

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

4

✓ (DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 75/01.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet.....OA.....Pg. 1.....to. 3.....
2. Judgment/Order dtd/12.11.2001.....Pg. 1.....to. 2.11.2001.....
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....75/01.....Pg. 1.....to. 38.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
- ✓ 7. W.S.....Pg. 1.....to. 4.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

(See Rule 42)

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

ORDER SHEET
APPLICATION NO

75 OF 20d

Applicant' (S)

Prantosa diti

Respondent (s)

U. O. I. Sons

Advocate for Applicant(s)

Mr. AX Gaudin, Mr. M. Chandel

Advocate for Respondent (CJ)

Ms. A.D. / Grosvenor, R. S. / Ghosh
CSC

Notes of the Registry

Datr e

Order of the Tribunal

16.2.01

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

Heard learned counsel for the parties.

Issue notice as to why the application shall not be admitted. Returnable by 6 weeks. List on 7.3.01 for Admission.

Issue notice on the respondents as to why interim order shall not be granted. Returnable by 4 weeks. In the meantime, the impugned order of transfer and posting No.16/2001 dated 19.1.2001 (Annexure 1) of Shri Prantosh Dutta shall remain suspended till the returnable date.

Vice-Chairman

Heard Mr.M.Chanda learned couns.
for the applicant and also Mr.A.Deb
Roy, Sr.C.G.S.C. for the respon-
dents.

Application is admitted. Issue notice to the respondents. Call for records. Returnable by 6 weeks List on 2.5.01 for orders.

In the meantime the interim order dated 14.2.01 shall continue. Member.

This application is in form
but not in time. Declaration
Fertile is still on file vide
M.F.P.

for the [redacted] [redacted]

IPG# SG-422069

Dated... 15.2.2001
F. in Registrar 1/2107

26-2-2001

Service of Notice issued
to the respondents
vide D. No. 837-844 Dt.
2.3.01

1m

14.3.01

13. 3. 01

Cause has been

no ~~25/5/11 (cont)~~

Sharon

2.5. Passover 4.5.2001

19/10
11/10/2
2.5

4.5.2001

Four weeks time allowed to the respondents to file written statement. List for orders on 8.6.01.


Vice-Chairman

nk m

8.5.01

Written statement has been filed. Mr. M.Chanda learned counsel for the applicant asked for time to file rejoinder, if any within 2 weeks. List on 10-7-01 for order.

Notice duly served
on R.No. ~~1,2,3~~ 1,2,3
& 6
30
11.6.2001

mb


Member

11.7.01

Written statement has been filed. The applicant may file rejoinder if any within 2 weeks. List on 1.8.01 for orders.

12.6.2001
w/s has been
submitted by the
Respondents.

lm

Vice-Chairman

By Order

A.K.S. 11.7.

31-7-2001

No, Rejoinder
has been filed

Don

1.8.01

Written statement has been filed. Case is ready for hearing. Let this case be listed for hearing on 5.9.01.


Vice-Chairman

lm

5.9.01

On the request made by Mr.M.Chanda, learned counsel for the applicant, the case is adjourned to 21.9.2001 for hearing.

No. rejoinder has
been filed.

34
20.9.01

bb

21.9.01

Mr. A.K.Choudhury, learned counsel for the applicant sought for short adjournment. Prayer is allowed.

List on 10/10/01 for hearing.

No. rejoinder has
been filed.

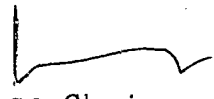
34
9.10.01


Vice-Chairman

mb

10.10.01

Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open Court, kept in separate sheets. The application is disposed of in terms of the observations made in the order. No costs.


Vice-Chairman

trd

21/11/2001

Copy of the
Judgment has been
sent to the Office
for issuing the same
to the applicant
as well as to the
L/Adv. for the Respds

HS

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. NO. 75/2001 . . . of

DATE OF DECISION 10.10.2001

Sri Prantosh Dutta

APPLICANT(S)

Mrs. N.D.Goswami.

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. B.C.Pathak, Addl.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.



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 75 of 2001.

Date of Order : This the 10th day of October, 2001.

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

Shri Prantosh Dutta
Son of Late Atul Chandra Dutta
Resident of Custom Quarter
Mantribari Road,
Quarter No.16 (Near Netaji Choumohini)
Agartala, Tripura (West).

...Applicant

By Advocate Mrs. N.D.Goswami.

-versus-

1. Union of India
Through the Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue
New Delhi.
2. The Chairman
Central Board of Excise and Customs
Government of India,
Ministry of Finance,
Department of Revenue
New Delhi.
3. Commissioner of Customs
15 Strand Road,
Calcutta.
4. Commissioner of Customs
N.E. Region
Shillong.
5. Shri K.K.Das,
Commissioner of Customs
N.E.Region,
Shillong.
6. Commissioner of Central Excise,
N.E. Region,
Shillong.
7. Additional Commissioner (P&V)
Central Excise and Customs,
Shillong.
8. Assistant Commissioner,
Agartala Customs Division,
Government of India,
Agartala

....Respondents

By Advocate Mr. B.C.Pathak, Addl. C.G.S.C.

Contd...

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

The issue pertains to transfer and posting. By order dated 19.1.2001 the applicant Prantosh Dutta a Group D Sepoy of Central Excise and Customs is transferred from A/S Unit, Agartala Customs Division to Dharmanagar Range, Silchar Customs and Excise Division. The applicant assailed the legitimacy of the aforementioned order as arbitrary and discriminatory. The applicant contended that he being a Group D staff should not be transferred frequently more so on account of his personal problem mentioned in the application. The respondents submitted its written statement denying and disputing the contention raised by the applicant. In the written statement it was stated that the applicant served in the Customs for 19 years and he has now been transferred within the State from Agartala to Dharmanagar Range in conformity with the transfer policy and guidelines. Ms. N.D.Goswami, learned counsel for the applicant submitted that the impugned order of transfer and posting of the applicant will seriously affect in the studies of the school going children of the applicant. The eldest daughter of the applicant is to appear in the Matriculation Final Examination in the month of March 2001 and the minor son of the applicant studying at class II at Agartala under the Tripura Board. She has also pointed out that about the serious set back in view of the fact that his elder brother was kidnapped by the extremist group on 15.10.1999, as a result the entire responsibility of the entire family of his elder brother is on the shoulder of the present applicant. Therefore the impugned transfer order made at this stage would cause serious effect and in view of his transfer it will be difficult for the applicant to maintain two families with his meagre income. Mr. B.C. Pathak, learned

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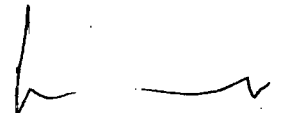
8

Addl.Sr. C.G.S.C. opposes the prayer of the counsel for the applicant and stated that it is the routine transfer made to shift the persons from Customs to Central Excise.

Upon hearing the counsel for the parties I do not find any infirmity to shift the applicant from Customs to Central Excise. The transfer of the applicant is also seemingly not unlawful. However fact remains that the impugned order of transfer on the facts and circumstances would cause some dislocation to the family of the applicant. Such matter can only be look^{ed} after by the employer and not by the Tribunal to go into that area.

In the circumstances I am of the view that ends of justice will be met if a direction is given to the applicant to submit a representation narrating his grievances before the Commissioner, Central Excise and Customs, Shillong, so that the Commissioner or some other competent officers assigned by the Commissioner can look into the matter considering the situation of the applicant. Accordingly the applicant is directed to make an appropriate representation before the Commissioner, Central Excise and Customs within a period of two weeks from the date of receipt of a certified copy of this order. If such representation is filed, the Commissioner of Central Excise and Customs may himself examine the matter or assign any of the competent authority to examine the representation of the applicant and pass an appropriate order as per law, so that proper justice can be made to the applicant. The above exercise shall be completed by the respondents within two months from the date of receipt of the representation of the applicant.

With the observations made above, the application stands disposed of. There shall, however, be no order as to costs.


(D.N.CHOWDHURY)
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed by:
 Sri Prantosh Dutta
 Applicant
 through:
 Sujit Ghosh
 Advocate
 15.2.2001

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

Title of the Case : O.A. No. 75/2001

Sri Prantosh Dutta : Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1	-	Application	1-17
2	-	Verification	18
3	1	Order of transfer and posting dt. 19.1.2001	19-21
4	2	Representation dt. 30.1.2001	22-23
5	3	Transfer & posting guidelines dt. 30.6.94	24-27
6	4	Officer order dt. 19.9.94	28-29
7	5	Office order dt. 19.5.97	30-32
8	6	Office order dated 5.6.97	33-34
9	7	Office order dt. 2.8.99	35
10	8	Office order dt. 10.3.2000	36
11	9	Office order dt. 24.8.2000	38-37
12	10	Judgement & order of the 31.1.1994	38

Date : 13.2.2001

Filed by
Sujit Ghosh
 Advocate

Prantosh C. Dutta

10
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

O.A. No. 75/2001

BETWEEN

Shri Prantosh Dutta

Son of Late Atul Chandra Dutta

Resident of Custom Quarter

Mantribari Road,

Quarter No. 16 (Near Netaji Choumohini)

Agartala, Tripura (West)

..... Applicant

-AND-

1. Union of India

Through the Secretary to the

Government of India

Ministry of Finance,

Department of Revenue

New Delhi.

2. The Chairman

Central Board of Excise and Customs

Government of India,

Ministry of Finance,

Department of Revenue

New Delhi

3. Commissioner of Customs

15 Strand Road,

Calcutta.

Contd....

Prantosh Ch. Dutta

4. Commissioner of Customs
N.E. Region
Shillong.
5. Shri K.K. Das,
Commissioner of Customs
N.E. Region,
Shillong.
6. Commissioner of Central Excise,
N.E. Region
Shillong.
7. Additional Commissioner (P&V)
Central Excise and Customs,
Shillong.
8. Assistant Commissioner,
Agartala Customs Division
Government of India,
Agartala.

...Respondents

DETAILS OF APPLICATION.

1. Particulars of orders against which this application has been made.

This application is made against the impugned order of transfer and posting issued under Establishment Order No. 16/2001 dated 19.1.2001 whereby the applicant is sought to be transferred and posted from Agartala Customs Division to Dharmanagar Range, under Silchar Central Excise Division during the middle of the academic

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Bantosh Ch. Dutta

session/academic course and praying for a direction upon the respondents to allow the applicant to continue in the present place of posting at Agartala till the academic session of the ~~applicant~~ children of the applicant is over.

2. Jurisdiction

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

3. Limitation

The applicant declares that the application is within the limitation 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 protection and privileges as guaranteed under the Constitution of India.

4.2 That your applicant initially appointed as Group D Sepoy under the then Collectorate of Customs and Central Excise in the year 1981 and he was posted at Agartala Customs Division. After a lapse of four and half months he was transferred and posted to Udaipur Customs Preventive post. Thereafter on different occasions the applicant was transferred and posted in different places. The brief particulars of such transfers and postings are furnished hereunder for kind perusal of the Hon'ble Tribunal :

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Bantosh Ch. Dutta

Sl.No.	Name of the Division	Unit	Post held	
			From	To
1	Agartala Division Office	Agartala	March 81	May 82
2	Udaipur P.P.	Udaipur	June 82	Aug.82
3	Srimantapur L.C.S.	Sonamura	Sept.82	March 86
4	Udaipur P.P.	Udaipur	April 86	Dec.94
5	Agartala Div. Office	Agartala	Jan.95	May 97
6	D.H.P. Unit	Agartala	June 97	Till date

4.3 That your applicant presently serving in the Customs Divisional Office at Agartala. He has two school going children namely, Miss Suchitra Dutta now promoted to Class X in the month of December 2000. She is reading in Maharani Tulshibati Balika Vidyalaya at Agartala under the Tripura Board of Secondary Education and she is appearing in the Matriculation Final Examination in the month of March/April 2002 and he has a minor son Master Biki Dutta reading in Class II at Srikirshna Mission School at Agartala under Tripura Board. It is stated that during the middle of the academic session of his children the respondents more particularly the Additional Commissioner - respondent No.7 issued the impugned transfer and posting order vide Establishment Order No. 16/2001 dated 19.1.2001 whereby the applicant is now sought to be transferred and posted from Agartala Customs Division to Dharmanagar Range under Silchar Central Excise Division. The name of the applicant is figured at Serial No. 26 of the impugned order of transfer. In this connection it is relevant to mention here that in the month of August 1999

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Bantosh D. Dutta

option was invited both from the Customs and Excise Wing regarding transfer and posting. The applicant in his option mentioned three places within Agartala and also stated categorically in the said option letter that his daughter is appearing in the Matriculation Final Examination in the month of March 2002, therefore his case may be considered for posting in any place around Agartala so that the education of his daughter should not be disturbed. But in spite of the fact that his option has not been considered by the respondents and in a very arbitrary manner the order of his transfer and posting has been passed ignoring the prayer made in the option submitted by the applicant. It is relevant to mention here that ~~xxx~~ although the impugned order of transfer and posting has been issued on 19.1.2001 but the copy of the same was received by the Assistant Commissioner, Customs Division, Agartala only on 23.1.2001 through FAX and the applicant came to know that the posting order as well as the release order is under process and the same will be handed over to the applicant alongwith release order by 24.2.2001. However the applicant submitted leave application and also submitted representation was handed over to Shri G.C.Das, Office Superintendent, Customs Division, Agartala but surprisingly the said representation was not forwarded by the Administrative Officer Shri Samir Chakraborty for the reasons best known to him. In such compelling circumstances the applicant finding no other alternative sent an advance copy of the said representation to the Commissioner, Central Excise, Shillong. However the official copy has not been forwarded to the Commissioner

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Pantosh A. Chatterjee

Central Excise Shillong so far the knowledge goes to applicant the applicant. The applicant in the instant case ~~XXXXXX~~ prays for retention in his present place of posting for the sake of the education of his daughter as because her daughter is going to appear in the Matriculation Final Examination in the ~~March~~ ^{month} of March 2002 and she is at present reading in Maharani Tulshibati Balika Vidyalaya at Agartala and at this critical juncture if the family is required to be shifted at Dharmanagar in that event it will cause irreparable loss to the smooth education of the daughter of the applicant. He has also stated in his representation apart from the education ground that the elder brother of the applicant was kidnapped by NLFT Extremists Group on 15.10.1999 while he was coming from Udaipur to Agartala and thereafter the said Terrorist Group demanded Rs. two lakhs for his release. The applicant being poor paid employee could not provide the money thus his brother did not return from the captivity of the Extremist Group. An FIR was duly lodged with the Police Station Bishalgarh but till date Police failed to take out him. As a result the responsibility of the entire family of his elder brother is on the shoulder of the present applicant and the applicant is passing with a very miserable life with ^{constant} ~~constraint~~ fear and apprehension of the worst happening at any time. Besides the mother of the applicant is bedridden and she is counting her days to leave this material world and at this critical juncture if the order of transfer and posting dated 19.1.2001 is to carry out in that event the mother of the applicant alongwith his children will remain unattended.

Pantosh Ch. Dutta

On the other hand there is no way out to drag applicant's children to his present place of posting leaving his aged mother and brother in law unattended. It is also difficult on the part of the applicant to ^{maintain} ~~main~~ double establishment with his meagre income as the applicant is serving in the cadre of Group D post. The applicant narrated all the above facts in his representation addressed to the Commissioner, Central Excise, Shillong ^{till} but/filing of this application no communication is received regarding disposal of his representation. In the circumstances finding no other alternative the applicant is approaching this Hon'ble Tribunal for protecting his right and interest by way of directing the respondents to modify the order of transfer or cancel the same at least to retain the applicant in the present place of posting till the academic session of his children is over or to allow the applicant to continue in his present place of posting in the peculiar facts and circumstances stated above.

Copy of the impugned order of transfer and posting dated 19.1.2001 and representation dated 30.1.2001 are annexed as Annexure-1 and 2 respectively.

4.4 That your applicant further begs to state that the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs vide their letter No. F. No. A-35017/28/92-Ad.III-B dated 30.6.94 whereby the transfer guidelines regarding transfers of Group B, C and officers in the attached subordinate offices

Poantosh Ch. Dutta

under Central Board of ~~Excise~~ Excise and Customs has been framed and direction was issued to all Principal Collectorate and Central Excise and Customs of the Head of Departments under Central Board ~~and~~ of Excise and Customs for strict adherence of the instructions of transfer guidelines. In the said policy so far Group D staff is concerend instructions issued are as follows :

"II. Group 'D' staff- Group 'D' staff are also liable to be transferred anywhere within the Collectorate even though its jurisdiction extends more than one State. However, frequent transfer of Group D staff shaould be avoided."

and in ~~xxx~~ sub para (i) of para VIII it is stated as follows :

" (i) General transfers should be effected at the end of the academic year and orders therefor should be issued suffieicently in advance. Orders issued otherwise should contain reasons on record"

From above policy it is quite clear that frequent transfer of the Group D should be avoided and the said policy in fact framed considering the financial condition of the low paid Group D employees. In the instant case of the applicant he was transferred and posted in different places and the applicant also carried out the transfer and posting orders. At the present moment it will be difficult on the part of the applicant to carry out the impugned order of transfer and posting dated 19.1.2001 at the cost of education of his daughter who

Pantosh d. Datta

is going to be appearing in the final examination of Matriculation under Tripura Board. In this connection it is also relevant to mention here that the applicant categorically mentioned in his option that in view of his daughter's final examination his case may be considered for transfer and posting around Agartala, and he has also submitted three places for his posting at Agartala. But the said representation has been ignored while issuing the impugned order of transfer and posting. As such the fact of inviting options has no meaning. Moreover in the instant case it appears that posting order is issued only on 19.1.2001 in violation of the clause laid down in the transfer policy in sub para (1) of paragraph VIII of the transfer and posting policy dated. 30.6.94, and no reason is assigned in issuing the impugned order of transfer and posting in respect of the applicant. Therefore it is stated that the order of transfer and posting has been passed in total violation of norms laid down in the transfer policy. Moreover the applicant being a low paid employee it will be difficult on his part to maintain double establishment with his meagre income. It is also relevant to mention here that in many cases even the Commissioner Shri K.K. Das took personal interest and got the order of transfer ^{stayed} ~~noneffective~~ in respect of group D officials. As for example Shri Moloy Kumar Paul, a Group D official was transferred and posted from Agartala Divisional Office at Agartala to C.P.F. Division within the same station vide Establishment order No. 258/94 dated 19.9.94. Again Shri Moloy Kumar Pal transferred and posted

Pantosh Ch. Chatterjee

from Agartala Customs Division to Manu L.C.S. under Karimganj Customs Division was modified vide order No. 24/97 dated 5.6.97 and Shri Moloy Kumar Paul was retained upto December 1997 at Agartala. It is also relevant to mention here that Shri Moloy Kumar Paul vide order No. 15/99 dated 2.8.99 with the interference of Shri K.K. Das, Commissioner of Customs, N.E. Region is allowed to retain upto December 1999 in the Divisional Office Agartala Customs Division for the reason best known to Shri K.K.Das. The representation of Shri Moloy Kumar Paul was rejected by the Assistant Commissioner (P&V), Customs Headquarter, Shillong vide his letter No. C.No. II(3)3/Et/CC/Cell/Sh/98/884(A) dated 20.3.2000 whereby the representation of Sri Moloy Kumar Paul, Sepoy dated 24.12.99 was rejected, vide his letter dated 24.12.99 and the said Moloy Kr. Paul was relieved from duty by 31.3.2000 as per the order dated 2.8.99. But most surprisingly Sri K.K.Das, Commissioner of Customs vide his order No. 13/2000 dated 24.8.2000 allowed Sri Moloy Kr. Paul to continue to his present place of posting at Customs Division at Agartala office until further order. Therefore it appears that all transfer and posting orders in respect of Group D officials are being passed on the instruction of Shri K.K.Das, Commissioner. It also appears from the series of orders which were passed in favour of Shri Moloy Kr. Paul modifying the transfer order one after another since 1997 by Sri K.K. Das, Commissioner, on extraneous consideration. Therefore the present applicant cannot be discriminated in the matter of retention in the present place of posting on a bonafide ground and for a ^{genuine} ~~bonaf~~ cause otherwise it would be violative

Pantosh Ch. Dutta

of Article 14 of the Constitution when one Group D official is being favoured by passing series of modiviation order retaining Sri Moloy Kr. Paul in the Customs Division at Agartala since 1994. It is also relevant to mention here that discretion cannot be exercised by the higher authority on pick and choose basis and arbitrarily and on that score alone the instant application is deserves to be allowed with costs.

Copy of the transfer and posting guidelines dated 30.6.94, Office orders dated 19.9.94, 19.5.97, 5.6.97, 2.8.99 and 10.3.2000 and 24.8.2000 are annexed as Annexures-3,4,5,6,7,8 and 9 respectively.

4.5 That your applicant submitted representation dated 30.1.01 praying interalia for retention of the applicant in his present place of posting on the ground of smooth continuation of education of his daughter and also on the ground that being a low paid Group D employee it will be difficult to maintain a double establishment specially when the elder brother of the applicant has been kidnapped by the Extremists in the year 1999 and as a result total responsibility is now on the shoulder of the present applicant besides his aged mother is bedridden but unfortunately till filing of this application no communication is received from the authority. Finding no other alternative the applicant approaching the Hon'ble Tribunal for protection of his hight and interest praying for a direction to the respondents to allow the applicant to continue in his present place of posting at least for the period till the academic session of his daughter is over.

Bantosh Ch. Chatterjee

4.6 That your applicant begs to state that the Central Board of Customs and Central Excise, Government of India, Department of Revenue, New Delhi framed a specific transfer policy in respect of the employees working under the respondents. The said policy was issued under letter No. A-350/7/28/92 dated 30.6.1994. In the said policy of transfer and posting in para II it is stated that Group 'D' staff are also liable to be transferred anywhere within the collectorate even though its jurisdiction extends to more than one State. It is also stated that however, frequent transfers of Group D staff should be avoided. In the instant case of the applicant option of was invited from the applicant by the respondents for his transfer and posting accordingly the applicant submitted his option preferring his posting in and around Agartala on the the ground of smooth education of his daughter name Miss Suchitra Dutta who is reading class X in Maharani Tulshibati Balika Vidyalaya, Agartala under the board of Tripura but ~~xxxxxxx~~ the impugned order of transfer and posting dated 19.1.2001 has been issued ignoring the option for transfer and posting submitted by the applicant. In the transfer and posting policy dated 30.6.94 it is also categorically stated that this policy be scrupulously followed by all the Heads of the Department while issuing transfer and posting order in respect of their employees. It is also relevant to mention here that Hon'ble Supreme Court also observed in the case of Director of School Education Madras and Another Vs. O. Karuppa Thevan and Another reported in (1994) 2 Supp SCC 666 that the transfer of an employee during the mid academic session should not be effected in absence of urgency and also ordered such such transfer be restrained from being effected till the end of their academic session.

Pantosh C. Dutta

Copy of the judgement and order of the Apex Court referred to above is annexed as Annexure-10

4.7 That your applicant further begs to state that there are longest staying Group D officials are still working at Agartala since ³⁰/35 years. The details particulars of the longest staying officials are furnished below :

1. Mr. Badal Chakraborty w.e.f. 10.4.1966 at Agartala.
2. Mr. Manish Deb Barma w.e.f 21.10.79 at Agartala.
3. Mr. Ratan Acharujee since 3.8.79 at Agartala.
4. Mr. Sudam Chandra Dhar since 16.3.81 at Agartala.

In terms of fair transfer policy the longest staying ~~ing~~ Group D officials ought to have been transferred in preference to their juniors, but in the instant case of the applicant the respondents have violated the rule of fairness while issuing indiscriminate transfer order. Therefore, it appears that there is absence of fairness while the impugned order of transfer and posting issued in respect of the applicant and on that score alone the impugned order transfer and posting is liable to be set aside and quashed.

It is further stated that the low paid employees are normally retained nearer to their home stations. In this connection it is relevant to mention ~~he~~ here that Sri Rabindra Das, Group D official hail from Dharmanagar town is posted at Agartala since 19.5.97 now he is sought to be posted at Khowai vide order dated 24.1.2001. Moreover Sri Deepak Das Group D Sepoy hails from Nilambazar under Karimganj District is posted at Agartala since 1983, any one of them could have been posted at Dharmanagar whereas the applicant is being picked up for posting at Dharmanagar, in spite of his option submitted on demand.

Bantosh Ch. Saha

4.6 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions :

- 5.1 For that the impugned order of transfer and posting dated 19.1.2000 has been issued during the middle of the academic session/course especially when the daughter of the applicant is going to be appeared in the Matriculation Final Examination which is likely to be held in the month of March 2002 and the daughter of the applicant is now reading in Class X in Maharani Tulshibati Balika Vidyalaya at Agartala under the Tripura Board.
- 5.2 For that the applicant is a low paid Group D employee and it will be difficult on his part to maintain separate establishment leaving his dependent family at this crucial stage in a far of place.
- 5.3 For that the transfer order has been issued in total violation of the transfer policy/guidelines laid down by the Govt. of India Ministry of Finance Department of Revenue, Central Board of Excise and Customs.
- 5.4 For that frequent transfer to a low paid employee like the applicant causes hardships.
- 5.5 For that the applicant submitted representation but the same is still pending before the Commissioner, Customs, N.E.Region, Shillong.

Pantosh A. Dutta

- 5.6 For that the elder brother of the applicant is being kidnapped by the NLFT Extremist Group and the entire responsibility of the dependent family members of the elder brother of the applicant is now being shouldered ^{by} ~~on~~ the applicant as such two separate establishment at this crucial stage would cause hardships to the applicant.
- 5.7 For that the impugned order of transfer and posting dated 19.1.2001 issued mechanically ignoring the option submitted by the applicant in response to the option invited by the authority for choice transfer and posting for Group D employees.
- 5.8 For that the applicant has been discriminated in the matter of transfer and posting in comparison to other similarly situated Group D employee whose cases were considered on different occasions by the Commissioner, Shri K.K.Das.
- 5.9 For that the release order in respect of the applicant has been processed in total violation of the transfer policy/guidelines dated 30.6.94.
- 5.10 For that the order of transfer is contrary to the law laid down by the Hon'ble Apex Court in the case of Director of School Education Madras and Ors. Versus O. Karuppa Thevan and Another reported in 1994 Supp(2) SCC 666.
- 5.11 For that the applicant is the only earning member of his family and it will be difficult to maintain double establishment on his part if the impugned order of transfer and posting dt. 19.1.2001 is to ^{required} carry out.

Bantosh Ch. Datta

6. Details of remedies exhausted.

That the applicant states that he has no other alternative and other efficacious remedy that to file this application. Representation through proper channel as well as an advance copy has been sent to the Commissioner, Customs, N.E. Region, Shillong but to no result till filing of this application.

7. Matters not previous filed or pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application writ petition or suit is pending before any of them.

8. Reliefs sought for :

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

- 8.1. That the Hon'ble Tribunal be pleased to set aside the impugned order of transfer and posting issued under Order No. 16/2001 dated 19.1.2001 (Annexure-1) transferring the applicant from Agartala Customs Division to Dharmanagar Range under Silchar Central Excise Division.
- 8.2 That the respondents be directed to allow the applicant to continue in his present place of posting at Agartala Customs Division, Agartala.

Sanjosh Ch. Dutta

8.3 Costs of the Application.

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

9. Interim order prayed for :

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

9.1 Hon'ble ^{Tribunal} be pleased to stay the operation of the impugned order of transfer and ^{posting} issued under No. 16/2001 dated 19.1.2001 (Annexure- I) so far as the applicant is concerned till the academic session/academic course of the daughter of the applicant is over.

10.

This application is filed through advocate.

11. Particulars of I.P.O.

i. I.P.O. No.	: 56422049
ii. Date of Issue	: 15.2.2001
iii. Issued from	: G.P.O., Guwahati.
iv. Payable at	: G.P.O., Guwahati.

12. Details of enclosures :

As stated in the Index.

Pantosh Ch. Datta

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

I, Shri Prantosh Dutta, Son of late Atul Chandra Dutta, Resident of Quarter No.16, (Near Netaji Choumohini), Mantribari Road, Agartala, Tripura (West), do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 12 in the instant application are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the
~~16th day of January~~ 13th day of February, 2001.

Prantosh Ch. Dutta

Signature

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE : SHILLONG :ESTABLISHMENT ORDER NO.16/2001

Dated, Shillong the 19th January, 2001

Subject: - Estt. Transfer and posting of Group 'D' Officers
 - Order / Regarding

The following Group 'D' officers (Peeps) of Central Excise & Customs are hereby transferred and posted to the places mentioned against their names with immediate effect and until further orders.

Sl.No.	Name	From	To
	<u>S/Shri</u>		
01.	Badal Ch.Roy	<u>Cus.Hqrs.Office</u> Shillong	<u>C.Ex. Hqrs.Office</u> Shillong
02.	D.B.Sunar	- do -	- do -
03.	O.Warjri	<u>Fynursia P.P.</u> Shillong Cus.Divn.	- do -
04.	B.D.Kalita	<u>D.O. Guwahati Cus.</u> Guwahati	<u>D.O. Guwahati C.Ex.</u> Guwahati
05.	T.Daimary	<u>Mankechar L.C.S.</u> Guwahati Cus.Divn.	<u>D.O. Dhubri C.Ex.</u> Dhubri
06.	R.S.Sharma	<u>Dhubri C.P.F.</u> Guwahati Cus.Divn.	<u>D.O. Guwahati C.Ex.</u> Guwahati
07.	D.K.Rajkhowa	<u>Mahendraganj LCS</u> Guwahati Cus.Divn.	- do -
08.	G.K.Konwar	<u>Baghmara P.P.</u> Guwahati Cus.Divn.	<u>D.O. Tezpur C.Ex.</u> Tezpur
09.	Digen Ch.Das	<u>Tura P.P.</u> Guwahati Cus.Divn.	<u>Jagi Road Range</u> Guwahati C.Ex. Divn.
10.	H.S.Timung	<u>Nampong L.C.S.</u> Dimapur Cus. Divn.	<u>D.O. Jorhat C.Ex.</u> Jorhat
11.	R.R.Deb Baidya	<u>D.O. Dimapur Cus.</u> Dimapur	<u>Karimganj Range</u> Silchar C.Ex. Divn.
12.	B.R.Boro	<u>A/S Unit</u> Dimapur Cus. Divn.	<u>Sonari Range</u> Jorhat C.Ex. Divn.
13.	P.R.Malakkar	<u>Numaligarh CPF</u> Dimapur Cus. Divn.	<u>Rangapara Range</u> Tezpur C.Ex. Divn.
14.	Jogen Saikia	<u>D.O. Dimapur Cus.</u> Dimapur	<u>D.O. Jorhat C.Ex.</u> Jorhat
15.	Y.I.Singh	<u>Sekmai P.P.</u> Imphal Cus.Divn.	<u>Imphal Range</u> Silchar C.Ex. Divn.
16.	M.Tomcha Singh	<u>Patel CPF</u> Imphal Cus. Divn.	- do -
17.	M.C.Das	<u>Zawhatar LCS</u> Aizawl Cus. Divn.	<u>C.Ex. Hqrs. Office</u> Shillong

..... 2.....

	2.	3.	4.
	<u>S/Shri</u>		
18.	B.R. Baster	<u>D.O. Karimganj Cus.</u> Karimganj	<u>D.O. Silchar C.Ex.</u> Silchar
19.	S.R. Das	- do -	- do -
20.	R.K. Paul	- do -	<u>Silchar-I Range</u> Silchar C.Ex. Divn.
21.	K.K. Debnath	<u>A/S Unit</u> Karimganj Cus. Divn.	<u>Silchar-II Range</u> Silchar C.Ex. Divn.
22.	H.L. Deb	<u>Sutarkandi ICS</u> Karimganj Cus. Divn.	<u>Badarpur Range</u> Silchar C.Ex. Divn.
23.	J.M. Das	<u>D.O. Karimganj Cus.</u> Karimganj	- do -
✓ 24.	Amit Chakraborty	<u>A/S Unit</u> Agartala Cus. Divn.	<u>C.Ex. Hqrs. Office</u> Shillong
✓ 25.	S. Sil	- do -	- do -
✓ 26.	P.C. Dutta	- do -	<u>Dharmnagar Range</u> Silchar C.Ex. Divn.
27.	Kiranjit Pathak	<u>Rangapara Range</u> Tezpur C.Ex. Divn.	<u>D.O. Guwahati C.Ex.</u> Guwahati
28.	Putul Ch. Bhareli	<u>Jorhat C.Ex. D.O.</u> Jorhat	<u>Golaghat-I Range</u> Jorhat
29.	Ratul Sonowal	<u>Amguri Range</u> Jorhat	<u>C.Ex. Hqrs. Office</u> Shillong

The following Group 'D' Officers in the grade of Sepoys are hereby placed at the disposal of Commissioner of Cus-toms, N.E.R., Shillong:

Sl.No.	Name	Present Place of Posting
	<u>S/Shri</u>	
01.	K.N. Joshi	Central Excise Hqrs. Office, Shillong
02.	D. Diengdoh	- do -
03.	H.P. Sikoel	- do -
04.	Rajkumar Shah	- do -
05.	S.R. Roy	- do -
06.	Hakul Roy	- do -
07.	N.K. Singh	- do -
08.	M. Chellam	- do -
09.	Bhagwanlal Roy	- do -
10.	Raja Ram Roy	Central Excise Division, Guwahati
11.	Amphi Ram Deka	- do -
12.	S.D. Srivastava	R.B.C. Range, Guwahati C.Ex. Divn.
13.	Girish Ch. Mali	P.B.C.-I Range, Guwahati C.Ex. Divn.
14.	D.K. Banja	N.O.R. Range, Guwahati C.Ex. Divn.
15.	M.N. Kalita	Amingaon Range, Guwahati C.Ex. Divn.
16.	Md. R. Ahmed	Central Excise Division, Guwahati
17.	Shah Alam Ahmed	Imphal Range, Silchar C.Ex. Divn.
18.	Hopeson Shadang	Central Excise Division, Silchar
19.	Anil Ch. Das	- do -
20.	Nikhil Seal	

Contd.....P/3.....

21

-21-

30

01-24-2001 16:39 FROM: CENT. EXCISE, SHILLONG 0364226215

TO: 0381228619

PAGE: 3

..... 3.....

01.

02.

03.

S/Shri

21. Robin Chandra Das
22. B. Sonowal
23. Prashant Gogoi
24. Chanan Shomen Singh
25. J.L. Rajak
26. Laliteswar Sharma
27. D. Mandish
28. Chandrika Bhagat

Central Excise Division, Tinsukia
 - do -
 Central Excise Division, Jorhat
 Central Excise Division, Jorhat
 Central Excise Division, Dhubri
 - do -
 Central Excise Division, Dighal
 Central Excise Division, Tezpur

[Signature]
 19.01.01

(B. THAMAR)
 ADDL. COMMISSIONER (P&V)
 CENTRAL EXCISE & CUSTOMS, SHILLONG

Dated:..

C.NO.II(3)19/ET.IV/2000/

- Copy forwarded for information and necessary action to :-
1. The Commissioner of Customs, N.E.R., Shillong.
 2. The Additional Commissioner (Tech), Central Excise, Shillong.
 3. The Deputy/Assistant Commissioner of Central Excise _____ Division. The copy meant for the concerned officer(s) is/are enclosed. Officers under your charge are to be relieved by 31.01.2001 (A/N).
 4. The Deputy/Assistant Commissioner of Customs _____ Division. The copy meant for the concerned officer(s) is/are enclosed. Officers under your charge are to

[Signature]
 19.01.01

To,
The Commissioner,
Central Excise,
SHILLONG.

22
ANNEXURE-2

Subject : Representation of Sri Prantosh Ch. Dutta, Sepoy, Customs Division, Agartala, for retention at Agartala.

Hon'ble Sir,

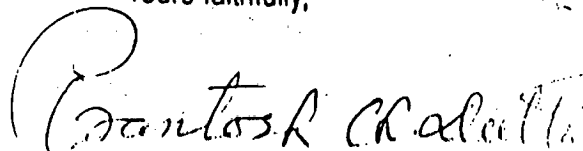
At the very outset, with profound respect, the petitioner on being pricked by exasperating circumstances begs to refer Hqrt. Establishment Order No. 16/2001 dated 19th January, 2001 issued by the Commissioner, Central Excise, Shillong, communicated under endorsement C. No. II(3)19/ET.IV/2000 dated Nil and submit the following grim facts for favour of your sympathetic consideration.

- (1) That Sir, the petitioner have been transferred from Agartala to Dharmanagar vide Hqr. Estt. order No. 16/2001 dated 19.01.2001. The petitioner felt that the administration is oblivious to the welfare of the poor paid sepoy when there is categorical direction of the Ministry to place/transfer the ill paid staff in and around their home posting.
- (2) That Sir, the petitioner's daughter namely Smti. Suchitra Dutta, is reading in Class X under the disposal of the authority of Tulsibali Balika Vidyalaya who will appear Madhyamik Examination in March, 2002 under Tripura Board of Secondary Education. Certificate from school authority is enclosed. Petitioner's transfer from Agartala to Dharmanagar will jeopardise petitioner's daughter's academic year.
- (3) That Sir, petitioner's elder brother was kidnapped by N.L.F.T. extremist group on 15.10.99 while he was coming from Udaipur to Agartala and thereafter the said terrorist group demanded Rs. 2,00,000.00 (Two Lakhs) for his release. The petitioner being a poor paid employee could not arrange the money and thus his brother did not return from the captivity of the extremist group. F.I.R. was duly lodged with the Police Station, Bishalgarh but till date police failed to trace out him. Entire family of the petitioner have been passing with a very miserable life with constant fear and apprehension of the worst happening at any time.
- (4) That Sir, it is unsafe for petitioner's bed-ridden mother who is counting her days to leave this material world to remain unattended alongwith the petitioner's children. On the other hand, there is no way out to drag petitioner's children to his place of posting leaving his mother and brother-in-law unattended.

Contd.....P/2.

- (5) That Sir, the petitioner have been taking all care of his elder brother's family after the sad incident and all out efforts to bring his brother alive from the clutch of the N.L.F.T. extremist by maintaining day to day liason with the police authority.
- (6) That Sir, damage and miseries already caused in petitioner's family due to kidnapping of his elder brother by the extremist, is irreparable but the petitioner have the profuse faith on justice, but delay in justice only pay its price to the circumstantial victim for which the petitioner fervently prays for sympathetic consideration of his case by passing judicious order and save the petitioner from pangs of threatened mental agony.

Yours faithfully,



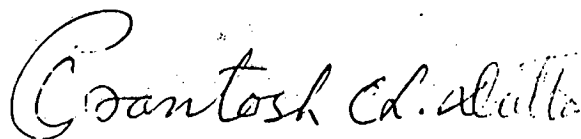
(PRANTOSH CH. DUTTA)

Sepoy, Custom Division, Agartala.

(Under Order of Transfer)

Copy forwarded for information and necessary action :-

1. The Commissioner of Custom, North Eastern Region, Shillong. He is kindly requested to go to through the grim conditions by paying his valuable time.
2. The Assistant Commissioner, Custom Division, Agartala. He is requested not to relieve me at present till any fate against my representation from the Hon'ble Commissioner's end is received.
3. The General Secretary, Group "D" Officer's Association N.E.R. Shillong. He is kindly requested to take up the matter with the Commissioner of Customs and Commissioner Central Excise on TOP PRIORITY basis so that I may not encounter with any mental agony.



(PRANTOSH CH. DUTTA)

Sepoy, Custom Division, Agartala.

(Under Order of Transfer)

24

Annexure-3

Annexure-4

Annexure-4

F. No. A-35017/20/92-AD-III-B
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Excise & Customs

New Delhi, the 30th June, 1994

To

All Principal Collectors of
 Central Excise and Customs.

All Director Generals/Narcotics Commissioner

All the Heads of Departments under
 Central Board of Excise & Customs.

Subject: Transfer-Guidelines regarding posting and
 transfers of Group 'B', 'C' and 'D' officers
 in the attached & subordinate offices under
 Central Board of Excise and Customs.

Sir,

1. F. No. A 22015/20570-
 Ad-III-B dt. 1.11.78.
2. E.No. A-22015/21/89-
 Ad-III-B dt. 21.7.89.
3. F. No. A-35017/17/91-
 Ad-III-B dt. 24.1.92
4. F. No. B-22014/4/92
 Ad-III-B dt. 2.9.92.

In supersession of all previous
 instructions, as indicated in
 the margin, the following instruc-
 tions/guidelines are issued in
 consolidated form for regulating
 the transfers and deputation of
 Group B, C and D officers in the
 various attached and subordinate
 offices under the Central Board
 of Excise & Customs :-

I. Group 'B' and Group 'C' Officers :

(i) Period of stay at one station :

(a) Executive Officers : The period of stay of an
 officer at one station should normally be 4 years.
 Transfers may be made earlier if administrative
 requirements or compassionate grounds, so
 necessitate.

(b) Ministerial Officers : While Ministerial officers
 are also liable to transfer, like Executive
 Officers, routine transfer of Ministerial Officers
 from one station to another should be avoided.
 However, Ministerial officers are liable to be
 transferred from one charge to another at periodic
 intervals.

Contd..1/2

True copy
 Div. Secy.
 20/6/94

II. Group 'D' staff :- Group 'D' staff are also liable to be transferred any where within the Collectorate even though its jurisdiction extends to more than one State. However, frequent transfers of Group D staff should be avoided.

III. Postings of husband - wife teams at the same station :-

Guidelines contained in Department of Personnel & Training's Office Memorandum No. 2034/7/86-Entt(A) dated 03.4.86 may be followed subject to administrative requirements/exigencies.

IV. The tenure at nonitive charges and requirements of "Cooling Off" period :-

(1) Officers posted in any of the following charges as mentioned below, on completion of his/her normal tenure, be posted to a formation/organisation/assignment other than those mentioned here below :-

- (a) Airports,
- (b) L.C.R.I.
- (c) D.G.A.E.
- (d) NCB/ED (FERA/ETB ETC.

The officers so posted in any of the aforesaid charges/organisation assignments will be required to complete the "Cooling Off" period of not less than two years before being considered for re-posting to any of the aforesaid charges.

V. (A) The power to relax the cooling off period etc.

The power to relax the "cooling off" period for an officer with reference to the charges mentioned in para IV shall be exercised by the P.R. Collr./Director General Concerned, in consultation with the Head of the Department of the Officer in question.

(b) The decision to extend the normal tenure :

The decision to extend the normal tenure etc. will be governed by the provisions of recruitment rules and the DPO&T's guidelines on the tenure/deputation/executive instructions of the Board as the case may be.

VI. Transfers of Office bearers of the recognised Associations of Central Government Employees.

In regard to the transfers of Office bearers of the recognised Unions/Associations the instructions contained in the Department of Personnel & Training's O.M. No. 27/3/69-Estt. (U) dated 8.4.1969 should be observed strictly read with future amendments, if any.

VII. Notwithstanding the instructions contained in paragraphs (I), (II), (III), the Heads of the Department will have full authority/power to transfer an officer on administrative/compassionate grounds.

The Heads of the Department will also be the deciding authority as to what would constitute difficult posting depending on the local conditions and will be fully authorised to fix - tenure of posting of officers at those places, as deemed necessary for administrative requirements and exigencies of service.

VIII. General :

- (1) General transfers should be effected at the end of the academic year and orders therefor should be issued sufficiently in advance. Orders issued otherwise should contain reasons on record.
- (ii) Officers who are due to retire within two years or so, may not be transferred from their state/district or from the proximity of the station where they propose to settle down after retirement. Those who are posted away from such a station may, if they so request be brought to the proximity of that

27

-20-28-27-

36

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Amendment (Contd.) 0303

station within last one year or so of their service. All this will, however, be subject to administrative requirements.

- (iii) For the purpose of transfer, the stay of an officer at a particular station should be computed with reference to the total period of his continuous stay at that station regardless of the different posts held by him there.

2. Above instructions may please be followed scrupulously.

Please acknowledge the receipt of this letter.

Yours faithfully,

Sd/- R.K. MITRA)
UNDER SECRETARY

Central Board of Excise & Customs

Copy to recognised Association/Unions of Group 'B', 'C' and 'D' staff.

Sd/- Ill. 1110

28

Annexure 4
ANNEXURE - 4
37

(EXTRACT)

CUSTOMS & CENTRAL EXCISE, SHILLONG

ESTABLISHMENT ORDER NO. 256/94

DATED SHILLONG THE 19TH SEPT, 1994

Subject.-Transfer posting and adjustment in the
Grade of Sepoy of Customs and Central
Excise, Collectorate, Shillong.-order reg.

The following transfer posting and adjustment in
the grade of Sepoy of Customs and Central Excise, Collectorate,
Shillong is hereby ordered with immediate effect and until further
orders.

Sl.	Name	From	To	Rem
1.	N. P. Sharma No. 1	To continue at Hqs. Office Shillong.		
2.	Shagwanlal Rai	- do -		
3.	K. M. Joshi	- do -		
4.	Surender Giri	- do -		
5.	Subrata Paul	- do -		
6.	K. K. Pradhan	- do -		
7.	M. Chellam	- do -		
8.	Golul Biswas	- do -		
9.	Santu Thapa	- do -		
10.	Sanjay K. Deb	Hqs. Office Shillong	Silchar C. Ex. Divl. Office	
11.	Ganesh Chakraborty	Bholaganj P.P. Sng. Cus. Divn.	Hqs. Office Shillong	
12.	Ram Bahadur Gurung	Sutarkandi L.C.S. Karinganji Divn.	- do -	
13.	Alok D. Sangma	Baghmara P.P. Guwanati Cus. Divn.	- do -	
14.	Jaharlal Bhattacharjee	Agartala Divl. Office	- do -	
15.	Raj Kumar Shah	- do -	- do -	
16.	R. B. Chetry	Khowaihat L.C.S. Agartala Divn.	- do -	
17.	P. S. Swer	Jowai P.P. Sng. Cus. Divn.	- do -	
18.	Raj Kumar Singh	Champai P.P. Aizawl Divn.	- do -	

True copy
Signed
Adv.

-9-

Sl. No. Name From To Rem

S/Shri

183. Dilip Debbarma

To continue at Agartala Customs
Divisional Office

184. Dulal Ch. Das

Udaipur C.F.P.
Agartala Divn.Agartala Divl.
Office

185. Gati Sakham Bala Das

Sonamura I.I.
Agartala Divn.

- do -

186. Naridhan Sil

Agartala Divl.
OfficeAgartala C.F.P.
Agartala Divn.

187. Malay Kr. Paul

- do -

- do -

188. Sibendra Roy

- do -

- do -

189. Gopal Ch. Deb

Fohampur I.I.
Agartala Divn.

- do -

190. Alauddin, Barbhuiyan

Mailashahar I.I.
Agartala Divn.

- do -

191. Prantosh Ch. Dutta

Udaipur C.F.P.
Agartala Divn.

- do -

192. Ratan Acharjee

Agartala Divl.
OfficeAgartala L.C.S.
Agartala Divn.

193. Harinder Roy

- do -

- do -

194. Manoj Das

To continue at Bishalgarh I.I.
Agartala Divn.

195. Chandan Kr. Dey

Agartala Divl.
OfficeBishalgarh I.I.
Agartala Divn.

196. Hiralal Dey

Karinganji Divl.
OfficeUdaipur C.F.P.
Agartala Divn.

197. Gopal Ch. Dey

Bishalgarh I.I.
Agartala Divn.

- do -

198. Dilip Sharma

Agartala Divl.
Office

- do -

199. Dipak An. Das

To continue at Srirampur L.C.S.
Agartala Divn.

200. Manish Debbarma

- do -

201. Binoy Debbarma

Agartala Rg.
Silchar Divn.Sonamura I.I.
Agartala Divn.

202. Dhiman Jarkayastha

Karinganji Divl.
Office

- do -

203. Setu Niah

To continue at Fuhurighat L.C.S.
Agartala Divn.

204. Ratan Sanpurta

Fohampur I.I.
Agartala Divn.Fuhurighat L.C.S.
Agartala Divn.

30

Annex-5

ANNEXURE-5

11. Ratan Acharjee

Agartala LCS
 Agartala Cus (P) Div
 U/O of transfer to
 Dholaihat LCS vide
 O.No. 17/97 dt. 8-5-97

Divnl Ofcice,
 Agartala Cus (P) Div

Sd/-
 (LALLUNGHNEMA)

COMMISSIONER OF CUSTOMS (PREVENTIVE)

C.NO. II(3)3/ET/CCP/CELL/SH/95/1864-90 Dated :- 19-5-97

Copy forwarded for information and necessary action to :-

1. Shri/Smti Dilip Deb Barma, Sepoy for compliance.
2. The Deputy Commissioner (P&V), Customs and Central Excise, Shillong.
3. The Deputy Commissioner of Customs (Prev), NER, Shillong.
4. The Assistant Commissioner of Customs (Preventive, Agartala Kariganj, Copy meant for the concerned officer(s) is/are enclosed herewith for causing delivery.
5. The Assistant Commissioner of Central Excise, Silchar.
6. The PAO/ACAO (Accts), Customs and Central Excise, Shillong.
7. The A.O. (Customs), C.P.'s Hqrs. Ofcice, Shillong.
8. The Branch-in-Charge, ET II & III/Accts/Con/Vig Branch Customs and Central Excise, Shillong.
9. The General Secretary, Customs and Central Excise Group 'D' Officers' Association, Shillong.
10. The Superintendent, Central Excise, Agartala Range.
11. Guard File.

N.B.:- Officers under transfer should be relieved immediately.

Lallughnema
 (LALLUNGHNEMA) 19/5

COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION : SHILLONG

Copy
 Digitized
 by

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40

AC, Asst

OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG

ORDER NO. 19/1997

Dated, Shillong, the 19th May, 1997

Sub :- Transfer and Posting (Rotation & adjustment) in the grade of Group 'D' Sepoys of the Commissionerate of Customs (Preventive), NER, Shillong - Order regarding.

The following transfer and posting (rotation and adjustment) in the grade of Group 'D' Sepoys of the Commissionerate of Customs (Preventive), North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

Sl.No.	Name	place of posting	
		From	To
S/Shri			
1.	Moloy Paul	D.H.P. Unit Agartala Cus(P) Div	Manu LCS Karinganj Cus (P) Div.
2.	Dilip Debbarma	Agartala Air Port PP Agartala Cus(P) Div	D.H.P. Unit Agartala Cus (P) Div.
3.	Amit Chakraborty	Divnl Office Agartala Cus (P) Div.	-do-
4.	Prantosh Datta	-do-	-do-
5.	Dulal Das	-do-	Agartala Airport PP Agartala Cus (P) Div.
6.	Sibender Roy	D.H.P. Unit Agartala Cus (P) Div.	Dholaihat LCS Agartala Cus(P) Div.
7.	Setu Mia	Muhurihat LCS Agartala Cus (P) Div U/o of transfer to Agartala Range vide Order No. 86/97 dt. 11-4-97.	Retained at Muhurihat LCS
8.	Benoy Debbarma	Sonamura CPF Agartala Cus (P) Div	Divnl Office, Agartala Cus (P) Div
9.	Smti Ratna Sil	Manu LCS Agartala Cus(P) Div U/O of transfer to Karinganj Divnl Office vide Order No. 86/97 dt. 11-4-97.	Retained upto Dec'97
10.	N. Tuolzalang	Churachandpur P.P. Imphal Cus(P) Div U/O of transfer to Imphal Cus(P) Div. Off. vide Order No. 86/97 dt. 11-4-97	Retained at Churachandpur P.P.

(Contd... ..P/2).

1. Ratan Acharjee

Agartala LCS
Agartala Cus (P) Div
U/O of transfer to
Dholaghat LCS vide
O.No. 17/97 dt. 3-5-97

Divnl Of fce,
Agartala Cus (P) Div

Sd/-
(LALLUNGHNEMA)

COMMISSIONER OF CUSTOMS (PREVENTIVE)

C.NO. II(3)3/ET/CCP/CELL/SH/95/1864-90 Dated :- 19-5-97

Copy forwarded for information and necessary action to :-

1. Shri/Smti, Sepoy for compliance.
2. The Deputy Commissioner (P&V), Customs and Central Excise, Shillong.
3. The Deputy Commissioner of Customs (Prev), NER, Shillong.
4. The Assistant Commissioner of Customs (Preventive, Agartala Kariaganj, Copy meant for the concerned officer(s) ispare enclosed herewith for causing delivery.
5. The Assistant Commissioner of Central Excise, Silchar.
6. The PAO/ACAO(Accts), Customs and Central Excise, Shillong.
7. The A.O.(Customs), C.P.'s Hqrs. Office, Shillong.
8. The Branch-in-Charge, ET II & III/Accts/Con/Vig Branch, Customs and Central Excise, Shillong.
9. The General Secretary, Customs and Central Excise Group 'D' Officers' Association, Shillong.
10. The Superintendent, Central Excise, Agartala Range.
11. Guard File.

N.B.:- Officers under transfer should be relieved immediately.

Lallunghnema
(LALLUNGHNEMA) 19/5
COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION : SHILLONG

33
E.T. 15/6/97
Annex-6
42

OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
:: SHILLONG ::

ORDER NO. 24/97

DATED, SHILLONG, THE 5TH JUNE, 1997.

Subject :- Transfer & posting (rotation & adjustment) in the grade of Group-'D' Sepoy of Commissionerate of Customs (Preventive), North Eastern Region, Shillong.
- Order regarding.

In partial modification of this office order No. 17/97 dtd. 3.5.97 & No. 19/97 dtd. 19.5.97 issued under endt. of Even No. 1572-1608 dtd. 9.5.97 & No. 1864-90 dtd. 19.5.97 respectively, the following transfer & posting (rotation and adjustment) in the grade of Sepoy of Commissionerate of Customs (Preventive), North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

Sl. No.	Name	From	Places of posting	To
	S/Sri			
1.	" Dittan Purkayastha	Sonamura CPF Agartala Cus(P) Divn. (U/O of transfer to Divl. Office, Agartala vide Order No. 17/97 dtd. 3.5.97.)	Retained upto Dec' 97.	
2.	" Nology Paul	DIP Unit, Agartala Agartala Cus(P) Divn. (U/O of transfer to Manu LCS under Karingan Cus(P) Division, vide Order No. 19/97 dtd. 19.5.97.)	Retained upto Dec' 97	
3.	" Indrajit Bhattacharjee	Khawai P.P. Agartala Cus(P) Divn. (U/O of transfer to Divl. Office, Agartala vide Order No. 86/97 dtd. 11.4.97)	Retained upto Dec' 97	
4.	" P. Haokip	Divl. (A.S. & Narc/Intt) Aizawl Cus(P) Division.	Parallel CPF Imphal Cus(P) Divn.	
5.	" Y. Mani Singh	Divl. Office Aizawl Cus(P) Division.	Divl. Office Imphal Cus(P) Divn.	

Sd/-
(LALLJAGNEMA)
COMMISSIONER OF CUSTOMS (PREVENTIVE)

Contd. on... P/2.

Tone up
Signature
S.V.

34

- : (2) : -

C.No. II(3)3/ET/CCF/CELL/SH/95/ 2955-85 Dated:- 5.6.97

Copy forwarded for information & necessary action to :-

1. The Deputy Commissioner (P & V), Customs & Central Excise, Shillong.
2. The Deputy Commissioner (Prev.), CCP's Hqrs. Office, Shillong.
3. The Asstt. Commissioner, Customs (Preventive) Division, Agartala/
Karimganj/Imphal/Guwahati/Aizawl/Dimapur/Shillong.
4. The ACAO (Accounts)/PAO, Customs & Central Excise, Shillong.
5. The A.A.O (Customs), Hqrs. Office, Shillong.
6. The Superintendent, DHP Unit, Agartala/Sonamura CPF.
7. The Superintendent, Pallel CPF, Pallel.
8. The Superintendent (A/S, Warc. & Intt.) Aizawl Customs (Prev.) Divn.
Aizawl.
9. The Superintendent (Tech) Divl. Office, Imphal Customs (Prev) Divn.
Imphal.
10. The Superintendent (Tech) Divl. Office, Karimganj Customs (Prev) Divn.
Karimganj.
11. The Branch-in-Charge, ET, II & III/Accts. I & II/Confdl. Branch/
CIU-VIG Branch, Customs & Central Excise, Shillong.
12. The General Secretary, Group-'D' Officers' Association, Shillong.
13. Guard File.
14. Shrt _____ Sepoy for compliance.

(LALLUNGMEHA) 5/6
COMMISSIONER OF CUSTOMS (PREVENTIVE)

C.No. II(3)3/ET/ACA/97/ 24326(A) Date 11-6-97

Copy forwarded to the Supdt. (A.S), Customs (Agartala) for information, along with Personal copy Sri Gmrajit Bhattacharya, Sepoy for delivery to him.

Encl. As stated

%
(B.C. DEY)
Administrative Officer
Customs Preventive Division
Agartala.

35
Annexure - 7
44

OFFICE OF THE COMMISSIONER OF CUSTOMS
NORTH EASTERN REGION
SHILLONG

ORDER NO. 15/1999

Dated, Shillong, the 2nd August, 1999

Sub :- Transfer & Posting, Rotation and adjustment in the Grade of Group 'D' Sepoys - Orders reg.

In supersession of earlier orders, the following transfer and posting, rotation and adjustments in the Grade of Group 'D' Sepoys of Commissionerate of Customs, North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

SL.NO.	NAME	PLACE OF POSTING	
		FROM	TO
S/Shri			
1.	Mohey Paul	<u>DHP Unit</u> Agartala Cus.Div (U/O of transfer to Kai- Lashahar P.P. under Karimganj Cus.Div. Vide O/No. 10/99 dt. 13-05-99)	Retained upto Dec'99 in the Divisional Office, Agartala Cus.Div.
2.	Dhruba Joshi	<u>Khawzawl CPF</u> Aizawl Cus.Div (U/O of transfer to Divnl. Office, Aizawl vide O/No. 10/99 dt. 13-05-99)	Retained at Khawza- awl CPF upto December'99 ✓
3.	Dipak Rn. Das	<u>Moreh CPF</u> Imphal Cus. Div	Cus. Hqrs. Office, Shillong.

2.8.99
(K.K. DAS)
COMMISSIONER OF CUSTOMS
N.E.R.:SHILLONG

C.NO. II(3)3/ET/CC/CELL/SH/98/322-50(5) Dated :- 05-08-99
Copy forwarded for information and necessary action to :-

1. The Commissioner of Central Excise, Shillong.
2. The Joint Commissioner (P&V), Customs and Central Excise, Shillong.
3. The Assistant Commissioner of Customs, Agartala/Karimganj/Aizawl/Imphal. Copy meant for the concerned officer is enclosed for causing delivery.
4. The Superintendent, Khawzawl CPF/Dharmanagar CPF/ Moreh CPF.
5. The Superintendent, CC's Cell, Shillong.
6. The C.A.O., Customs and Central Excise, Shillong.
7. The ACAO/PAO, Customs and Central Excise, Shillong.
8. The A.O.(Customs), Customs Hqrs., Shillong.
9. The Branch-in-Charge, ET.II & III/Accts/Confdl/Vtg. Branch of Hqrs. Office, Shillong.
10. The General Secretary, Cus.&C.E. Gr.'D' Officers, Asson. Shg.
11. Shri _____, Sepoy.

(M.J.DRY) 5/8/99

ASSISTANT COMMISSIONER OF CUSTOMS (P&V)

36

ANNEXURE-8 45



OFFICE OF THE COMMISSIONER OF CUSTOMS
NORTH EASTERN REGION
SHILLONG

C.No. II(3)/3/ET/CC/CELL/SH/98/884(A)

Dt. 10.03.2000

To:

The Assistant Commissioner,
Agartala Customs Division.

Sub:- Relieve of Sri Moloy Paul, Sepoy - Regarding.

Sir,

I am directed to inform you that Commissioner of Customs, N.E.R., Shillong desires that Sri Moloy Kr. Paul, Sepoy presently posted in Customs Divisional Office, Agartala should be relieved by 31st March, '00 as per Order No. 15/99 dt. 2.8.99.

The representation of Sri Moloy Kr. Paul, Sepoy dt. 24.12.99 forwarded by the assistant commissioner, Agartala Customs division vide his office letter C.No. II(3)/3/ET/ACA/9/4554(A) dt. 24.12.99 has been rejected by Commissioner.

Yours faithfully,

(M. L. DEY)

Assistant Commissioner(P&I)
Customs Headquarter
N.E.R. SHILLONG

True copy
Sd/-
Adv.

37

ANNEXURE - 9



OFFICE OF THE COMMISSIONER OF CUSTOMS
NORTH EASTERN REGION
SHILLONG

ORDER NO. 13/2000

Dated, Shillong. the 24th August, 2000

Shri Moloy Kr. Paul, Sepoy, presently posted at Agartala Customs Divisional Office and under order of transfer to Kailasahar PP is posted to D.P.F., Agartala Customs Division with immediate effect and until further orders.

(K. K. DAS)
Commissioner Of Customs

C.No. II(3)1/ET/CC/CELL/SH/99/ 2669-83(A)

Dt. 25. 08. 2000

Copy forwarded for information & necessary action to :-

1. The Joint Commissioner(P&V), Customs & Central Excise, Shillong.
2. The Assistant Commissioner, Agartala Customs Division.
3. The C.A.O./P.A.O., Customs & Central Excise, Shillong.
4. The A.O., Customs Hqrs., Shillong.
5. The Branch-in-charge Accts. I & II / ET II & III/ Confdl./ CIU-Vigl. Br. Of Customs & Central excise, shillong.
6. Sri Moloy Kr. Paul, Sepoy for compliance.
7. The General Secretary, Gr. 'D' Officers Association, Customs & Central Excise, Shillong.
8. Guard file.

(M.L. Dey)
Assistant Commissioner(P&I)

one copy
sent to
Adv.

6266 SUPREME COURT CASES 1994 Supp (2) SCC
 were being paid special pay in addition to their pay but the direct recruits were denied this privilege. This Court held that the denial of special pay to Class I direct recruits amounted to violation of Articles 14 and 16 of the Constitution and that they were entitled to special pay at the same rates at which it is paid to the transferred officers working in the Centre.

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

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

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

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

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

1994 Supp (2) Supreme Court Cases 666
 (BEFORE P.B. SAWANT AND N.P. SINGH, JJ.)

DIRECTOR OF SCHOOL EDUCATION,
 MADRAS AND OTHERS

Appellants;

Versus

O. KARUPPA THEVAN AND ANOTHER

Respondents.

Civil Appeal No. 546 of 1994¹, decided on January 31, 1994.

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

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

38 41- Annex-10
 35-35
 absence of urgency such transfer restrained from being effected till the end of that academic year (Para 2)

a Appeal allowed

H-R/13371/SLA

ORDER

1. Leave granted. Heard both counsel.

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

1994 Supp (2) Supreme Court Cases 667

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

A.M. VADI

Appellant;

Versus

e INDIA TRADE PROMOTION ORGANISATION
 AND ANOTHER

Respondents

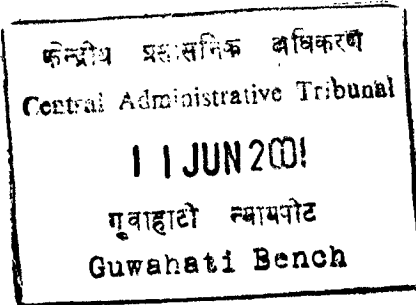
Civil Appeal No. 713 of 1994 in SLP (Civil) No. 20597
 of 1993, decided on February 4, 1994

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

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

Held:

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



Recd by
11/6/01
(A. DEB ROY)
Sr. C. C. S. C.
Q.A.T., Guwahati Bench
48
Vishie Kero
(VISIELIE KERO)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 75 OF 2001

Shri Prantosh Dutta

-Vs-

Union of India & Ors.

- And -

In the matter of :

Written Statement submitted by the
Respondents

The Written Statements of the ~~abovenamed~~ abovenoted respondents are as follows :

1. That with regard to para 1 and 4.2, the respondents beg to state that the matter of fact.
2. That with regard to para 4.3, the respondents beg to state that the applicant served in Customs formation with effect from 1981 to 2000 i.e. 19 years within the Tripura State. The respondent has now felt that his name must be released to Central Excise Commissionerate and accordingly it has been done. The impugned Estt. Order No. 16/2001 dated 19.1.2001 transferring him from Agartala Customs Division to Dharmanagar Range has been issued by the Additional Commissioner (P&V), Customs and Central Excise, Shillong. Regarding option it may be stated that the same is a general circular issued by the Additional Commissioner (P&V), Customs and Central Excise, Shillong calling for option to be taken up in the

Annual General Transfer as it is done every year. The applicant has accordingly opted according to his choice, but it does not mean that he will be given posting of his choice.

As regards educational problem as stated by him it may be mentioned that the excuses put forward by the applicant is a common phenomenon. The applicant has been transferred to Dharmanagar Range which is not so far from Agartala and he can easily keep his family members there when they are studying at Agartala. As such the excuses of the applicant put forward is baseless and not sustainable. As regards submission of representation for his retention, the matter is being dealt by Additional Commissioner, Customs and Central Excise, Shillong, hence no comments can be offered.

3. That with regard to para 4.4, the respondents beg to state that the applicant has rendered maximum period in Customs Commissionerate i.e. 19 years at a stretch and after having considered his biodate etc. the respondent felt it necessary to release him at the disposal of Central Excise Commissionerate for posting there, it may be mentioned that while issuing transfer, guidelines of the Ministry's OM was taken into consideration. As such there was no violation in the order of transfer, further it is upto the respondent who has got prerogative to transfer any staff from any place depending upon the administrative exigency.

4. That with regard to para 4.5, the respondents beg to state that the comments may be obtained from the Commissioner of Central Excise regarding submission of representation.

-3-

5. That with regard to para 4.6, the respondents beg to state that ~~it may be~~ the applicant could manage to remain well within the State of Agartala only during his 19 years long service in Customs formation as it is evident ~~from~~ from his biodata. It is clear that the applicant had managed his posting within Tripura through his manipulative scheme hence it cannot be said that he was transferred frequently. As mentioned earlier the Govt. transfer policy was duly taken into consideration while issuing transfer order. The contention of the applicant is baseless and ridiculous.

6. That with regard to para 4.7, the respondents beg to state that the applicant about longest stay of some Gr. 'D' staff it may be mentioned that Sl. No.1 and 2 i.e. Badal Chakraborty and Manish Deb Barma are Havildar posted there in Agartala. and Sl. No.3 and 4 has completed the period of service in Customs less than the applicant.

7. That with regard to para 5.1, the respondents beg to state that the transfer order was issued by the respondent well in time as it is done every year, hence there is no any infirmity in the impugned order. His allegation that his daughter is going to appear final examination in March 2002 which is long way to come.

The respondents state that the application being devoid of any merit as stated in this written statement and is requested to dismiss the petition filed by the applicant forthwith and vacate the stay order.

Verification.

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

I, Shri VISIELIE KEZO, DEPUTY COMMISSIONER,

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

And I sign this verification on this 24 th day
of May, 2001.

Visielie Kezo
उप आयुक्त
De Declarant sioner
सोमा शुल्क प्रभाग
CUSTOMS DIVISION
गुवाहाटी Guwahati