satisfaction of all concerned. The Applicant is at Jorhat along with his family members. His daughter is a student of Carmel School, Jorhat and her annual examination is due in the month of March 2001.

A copy of the school certificate is annexed as Annexure-1.

D. Nath

4.4 That the Government of Assam in the forest department have issued a notification dated 12.1.2001 towards effecting transfer and posting of the forest officers. The name of the Applicant finds place in the said notification. He has been sought to be transferred from his present place of posting as CF (Wild Life), attached to the CCF (Wild Life), Assam, Guwahati.

A copy of the said notification dated 12.1.2001 is annexed as Annexure-2.

4.5 That the Respondent No. 5 who was earlier transferred from Silchar to Guwahati as CF, Development in the office of the CCF, Research, Education and Working Plan by notification dated 22.5.2000 had moved the Hon'ble Guwahati High Court by filing a writ petition registered and numbered as WP(C) 3300/2000. The writ petition was preferred on the ground of non-availability of a Bench of this Hon'ble Tribunal at that relevant point of time. The ground taken in the writ petition assailing the order of transfer was that his daughter a student of class-VI of Maharshi Vidya Mandir, Silchar was undergoing her studies and the transfer order would affect her academic career. It was also stated in the writ petition that his youngest daughter had been studying in pre-kg class in a school at Silchar named Khela-ghar and that her session would be over in the month of December 2000. Accordingly representation were submitted for accommodating him at Silchar till December, 2000. Same was the prayer in the

D. Handwritten

writ petition.

4.6 That the Hon'ble High Court by its order dated 21.6.2000 was pleased to grant interim protection to the Respondent No. 5. The affected officer who was transferred in the place of the Respondent No. 5 moved the Hon'ble Court by filing Misc. Case No. 731/2000 for vacating the interim order. Eventually the entire writ petition was disposed of by an order dated 7.9.2000 providing that Shri Brahma (Respondent No. 5) would be allowed to continue till 15.12.2000 i.e. till academic session of his daughters is over and thereafter the other incumbent namely Shri R.D. Tanwar who was transferred to his place would be allowed to join.

A copy of the said order dated 7.9.2000 is annexed hereto as Annexure-3.

4.7 That surprisingly enough the Respondent No. 5 although relinquished his charge at Silchar on 15.12.2000 in favour of said Shri Tanwar as per order dated 7.9.2000 mentioned above, did not join in his transferred post at Guwahati. Now by the impugned order he is shown to have returned from leave and is posted in place of the Applicant. The posting of Respondent No. 5 is stated to be in modification of his earlier order of transfer dated 22.5.2000 forming subject matter of WP(C) No. 3300/2000. Thus the Respondent No. 5 is successful in not carrying out his earlier transfer order firstly through the intervention of the Hon'ble High Court and secondly by way of the impugned

D. Hanu

order. On the face of it there is no public interest involved in his transfer to Jorhat.

4.8 That the Applicant states that he has already submitted a representation dated 16.1.2001 to the Government of Assam which was duly forwarded by his controlling authority praying for stay of his transfer at this juncture. He is concerned with his daughter's ensuing examination scheduled to be held in the month of March, 2001. It has been learnt that the said examination is likely to be postponed to April, 2001. Thus if the Applicant is to carry out the order of transfer it is the education of his daughter which will suffer.

A copy of the representation dated 16.1.2001 and the forwarding dated 17.1.2001 are annexed hereto as Annexure-4 & 5 respectively.

4.9 That the Applicant states that to the best of his knowledge his representation is under active consideration but at the same time there is a move to release the Applicant from his present place of posting unless the charge is handed over by him to the Respondent No. 5 by 3.2.2001. It is under these circumstances that the Applicant has come before this Hon'ble Tribunal seeking urgent and immediate relief.

4.10 That the Applicant states that immediately on receipt of the notification dated 12.1.2001, the Respondent No. 5 even without waiting for expiry of

D. h.d.P.

normal joining time rushed to Jorhat and submitted a letter dated 17.1.2001 to the PCCF, Assam stating that he has reported for duty at Jorhat on 17.1.2001 pursuant to the order of transfer. By the said letter the Applicant has been requested to hand over the charge. However, the Applicant is still functioning in his present place of posting and has not handed over the charge to the Respondent No. 5. The Respondent No. 5 on the other hand has left Jorhat and is in Guwahati. It will be pertinent to mention here that in the said letter the Applicant has stated to have availed earned leave from 16.12.2000 to 9.1.2001 and joining time from 10.1.2001 to 16.1.2001 i.e. even before the impugned order of transfer dated 12.1.2001 was issued.

The Applicant craves leave to produce the copy of the letter dated 17.1.2001 if and when required.

4.11 That the Applicant states that going by the sequence of events reflected above, it is not a case of transfer simpliciter and/or public interest, but has been issued with extraneous considerations. But while doing so the Respondents ought to have considered the difficulties being faced by the Applicant. It will be pertinent to mention here that the same very Respondents had earlier considered further stay of the Respondent No. 5 beyond 15.12.2001 at Silchar and even had advised the Government Advocate, Assam to move an application in the disposed of WP(C) No. 3300/2000 for

D.H. Paul

further extension of his stay at Silchar. Such a move was initiated at the request of the Petitioner. But however, before such an application could be moved meeting the technicalities the Respondent No. 5 himself had filed yet another WP(C) 6946/2000 making a prayer therein for his further continuation at Silchar upto March' 2001. However, possibly on the understanding he would be given his choice posting, the writ petition was withdrawn and the impugned order of transfer has been issued even without requiring him to join at Guwahati.

The craves leave of this Hon'ble Tribunal to produce the copies of writ petitions if and when required.

4.12 That the Applicant states that if the Respondent No. 5 could be accommodated on the ground of mid academic session, there is no earthly reason as to why the case of the Applicant cannot be considered on the same ground, in fact his representation is under active consideration and it is his reasonable expectation that, but for the move to release him, the representation would be favorably considered. Further the Applicant states that the Government of Assam has from time to time issued circulars prescribing the manner in which transfer of officers is to be effected, the transfer policy adopted by the Government of Assam clearly specifies that the transfers should be effected in such a manner that the academic session of the

D. Hanth

children of the transferred employee is not effected. As such the impugned transfer order dated 12.1.2001 has been issued in clear violation of the policy of the Government of Assam as regards the manner in which transfers are to be effected.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that prima facie the impugned order of the transfer of the Applicant is not sustainable and liable to be set aside.

5.2 For that the impugned order having not been issued in any public interest but having been issued to accommodate the Respondent No. 5, the same is liable to be set aside.

5.3 For that there being malafide and arbitrary exercise of power on the part of the Respondent No. 3 towards issuance of impugned order, same is liable to be set aside.

5.4 For that there being malice in law as well as of fact, it is a fit case to interfere with the impugned order.

5.5 For that in any view of the matter, the impugned order is not sustainable in law.

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

D. Hanu



6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application. He is seeking urgent and immediate relief.

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

The Applicant declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To set aside and quash the Annexure-2 notification in respect of the Applicant and to allow the Applicant to continue in his present post.

8.2 Cost of the application.

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

D. Narain

Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Under the facts and circumstances of the case the Applicant it is most respectfully prayed that the Hon'ble Tribunal may pleased to stay/suspend the Annexure-2 notification so far as the Applicant is concerned with a further direction that the Applicant be allowed to continue in his present post.

10. ....

The application is filed through Advocate.

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

- i) I.P.O. No. : 56 42/996
- ii) Date : 31/1/2001
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

D. Harsh

VERIFICATION

I, Shri D. Haraprasad, aged about 43 years, son of Late D. Nagaiah, presently working as Conservator of Forest, Eastern Assam Circle, Jorhat, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 5, 7, 9, 11 are true to my knowledge ; those made in paragraphs 3, 4, 6, 8, 10 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 1<sup>st</sup> day of February ~~January~~ 2001.

D. Hara Prasad

Phone : ( 0376 ) ~~321027~~ 360355



**CARMEL SCHOOL**

CINNAMARA P.O.

Jorhat—785008

ASSAM

14.01.2001

TO WHOMSOEVER IT MAY CONCERN

Miss Divya Prasad and Master Shashank Prasad are daughter and son of Mr. D. Haraprasad, I.F.S., Conservator of Fprests, Eastern Assam Circle, Jorhat, are studying in Carmel School, Jorhat. They will complete their final examination in mid-March 2001.

*M. Agnelita* sc.

PRINCIPAL

Principal

CARMEL SCHOOL

*Attested*  
*Uk Goru*  
*Advocate*

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT :: : DISPUR

ORDERS BY THE GOVERNOR

-NOTIFICATION-

Dated Dispur, the 12th January, 2001.

- NO.FRE.51/96/140 :** Shri N.K. Vasu, IFS (RR-1985), Divisional Forest Officer, Nagaon South Division, Hojai is promoted to supertime Scale of I.F.S. in the rank of Conservator of Forests in the Scale of pay of Rs.16,400-450-20,000/- P.M. and posted as Conservator of Forests (Development), in the Office of the Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati with effect from the date of taking over charge vice Shri D. Mathur, IFS, Conservator of Forests relieved from the dual charge.
- NO.FRE.51/96/140-A :** Shri S. K. Srivastava, IFS (RR-1985), Divisional Forest Officer, Nagaon Division, Nagaon is promoted to supertime Scale of I.F.S. in the rank of Conservator of Forests in the pay scale of Rs.16,400-450-20,000/- P.M. and posted as Conservator of Forests, Northern Assam Circle, Tezpur with effect from the date of taking over charge vice Shri B. N. Pathak, IFS, Conservator of Forests transferred.
- NO.FRE.51/96/140-B :** On relief, Shri B. N. Pathak, IFS, Conservator of Forests, Northern Assam Circle, Tezpur is in the interest of public service transferred and posted as Conservator of Forests, Central Southern Assam Social Forestry Circle, Guwahati with effect from the date of taking over charge vice Shri Chandra Mohan, IFS, Conservator of Forests transferred.
- NO.FRE.51/96/140-C :** On relief, Shri Chandra Mohan, IFS, Conservator of Forests, Central Southern Assam Social Forestry Circle, Guwahati is in the interest of public service, transferred and posted as Conservator of Forests, Lower Assam S.F. Circle, Bongaigaon with effect from the date of taking over charge vice Shri M.M. Sharma, IFS, Conservator of Forests transferred.
- NO.FRE.51/96/140-D :** On relief, Shri M.M. Sharma, IFS, Conservator of Forests, Lower Assam S.F. Circle, Bongaigaon is in the interest of public service, transferred and posted as Principal, North East Forest Rangers' College, Jalukbari, Guwahati with effect from the date of taking over charge vice Shri B.B. Dhar, IFS, Principal transferred.
- NO.FRE.51/96/140-E :** On relief, the services of Shri B.B. Dhar, IFS, Principal, North East Forest Rangers' College, Jalukbari, Guwahati are placed at the disposal of Karbi Anglong Autonomous Council, Diphu for his posting as Conservator of Forests, Karbi Anglong, Diphu against the existing vacancy.
- NO.FRE.51/96/140-F :** Shri B. Brahma, IFS, Conservator of Forests on return from leave is in the interest of public service, transferred and posted as Conservator of Forests, Eastern Assam Circle, Jorhat with effect from the date of taking over charge vice Shri D. Haraprasad, IFS, Conservator of Forests transferred.

This modified this Department's earlier Notification No. FRE-6/90/148-A, dtd. 22-5-2000.

Contd...P/2...

Attended  
U. G. G. G.  
Advocate

HARPA 30 1000 1000

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NO.FRE.51/96/140-G : On relief, Shri D. Haraprasad, IFS, Conservator of Forests, Eastern Assam Circle, Jorhat is in the interest of public service transferred and posted as Conservator of Forests(Wildlife) attached to Chief Conservator of Forests(Wildlife) Assam, Guwahati with effect from the date he assumes charges against the existing vacancy. Sd/- A. Jain, Principal Secretary to the Govt. of Assam, Forest Department, Dispur

Memo No. FRE.51/96/140-H Dated Dispur, the 12th January, 2001  
Copy to :-

1. The Accountant General(A&E) Assam, Beltola, Guwahati-29.
2. The Principal Secretary to the Govt. of Meghalaya, Forest and Environment Deptt., Shillong.
3. The Principal Chief Conservator of Forests, Assam, Guwahati-8.
4. The Principal Chief Conservator of Forests, Govt. of Meghalaya, Shillong.
5. The Chief Conservator of Forests(SF) Assam, Guwahati-24.
6. The Chief Conservator of Forests(Wildlife) Assam, Guwahati-8.
7. The Chief Conservator of Forests(T) Assam, Panbazar, Guwahati-1.
8. The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati-24.
9. The Under Secretary to the Govt. of India, Ministry of Environment & Forests, Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi-110003
10. The Principal Secretary, Karbi Anglong Autonomous Council, Diphu with a request to issue notification of posting of Shri B.B.Dhar, IFS.
11. The Conservator of Forests,
12. Shri B.N.Pathak, IFS, C.F., Northern Assam Circle, Tezpur.
13. Shri B.B.Dhar, IFS, Principal, North East Forest Rangers' College, Jalukbari, Guwahati-14.
14. Shri M.M. Sharma, IFS, C.F., Lower Assam SF Circle, Bongaigaon.
15. Shri B. Brahma, IFS, C.F. (on leave), C/O P.C.C.F., Assam, Guwahati-3.
16. Shri D. Haraprasad, IFS, C.F., Eastern Assam Circle, Jorhat.
17. Shri Chandra Mohan, IFS, C.F., Central Southern Assam S.F. Circle, Guwahati-1.
18. Shri N.K.Vasu, IFS, DFO, Nagaon South Division, Hojai. He is directed to proceed for taking over charge of his new assignment after handing over charge of Nagaon South Division to the seniormost A.C.F. of the Division.
19. Shri S.K. Srivastava, IFS, DFO, Nagaon Division, Nagaon. He is directed to proceed for taking over charge of his new assignment after handing over charge of Nagaon Divn. to the Seniormost ACF of the Division.
20. The Divisional Forest Officer,
21. The P.S. to the Chief Minister, Assam, Dispur for favour of information of the Chief Minister.
22. The P.S. to the Minister of State Forests, Assam for favour of information of the Minister.
23. The P.S. to the Chief Secretary, Assam for favour of information of the Chief Secretary.
24. The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for publication of the notification in the next issue of the Assam Gazette.
25. Personal file of the officers.

By order etc.,

Joint Secretary to the Govt. of Assam,  
Forest Department, Dispur



IN THE MATTER OF :-

Shri Bikash Brahma,  
son of Late R. Brahma,  
resident of Trunk Road,  
Silchar, Assam.

... PETITIONER.

-VERSUS-

Contd.../-

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1. The Union of India,  
Represented through Ministry of  
Environment and Forest, Department  
of Forest and Wildlife, C.G.O. Complex,  
Lodhi Road, New Delhi.
2. State of Assam,  
through the Commissioner and  
Secretary to the Govt. of Assam,  
Forest Department, Dispur,  
Guwahati-6.
3. The Principal Chief Conservator  
of Forests, Rehabari, Assam.
4. Dr. R.D.S. Tanwar, IFS,  
Conservator of Forests(Wildlife)  
Office of the Chief Conservator  
of Forests (Wildlife) Assam.

... RESPONDENTS.

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Noting by Officer or Advocate

Serial  
No.

Date

Office notes, reports, orders or proceeding  
with signature7/9/2000

BEFORE

THE HON'BLE MR JUSTICE A.K.PATNAIK

In this application under Article 226 of the Constitution, the petitioner has challenged the order dated 22.5.2000 (Annexure A) of the Government of Assam, Forest Department transferring him from the post of Conservator of Forests, Southern Assam Circle, Silchar and posting him as Conservator of Forests, Development in the office of the Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati and transferring the Respondent No.4 to his aforesaid post at Silchar.

Mr N.Dutta, learned counsel for the petitioner submitted that the Principal Chief Conservator of Forests, Assam in his letter dated 26th May, 2000 had recommended that the petitioner be continued in Southern Assam Circle at Silchar and be allowed to complete three years tenure on the said post and that the Respondent No.4 be posted as Conservator of Forests, Upper Assam. But the said recommendation of the Principal Chief Conservator of Forests Assam does not appear to have been given any weightage by the Government. He further submitted that two daughters of the petitioner Miss Diksha Brahma and Miss Sunaina Brahma are studying in Khela Ghar Pre-K.G.School and Maharishi Vidya Mandir, Silchar respectively and that the academic session of the children will be over only in the middle of December, 2000 and if the transfer of the petitioner is effected before the middle of December, 2000 the education of the said children of the petitioner will be adversely affected. Mr Dutta cited the decision of the Supreme Court

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in Director of School Education, Madras and others Vs O. Karuppa Thevan and another, 1994 Supp (2) Supreme Court Cases 666 in which the Supreme Court has observed that the transfer should not have been effected during mid-academic term and that the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent even though there is no rule providing for not transfer during mid-academic session. Mr Dutta further submitted that in the said decision the Supreme Court disposed of the case before it by directing that the employee concerned should be allowed to continue at the place from he had been transferred till the end of the current academic year.

Mr B.K. Sarma, learned counsel for the respondent No. 4, on the other hand, submitted that the aforesaid recommendation of the Principal Chief Conservator of Forests, Assam had been made after the transfer order was passed by the Government. Regarding inconvenience caused to the children of the petitioner in their study at Silchar, Mr Sarma submitted that the wife of the petitioner had in the meantime submitted a representation before the Hon'ble Chief Minister of Assam who is also the Minister of Forest and prayed for stay, the transfer order of the petitioner for a period of 3 months and the said 3 months period is over by now, the said representation <sup>having been</sup> filed in the first week of June, 2000. Mr Sarma further submitted that one of the daughters of the petitioner <sup>was</sup> studying in Maharishi Vidya Mandir at Silchar and the academic session in the said Vidya Mandir was over in the month of June, 2000 and there is no infirmity in the

Noting by Officer or Advocate

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cont.. 3

impugned order of transfer which was passed on 22.5.2000 just before the end of the academic session.

I will first deal with the contention of Mr Dutta that the recommendation of the Principal Chief Conservator of Forests, Assam in his letter dated 26.5.2000 to continue the petitioner at Silchar in Southern Assam Circle was not considered by the Government.

It appears from perusal of the records and the notes therein at pages 119, 120 and 121 that the said recommendation of the Principal Chief Conservator of Forests, Assam has been placed before the authorities and has been considered by the authorities and yet the authorities have taken the view that the impugned order of transfer, <sup>which has</sup> already been passed should not be interfered with. It is, therefore, not correct that the recommendation of the Principal Conservator of Forests has not been considered at all as indicated above. The said recommendation has been considered but the Government has not thought it desirable to change the order of <sup>transfer of</sup> the petitioner and the respondent No.4. This Court in exercise of its power under Article 226 of the Constitution cannot interfere with the said administrative decision taken by the Government with regard to transfer of the petitioner and the respondent No.4.

Regarding the contention of Mr Dutta that the petitioner should have been allowed to stay at Silchar at least till December, 2000 to enable his two daughters to complete their academic session in their respective schools, I find from a certificate dated 12th July, 2000 issued by the Principal

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7/9/2000

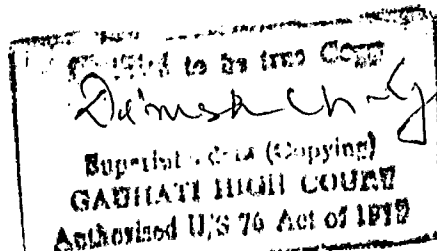
cont.. 4

Khela Ghar Pre K.G.School that the academic session of Miss Diksha Brahma will be over in December, 2000. There is, however, nothing to indicate the certificate issued by the Principal of Maharishi Vidya Mandir, Silchar that the academic session of Miss Sunaina Brahma will be over only in December, 2000. In view of the fact that the academic session of one of the petitioner's daughter will be over in December, 2000, without interfering with the order of transfer under the impugned notification dated 22.5.2000, I direct that the petitioner will be allowed to remain as Conservator of Forest, Southern Assam Circle at Silchar till 15 December, 2000 and the respondent No.4 will be allowed to take over the charge as Conservator of Forests Southern Assam Circle at Silchar as per the impugned order of transfer dated 22.5.2000 with effect from 15.12.2000.

Since the respondent No.4 apprehends that the impugned order of transfer dated 22.5.2000 may be interfered with by the Government in the meantime, I make it clear that the said order of the transfer shall not be interfered with by the Govt without the leave of this Court,

With the aforesaid direction this writ petition is disposed of.

Sd/- A K Pattnaik  
Judge



8/9/2000

GOVERNMENT OF ASSAM  
OFFICE OF THE CONSERVATOR OF FORESTS: EASTERN ASSAM CIRCLE:  
JORHAT

No. PG.2840/EAC

dt. 16/1/2001

From:- The Conservator of Forests,  
Eastern Assam Circle, Jorhat.

To

The Principal Secretary to the Govt. of  
Assam, Forest Deptt. Dispur, Guwahati-6.

(Through Proper Channel.)

Sub:- *Request for stay of transfer order.*

Ref:- Govt. notification No. FRE.51/96/140-G dt. 12.1.2001.

Sir,

I have the honour to draw your kind attention to the above referred Govt. order as per which the undersigned was transferred from Eastern Assam Circle, Jorhat to Conservator of Forests, Wild Life, O/O the Chief Conservator of Forests, Wild Life, Guwahati.

Whereas my children who are studying in Carmel School, Chinamara, Jorhat will be completing their final examinations of the academic year by mid March' 2001. A copy of the letter from the Principal, Carmel School is enclosed herewith for favour of your perusal.

Hence my transfer from Jorhat at this stage will hamper their preparations for the ensuing final exams. So I am to request you to kindly consider staying of my transfer order out of Jorhat till 31<sup>st</sup> March' 2001.

Yours faithfully,

Conservator of Forests,  
Eastern Assam Circle, Jorhat.

Advance copy to the Principal Secy. to the Govt. of Assam, Forest Deptt. Dispur for favour of his kind information.

Advance copy to the Principal Chief Conservator of Forests, Assam, for favour of information.

Advance copy to the Principal Private Secy. to the Honourable Chief Minister, Assam for favour of information.

Conservator of Forests,  
Eastern Assam Circle, Jorhat.

*Attended*  
*Wefarman*  
*Advocate*

GOVERNMENT OF ASSAM  
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS::ASSAM::  
GUWAHATI-8.

NO. PG. 280,

Dated Guwahati, the 18th Jan/2001.

To,

The Principal Secretary to the Govt. of Assam,  
Forest Department, Dispur,  
Guwahati-6.

Sub :-

Stay of transfer order of Sri D. Haraprasad,  
I.F.S. C.F.

Ref :-

Govt. notification No. FRE. 51/96/140-G,  
dtd. 12.1.2001.

Sir,

I am forwarding herewith a representation <sup>bearing</sup> No. PG. 2840/EAC, dtd. 16.1.2001 of Sri D. Haraprasad, I.F.S., Conservator of Forests, Eastern Assam Circle, which is received under cover of Chief Conservator of Forests, Territorial, letter No. FET. 12/TP/Officer, dtd. 18.1.2001, the contents of which are self explanatory for your requisite action.

Enclos:- As stated.

Yours faithfully,

*9/19012001*  
Principal Chief Conservator of Forests  
Assam :: Guwahati-8.

Dated Guwahati, the 19th Jan/2001.

Memo No. PG. 280-A,

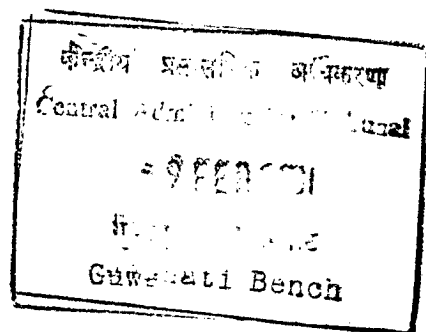
Copy to the Conservator of Forests, Eastern Assam  
Circle, for information.

*9/19012001*  
Principal Chief Conservator of Forests  
Assam :: Guwahati-8.

PCHB  
190101

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*Attested*  
*W. G. S. W.*  
*Advocate*



Filed By  
Shri D. Haraprasad  
Through  
Shri Krishnan Nair  
Union Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI  
GUWAHATI-BENCH

O.A No. 52/2001

Shri D. Haraprasad, IFS,

... Applicant

- versus -

Union of India & Ors.

... Respondents

IN THE MATTER OF

Reply to the application filed by  
the Respondent No. 5 for  
vacation/modification of the interim  
order dated 2.2.2001.

The Applicant begs to state as follows:-

1. That the Applicant has gone through the copy of the application filed by the Respondent No. 5 for vacating the interim order dated 2.2.2001 and has understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the application are categorically denied.
2. That with regard to the statements made in paragraph 1 of the application it is stated that the Respondent No. 5 has been posted in place of the Applicant in modification of his earlier order of transfer was reflected in the impugned notification itself. Earlier



the Respondent No. 5 was posted at Silchar from where he was transfer to Guwahati. However, he did not join at Guwahati and waited for a posting to his liking and remained on leave.

3. That with regard to the statements made in paragraph 2 of the application it is denied that the Applicant did not give any reply to the letter dated 17.1.2001. In fact the Applicant by his letter dated 22.1.2001 has <sup>replied</sup> ~~reply~~ to the Respondent No. 5 that since his representation was pending, charge would be handed over in due course.

The Applicant craves leave of the Hon'ble Tribunal to produce a copy of his reply dated 22.1.2001 if and when required.

4. That with regard to the statements made in paragraph 3 of the application it is stated that Annexure-D and D1 annexed to the application more particularly Annexure-D does not carry any meaning for the Respondent No. 5 so far as handing over of charge by him is concerned. He had already handed over the charge on 15.12.2000 at Silchar pursuant to the order of the Hon'ble High Court. However, he did not join at Guwahati, but remained on leave till such time his transfer order was modified by the impugned order. Rest of the things has reflected in those two Annexures can well be understood.

5. That with regard to the statements made in paragraph

4 of the application, the Applicant states that he has already filed an additional statement of fact and he craves leave of the Hon'ble Tribunal to refer and rely upon the said additional statement of fact in respect of the averments made in paragraph 4.

6. That with regard to the statements made in paragraph 5 of the application it is denied that the transfer order dated 12.1.2001 has been issued in any public interest. It is emphatically stated that the impugned order has been issued only to accommodate the Respondent No. 5. The relevant file will bear the testimony of the same and accordingly the Applicant craves leave of the Hon'ble Tribunal to call for the said file for a proper adjudication of the matter.

7. That with regard to the statements made in paragraphs 6 and 7 of the application it is stated that the interim order dated 2.2.2001 is required to be continued and not liable to be vacated as has been prayed for by the Respondent No. 5.

Verification...

= 4 =

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

I, Shri Haraprasad, IFS, the Applicant in OA No. 53/2001, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4, 5, 6 and 7 are true to my knowledge ; those made in paragraphs — are true to my informations derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 9th day of February 2001.

D. Hara Prasad