

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 18/2001.....
R.A/C.P No.....
E.P/M.A No.....

1. Orders Sheet OA-18/2001.....Pg.....1.....to.....3.....
2. Judgment/Order dtd. 11/07/2001.....Pg.....No depart order Dismissed.....
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....18/2001.....Pg.....1.....to.....37.....
5. E.P/M.P.....NIL.....Pg.....to.....
6. R.A/C.P.....NIL.....Pg.....to.....
7. W.S. Respondents No-2, 3, 4, 5.....Pg.....1.....to.....7.....
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.....

Written objection of the Respondents No-6
Pg-1 to 6

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 18/2001

... Sri. Birendra Paul ... Applicant.

Versus

Union of India & Ors Respondents.

For the Applicant(s)

Mr. M. Chandra
Mr. S. Ghosh
Mr. B.C. Pathak

For the Respondents.

Addl. C.G.S.C.

NOTES OF THE REGISTRAR

DATE

ORDER

This application is in form
but not in form of
Petition as per Rule 11
M.A. 1961.

for the purpose of the

IPO/2001 No. 27/222

Dated 22.12.2000

By Registrar
16/01/01

16.1.01

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

Heard Mr. M. Chanda, learned counsel for
the applicant and Mr. B.C. Pathak, learned Addl.
C.G.S.C. for the respondents.

Application is admitted. Issue usual
notice. Returnable on 8.2.2001. List on
8.2.2001 for further orders.

Also heard Mr. M. Chanda, learned
counsel for the applicant on the interim
prayer.

Issue notice as to why the impugned
Annexure-3 order dated 15.12.2000 vide order
No. 18/2000 transferring the applicant from Law
Branch, Agartala Customs Division to DEPB &
DEEC, Work of Divisional Technical Unit,
Guwahati Customs Division shall not be
suspended. Notice returnable on 8.2.2001. In
the meantime the operation of the impugned
Annexure-3 order dated 15.12.2000 shall remain
suspended.

List on 8.2.2001 for further orders.

Vice-Chairman

8.2.2001 No. 13. Admitted to 28.2.2001.

Mr. A.K. S. 8.2

trd

Slts are not received.

18/01/01

28-1-2001

Service of Notice ready
and issued to the

Respondents vide D.No. 370

379 of dt. 30.1.2001

(2)

O.A.No.18/2001

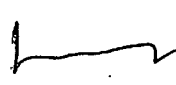
① Service report are still awaited.

② Reply has not been filed.

24
24.2.01

nkm

WS
24/3/01


Vice-Chairman

4.4.2001

Three weeks time allowed to the respondents to file written statement. List for, orders, on 25.4.01.

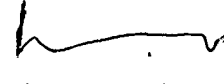

Vice-Chairman

nkm

12.3.2001

WS has been filed on behalf of Respondent Nos 2, 3, 4 and 5.

25.4.01 Three weeks time is allowed to the applicant to file rejoinder. List on 23.5.2001.


Vice-Chairman

 trd

23.5.01

List the case for hearing on 22.6.2001. In the meantime the applicant may submit rejoinder if so advised.


Vice-Chairman

13.3.2001

~~A Written objection has been filed by the Respondent No. 6 against the application filed by applicant.~~

22.6.01

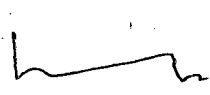
Heard Mr.M.Chanda learned counsel for the applicant and also Mr.B.C.Pathak, Addl.C.G.S.C. for the respondents has submitted that there are some development in the matter, therefore, he prays for adjournment to obtain necessary instructions. Prayer is allowed. List on 11.7.01 for hearing.


Vice-Chairman

Notice duly served
ON R.No. 1, 2 & 6.

lm

24
13.8.01

Notes of the Registry	Date	Order of the Tribunal
<p>Copy of the order dated - 11.7.2001 sent to D. Section for issuing of the same to the learned Adv. for the parties.</p> <p><u>24</u> 18.7.01</p>	<p>11.07.01</p> <p>1m NB 13/7/01</p>	<p>Heard Mr.M.Chanda, learned counsel for the applicant and also Mr.B.C.Pathak, learned Addl. C.G.S.C. for the respondents. It has been stated by Mr.M.Chanda that in view of the situation more particularly in view of the order No.21/2001 dated 7.6.2001 transferring the applicant as Superintendent, Agartala LCS with additional charge of Dhaka Agartala Bus Service with immediate effect, he does not want to press the application. Accordingly, the O.A. is dismissed as not pressed. The order No.21/2001 shall kept in records and shall form part of the proceedings.</p> <p> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
1. The first case was heard on the 1st of January 1900.	1st Jan 1900	1. The first case was heard on the 1st of January 1900.
2. The second case was heard on the 15th of January 1900.	15th Jan 1900	2. The second case was heard on the 15th of January 1900.
3. The third case was heard on the 30th of January 1900.	30th Jan 1900	3. The third case was heard on the 30th of January 1900.
4. The fourth case was heard on the 15th of February 1900.	15th Feb 1900	4. The fourth case was heard on the 15th of February 1900.
5. The fifth case was heard on the 1st of March 1900.	1st Mar 1900	5. The fifth case was heard on the 1st of March 1900.
6. The sixth case was heard on the 15th of March 1900.	15th Mar 1900	6. The sixth case was heard on the 15th of March 1900.
7. The seventh case was heard on the 30th of March 1900.	30th Mar 1900	7. The seventh case was heard on the 30th of March 1900.
8. The eighth case was heard on the 15th of April 1900.	15th Apr 1900	8. The eighth case was heard on the 15th of April 1900.
9. The ninth case was heard on the 1st of May 1900.	1st May 1900	9. The ninth case was heard on the 1st of May 1900.
10. The tenth case was heard on the 15th of May 1900.	15th May 1900	10. The tenth case was heard on the 15th of May 1900.
11. The eleventh case was heard on the 30th of May 1900.	30th May 1900	11. The eleventh case was heard on the 30th of May 1900.
12. The twelfth case was heard on the 15th of June 1900.	15th Jun 1900	12. The twelfth case was heard on the 15th of June 1900.
13. The thirteenth case was heard on the 1st of July 1900.	1st Jul 1900	13. The thirteenth case was heard on the 1st of July 1900.
14. The fourteenth case was heard on the 15th of July 1900.	15th Jul 1900	14. The fourteenth case was heard on the 15th of July 1900.
15. The fifteenth case was heard on the 30th of July 1900.	30th Jul 1900	15. The fifteenth case was heard on the 30th of July 1900.
16. The sixteenth case was heard on the 15th of August 1900.	15th Aug 1900	16. The sixteenth case was heard on the 15th of August 1900.
17. The seventeenth case was heard on the 1st of September 1900.	1st Sep 1900	17. The seventeenth case was heard on the 1st of September 1900.
18. The eighteenth case was heard on the 15th of September 1900.	15th Sep 1900	18. The eighteenth case was heard on the 15th of September 1900.
19. The nineteenth case was heard on the 30th of September 1900.	30th Sep 1900	19. The nineteenth case was heard on the 30th of September 1900.
20. The twentieth case was heard on the 15th of October 1900.	15th Oct 1900	20. The twentieth case was heard on the 15th of October 1900.
21. The twenty-first case was heard on the 1st of November 1900.	1st Nov 1900	21. The twenty-first case was heard on the 1st of November 1900.
22. The twenty-second case was heard on the 15th of November 1900.	15th Nov 1900	22. The twenty-second case was heard on the 15th of November 1900.
23. The twenty-third case was heard on the 30th of November 1900.	30th Nov 1900	23. The twenty-third case was heard on the 30th of November 1900.
24. The twenty-fourth case was heard on the 15th of December 1900.	15th Dec 1900	24. The twenty-fourth case was heard on the 15th of December 1900.
25. The twenty-fifth case was heard on the 1st of January 1901.	1st Jan 1901	25. The twenty-fifth case was heard on the 1st of January 1901.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

Title of the Case : O.A. No. 18/2001

Sri Bireswar Paul : Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1	-	Application	1-15
2	-	Verification	16
3	1	Transfer and posting order dt. 27.1.2000	17-19
4	2	Transfer and posting order dated 14.3.2000	20-21
5	3	Representation dt. nil	
65	43	Impugned order dt. 15.12.2000	22-24
76	54	Transfer and Posting Policy dt. 30.6.94	25-28
87	65	Representation dt. 19.12.2000	29-31
98	76	Medical certificate dt. 5.11.99	32
109	87	Medical Certificate dt. 17.11.2000	33
110	8	Medical Certificate dt. 6.1.2000	34
1211	109	Judgement and Order dt. 31.1.94	35
12	10	School certificate dt 24.1.2000, 7.4.2000	36-37

Date : 16.1.2001

Filed by

Mani K Chouda
Advocate

Bireswar Paul.

Filed by Me appk
Mani K Chouda
Advocate
16.1.2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

O.A. No. 18/2001

BETWEEN

Shri Bireswar Paul
Son of Late Nareswar Paul
Resident of Ram Nagar Road,
Road No.6, (West end),
Post Office Ramnagar,
Agartala-799002
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,
N.E. Region,
Shillong.

Contd...

Bireswar Paul.

4. Shri K.K.Das,
Commissioner of Customs,
N. E. Region,
Shillong.
5. Commissioner of Central Excise,
N. E. Region,
Shillong.
6. Shri P.S. Das
Superintendent,
Office of the Assistant Commissioner,
Agartala Customs Division,
Govt. of India, Ministry of Finance,
P.O. Agartala
Tripura.

B.C. ... Respondents

DETAILS OF APPLICATION.

1. Particulars of orders against which this application is made.

This application is made against the impugned order of transfer and posting issued under Office Order No. 18/2000 dated 15.12.2000 whereby the applicant is sought to be transferred and posted from the Law Branch, Customs Division, Agartala to DEPB & DEEC Work of Divisional Technical Unit, Guwahati Customs Division on the ground that the applicant is ordered for transfer on three occasions within a short span of eight months in total violation of the transfer and posting policies issued by the Central Board of Excise and Customs and

Contd...

Bineswar Paul.

Excise and also on the ground that the same has been issued during the middle of the academic session/course of his children and also on the ground that the applicant is a heart patient underwent Ballon Stent Angioplasty at B.M. Biral Heart Research Centre, Calcutta and also suffering coronary Artery disease and the applicant was evaluated between 3.1.2001 and 5.1.2001 by Dr. Devi Shetty, Manipal Heart Foundation, A Division of Manipal Hospital, Bangalore and praying for a direction to the respondents to allow the applicant to continue in his present place of posting at Agartala on the grounds mentioned above or at least till completion of the academic session/course of his children under the Board of Secondary Education, Tripura.

2. Jurisdiction.

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 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, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant was initially appointed as Inspector in the year 1976 under the Commissionerate of Central Excise and Customs and he was posted at

Bireswar Paul

North Lakhimpur, Assam. The applicant was promoted to the post of Superintendent in the year 1992 while he was working on deputation to the Directorate of Revenue Intelligence under the Department of Revenue, Government of India, Ministry of Finance. It is relevant to mention here that the applicant worked on deputation in the aforesaid office during the period from 1987 to 1992. After his promotion to the post of Superintendent the applicant was repatriated to his parent organisation and posted at Jagi-Road in the district of Nagaon, Assam under Central Excise Division, Guwahati. However he retained there at Jagi Road for a short period of three months. Thereafter in the year 1992 itself he was transferred and posted at Central Excise Division, Guwahati. While working at Guwahati during the year 1994 the applicant was again~~s~~t transferred and posted at Agartala Customs Division. It is relevant to mention here that in 1995 the applicant was again~~s~~t transferred and brought under Central Excise Division, Silchar.

4.3 That it is stated that the applicant was transferred and posted from Central Excise Range, Agartala, Silchar Central Excise Division to Sonamura CPF and Sonamura LCS. The applicant immediately on receipt of the order of transfer and posting dated 27.1.2000 represented before the authority for allowing him to continue at Agartala Central Excise Range on health ground. However the applicant in the meantime released from duty in terms of the transfer and posting order dated 27.1.2000. The applicant sincere and loyal employee finding no other alternative carried out the order of

Contd....

Bireswar Paul.

transfer and posting and reported for duty on 6.3.2000 at Sonamura CPF and LCS station. However after his joining at Sonamura and after a lapse of one and half month the Commissionerate of Customs was pleased to consider the case of the applicant for retention at Agartala and accordingly the office order No. 4/2000 dated 14.3.2000 was passed by the Commissioner of Customs N.E. Region, Shillong whereby in partial modification an order No. 1/2000 dated 27.1.2000 the Commissioner of Customs, NER Shillong was pleased to modify the transfer and posting transferring back the applicant at Law Branch Agartala Divisional Office in consideration of his representation already made on health ground. The applicant accordingly after discharging the duty at about one and half months at Sonamura carried out the order dated 14.3.2000 and joined at Agartala Law Branch. In this connection it is relevant to mention here that in fact Shri S.K. Roy, Superintendent, Sonamura CPF and LCS after receipt of his transfer and posting order dated 27.1.2000 approached the Hon'ble Central Administrative Tribunal, Guwahati Bench challenging the said order of transfer and posting from Sonamura CPF and LCS to Belonia CPF and M'hiraghat LCS Agartala Customs Division and obtained stay order from the Central Administrative Tribunal. In these circumstances the Commissioner Sri K.K.Das finding no other alternative was forced to consider the representation of the present applicant and was pleased to issued a fresh order dated 14.3.2000 transferring the applicant in Law Branch at Agartala Division office. But no order was made in consideration of his representation before joining at Sonamura rather the applicant was forced to join at

Contd...

Bineswar Paul.

✓
Sonamura even with the deteriorating condition of his health. It is relevant to mention here that the applicant underwent Balloon and Stent Angioplasty (PTCA) at B.M. Birala Heart Research Centre, Calcutta during the year 1997. It is also relevant to mention as he ~~XXXXXX~~ underwent balloon and stent angioplasty (PTCA) on July 17, 1997 and as a result of the same restriction has imposed on his food habit to maintain his health condition and it is also advised by the concerned R. that he should remain in such a place specially with his family to follow the restrictions imposed on him. In this connection it is also relevant to mention here that the applicant at the relevant time was also suffering from coronary artery disease. However the applicant after issuance of the transfer and posting order dated 14.3.2000 joined at Law Branch at Agartala Division office.

Copy of the transfer and posting order dated 14.3.2000 & 27.1.2000 and/~~representation dt.~~ are annexed as Annexures- 1, 2 & 3 respectively.

4.4 Most surprisingly another impugned order of transfer and posting issued by Shri K.K. Das, Commissioner of Customs, N.E Region, Shillong vide order bearing No. 18/2000 dated 15.12.2000 whereby the applicant within a short span of eight months again sought to be transferred and posted from Law Branch, Agartala Customs Division to DEPB & DEEC Work of Divisional Technical Unit, Guwahati Customs Division, Guwahati although the applicant was posted back to Agartala just eight months back on consideration of his health ground by Shri K.K. Das, Commissioner. In the order of transfer and posting

Bireswar Paul.

dated 15.12.2000 the name of the applicant was been figured at serial No.8. The applicant immediately on receipt of the impugned order of transfer and posting made a representation before the Commissioner of Customs, N.E. Region, Shillong on 19.12.2000 stating interalia that he is a heart patient and underwent Baloon and Stant Angioplasty (PTCA) at B.M. Birala Heart Research Centre during the year 1997 and as per medical advise of the concerned Dor. the applicant is required to stay with his family members as because certain restrictions have been imposed on the food habit/diet of the applicant. Therefore a special attention and care is required to be maintained. In the compelling circumstances the applicant is required to stay with his family members for maintaining routine life as a result of restrictions imposed on the food habit/diet of the applicant by the medical authority. It is further stated that in the said representation addressed to the Commissioner of Customs, N.E. Region Shillong it is mentioned that he is required to undergo for Coronary Artery Bye pass Grafting Surgery in the month of January, 2001 for restoration of his heart condition. In this connection it is also relevant to mention that in the meantime the applicant also went to Manipal Heard Foundation at Bangalore for coronary artery disease and he was evaluated thereat Bangalore from 3.1.2001 to 5.1.2001. In this connection a certificate was also issued by Dr. Devi Shetty, Vice-Chairman. In the said certificate it is also stated that in view of bis viable miocardium thallium report in LAD terriroty, he underwent baloon and stant angioplasty to LAD on July 17, 1997 at B.M. Birala Heard Research Centre, Calcutta. An opinion has

Bireswar Paul

expressed by ~~the~~ Dr. Devi Shetty, Vice-Chairman of the Manipal Heart Foundation, Bangalore, that the applicant should remain in a place specially with his family members to follow the restriction imposed on him and also advised to have cardiac check up at Manipal Heart Foundation, Bangalore for long term benefit. In the representation dated 19.12.2000 the applicant further stated his daughter Miss. Banabith Paul is studying in Sishu Bihar Higher Secondary ^{School} section under Tripura Board of Higher Secondary Education and she is not reading in class XII and his son Shri Tapeswar Paul is also studying at class IX, in a same school under the same Board and also enclosed a Xerox copy of certificates in this regard. The applicant also stated that change of board at this stage will badly hamper their education. It is also relevant to mention here that the annual examination of his daughter is commencing from the month of March-April 2001 and his son Sri Tapeswar Pal is also appearing his ~~final~~ annual examination in the month of December, 2001. The daughter of the applicant shall appear in the final Examination of Higher Secondary course under the Tripura Board in April 2002 and the son of the applicant is also appearing in the HSLC final examination in April, 2003. The syllabus and course of Tripura Board is quite different than the Board of Secondary Education, Assam. As such, the impugned order of transfer and posting during the middle of the academic session/course likely to cause irreparable loss to the education of the children of the applicant. It is a settled position of law that Government employee normally should not be transferred during the middle of the academic session and especially in the instant case

Bireswar Paul.

of the applicant the Central Board of Customs and Central Excise, Government of India, Department of Revenue, New Delhi framed a specific transfer policy in respect of its employees working under the respondents. ~~xxx~~ The said transfer 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 6 it is categorically stated that generally transfer should not be made in the middle of the academic year and it is also mentioned that that the transfer policy be followed scrupulously followed. But in the instant case Shri K.K. Das, Commissioner, Customs NE Region, Shillong violated the professed norms laid down in the transfer policy dated 30.6.94 issued by the Under Secretary, Government of India, Department of Revenue, New Delhi wherein it is categorically stated this policy be scrupulously followed by all the Heads of the department while issuing transfer and posting order in respect of their employees. Moreover the Apex Court also observed in the case of Director of School Education Madras And Another Vs. O. Karuppa Thevan and Other reported in (1994) 2 (Supp) SCC page 666 that transfer of an employee during the mid academic session should not be effected in absence of urgency and also ordered such transfer be restrained from being affected till the end of their academic session. It is also relevant to mention here that there was a peculiar condition also laid down by the Board of Secondary Education Tripura that for appearing in any Examination under the Board a student should continue his ^{studies} ~~studies~~ under the school of the said Board for preceding five

Contd...

Bireswar Paul.

years immediately before appearing in the examination conducted by the Board. So it is also not possible on the part of the applicant to shift the children of the applicant during this mid session from the State of Tripura to the State of Assam and in view of smooth continuation of education of his children the applicant is required to stay at Agartala till the academic session of his children are over. It is specifically stated that the academic session is likely to be over in respect of the daughter of the applicant in April 2002 and in respect of his son in the month of April 2002 respectively.

Copy of the impugned transfee order dated 15.12.2000 and transfer policy dated 30.6.94, representation dated 19.12.2000, Medical certificate dated 5.11.99, 17.11.2000 and 6.1.2000 and the certificates in respect of his daughter and son and the judgement and order of the Apex court dated 31.1.94 passed in Civil Appeal No. 546/94 are marked as Annexures-3,4,5,6,7,8,9 and 10 respectively.

4.5 That your applicant begs to state that though the applicant submitted his representation before the Commissioner on 19.12.2000 but till filing of this application no communication is received by the applicant regarding the prayer for retention him at Agartala. It is further stated that in the impugned order dated 15.12.2000 it is categorically mentioned that applicant be released from duty by 16.1.2004 positively. In the circumstances stated above finding no other alternative the applicant is approaching this Hon'ble Tribunal

Bireswar Paul.

for a direction upon the respondents to allow the applicant to continue in his present place of posting at Agartala till the academic session/course of his children under the Tripura Board is finally over.

4.6 That your applicant begs to state that ~~even~~ within a short span of ten months three orders of transfer and posting have already been issued in respect of the applicant. Frequent transfer and posting of the applicant is itself is mala fide and the same has been ordered by Shri K.K.Da, Commissioner of Customs on extraneous consideration because he is well aware regarding the health condition of the applicant and he has considered his representation only eight months back for posting back to Agartala on health ground from Sonamura as such it establishes beyond all doubts that impugned order of transfer and posting has been issued on extraneous consideration with a malafide intention and on that score alone the impugned order of transfer and posting dated 15.12.2000 is liable to be set aside and quashed so far as the applicant is concerned. It is also relevant to mention here that respondent no.6 is ^{been}impleaded as because he ~~was~~/ordered for posting in place of present applicant. It is also stated that the respondent no.6 is also working in the same building at Agartala where the present applicant is also working. Therefore there is no difficulty on the part of the respondents to accommodate the respondent No.6 in his present place of posting. Moreover it is categorically submitted that one More post of Superintendent is also lying vacant in the Customs and Central Excise Office at Agartala therefore there is no difficulty on the part of

Bireswar Paul.

the respondents to accommodate the present applicant at Agartala on health ground. It is also stated that the applicant is now posted in the Law Branch of the Customs Division at Agartala. ~~xxxxxxx~~ It is relevant to mention here the applicant did not show any interest for continuation at Sonamura CPF LCS station which is treated as sensitive posting in customs department. In the circumstances stated above, the Hon'ble Tribunal be pleased to consider the prayer for retention of the applicant at Agartala for the smooth continuation of education of his children and also on the health ground of the applicant and also in view of the fact that the applicant have been transferred and posted on three occasions with a short span of ten months and further be pleased to set aside the impugned order of transfer and posting dated 15.12.2000.

4.7 That this application is filed bona fide and for the cause of justice.

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

- 5.1 For that with a short span of 10 months the applicants have been ordered for transfer and posting on three occasions and the frequent transfer of a Govt. employee itself is malafide and further the applicant joined at Agartala Law Branch only on eight month back during the month of March, 2000 and therefore the impugned order of transfer and posting dated 15.12.2000 is liable to be set aside and quashed.
- 5.2 For that the applicant is a heart patient underwent Balloon and stent angioplasty (PTCA) to LAD in July 1997 at B.M. Birla Heart Research Centre, Calcutta

Bireswar Paul

and also presently suffering from coronary artery disease and he has been evaluated during the period from 3.1.2001 to 5.1.2001 in the Manipal Heart Foundation, Bangalore by Dr. Devi Shetty and restriction has been imposed in the food habit of the applicant ~~and~~ restoration of his health which is evident from the certificate issued on 6.1.2001 by Dr. Devi Shetty and on that ground alone the impugned order of transfer and posting dated 15.12.2000 is liable to be set aside and quashed.

- 5.3 For that the daughter and son of the applicant are studying at Class XI and Class IX respectively in the school under the Tripura Board at Agartala and they are appearing Annual Examination during the month of April and December 2001 and they are also appearing in the final examination in the month of March-April 2002 and 2003 respectively. As such shifting of the family of the applicant including children ~~will adversely~~ at this state is not possible on the part of the applicant.
- 5.4 For that it is a settled position of law laid down by the Apex Court that no transfer should be effected till academic session/course is over in the absence of extreme urgency.
- 5.5 For that the impugned order has been issued in total violation of professed norm and also violated the transfer policy dated 30.6.94 issued by the Board of Central Excise and Customs, Government of India, Department of Revenue.

Bireswar Paul.

5.6 For that the representation of the applicant is still pending before the Commissioner, Sri K.K. Das but no communication is received till filing of this application.

5.7 For that the impugned order dated 15.12.2000 issued by Sri K.K. Das, Commissioner, Customs, N. E. Region, Shillong on extraneous consideration with a malafide intention within a short span of 10 months from the date of posting at Agartala.

6. Details of remedies exhausted.

That the applicant states that he has no other alternative and other efficacious remedy than to file this application. Representation through proper channel was submitted by the applicant to the Commissioner, Customs and Central Excise, but to no result.

7. Matters not previously 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 paragraphe 4 of this application, the applicant prays for the following reliefs :

Bireswar Paul.

- 8.1 That the Hon'ble Tribunal be pleased to set aside the impugned order of transfer and posting dated 15.12.2000 (Annexure- 3) issued Under No. 18/2000, so far as the applicant is concerned.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in his present place of posting at Law Branch, Agartala Customs Division.
- 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. 18/2000 dated 15.12.2000 (Annexure- 3) so far as the applicant is concerned till the academic session/course of the daughter and son of the applicant are over.

10.

The application is filed through advocate.

11. Particulars of the I.P.O.

- | | |
|-------------------|---------------------|
| i. I.P.O. No. | : 66 771222 |
| ii. Date of Issue | : 22.12.2000 |
| iii. Issued from | : G.P.O., Guwahati. |
| iv. Payable at | : GPO, Guwahati. |

12. Details of enclosures

As per Index.

Bireswar Paul

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

I, Sri Bireswar Paul, son of Late Nareswar Paul, aged about 48 years, resident of Ramnagar Road, Road No.6, (West end), Post Office Ramnagar, Agartala 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, 2001.

Bireswar Paul.
Signature



OFFICE OF THE COMMISSIONER OF CUSTOMS
NORTH EASTERN REGION
SHILLONG

ANNEXURE - "F" 13
7

ORDER NO. 01/2000

Dated, Shillong, The 27th January, 2000

Subject: Transfer & Postings, Rotation & Adjustments in the Grade of Superintendents Group 'B' of the Commissionerate of Customs, North Eastern region, Shillong - **ORDERS REGARDING.**

The following transfer and postings, rotation & adjustments in the grade of Superintendents of Commissionerate of Customs, North Eastern Region, Shillong, are hereby ordered with immediate effect and until further orders.

Name of the Officer	Place Of Posting	
	From	To
Shri Apalak Das	Audit Branch C.Ex. Hqrs., Shillong	Technical Branch Customs Hqrs., Shillong
Rania Kanta Das	Audit Branch C.Ex. Hqrs., Shillong	Borsora LCS Shillong Customs Division.
P.K. Barua	Burnihat Range C.Ex. Div., Shillong	Statistics Branch Customs Hqrs., Shillong
S.N. Singh	Technical Branch C.Ex. Div., Tezpur	Technical Branch Imphal Customs Division.
Ranjit Sharma	Hqrs. Audit Unit Guwahati	Mahendraganj LCS Guwahati Customs Division
S.C. Das	PBC Range G.Ex. Div., Digboi	Badarpur GPF Karimganj Cus. Division
Bhuvajit Sarkar	Dhubri C.Ex. Range C.Ex. Div., Dhubri	Dhubri CPF/ St.Ghat LCS Guwahati Customs Division
S. R. Dhar	C.Ex. Range, Karimganj C. Ex. Div., Karimganj	Customs Divisional Office, Karimganj
Jalilar Dey	Hqrs. Appeal Branch C.Ex. Hqrs., Shillong	Customs Hqrs. Office, Shillong

24

of the Officer		Place Of Posting	
		From	To
1	Mr B.K. Deb	Adjudication Branch C.Ex. Hqrs., Shillong	Anti- Smuggling Unit Agartala Customs Division
2	G.C. Paul	Silchar C.Ex. Division	Law & Appeal Branch Customs Hqrs., Shillong
3	B. Paul	C. Ex. Range, Agartala Silchar C.Ex. Division	Sonamura CPF & Srimantapur LCS Agartala Customs Division
4	S. Chakrabarty	Belonia CPF & Muhiraghat LCS Agartala Cus. Division	Law/ Adjudication Branch Agartala Customs Division
5	S. K. Roy	Sonamura CPF & Srimantapur LCS Agartala Cus. Division	Belonia CPF & Muhiraghat LCS Agartala Customs Division
6	J.C. Das (No. 2)	Lumding Range C.Ex. Div., Guwahati	Disposal Branch Karimganj Cus. Division
7	M.S. Tyagi	Medvat Cell C. Ex. Div., Guwahati	Anti- Smuggling Unit Dimapur Cus. Division
8	N. G. Barman	Superintendent Hqrs C.Ex. Hqrs., Shillong	Hqrs. Preventive Unit Customs Hqrs., Shillong
9	J.R.H. Dierckx	Hqrs. Preventive Unit Cus. Hqrs., Shillong	A/s Unit & Technical Branch Shillong Customs Division
10	G.K. Nath	Anti-Smuggling Unit Agartala Cus. Division	Technical Branch Agartala Customs Division

27.1.2010
(K.K. DAS)

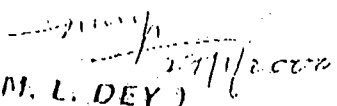
COMMISSIONER OF CUSTOMS
NORTH EASTERN REGION
SHILLONG

25

No. 11(3)9/ET/CC/CH11/SH/99/215-517(1) Dt. 22.01.2000

Copy forwarded for information & necessary action to :-

1. The Commissioner of Central Excise, Shillong.
2. The Joint Commissioner (P&V), Customs & Central Excise, Shillong.
3. The Joint Commissioner(Tech), Central excise, Shillong.
4. The Assistant Commissioner (P&I), customs Hqrs., Shillong.
5. The Deputy/Assistant Commissioner, Customs Division (All). Copy meant for the concerned officer(s) is/are enclosed herewith for causing delivery.
6. The C.A.O., Customs & Central excise, Shillong.
7. The P.A.O., Customs & Central excise, Shillong.
8. The A.C.A.O., Customs & Central excise, Shillong.
9. The Administrative Officer, Customs Hqrs., Shillong.
10. The Superintendent, Customs Hqrs. Office, Shillong (all).
11. S/Shri _____, Superintendent for compliance.
12. The Branch-in-charge, ET.II & III/ Accts. I & II/ CIU-VIG Br. of Customs & Central Excise, Shillong.
13. The General Secretary, Group 'B' Superintendents Association, Customs & Central excise, Shillong.
14. The Senior P.A. to the Commissioner of Customs, Shillong.
15. Guard File.


 (M. L. DEY)
 Assistant Commissioner(P&I)
 Customs Headquarter
H.E.R. III: SHILLONG

COMMISSIONERATE OF CUSTOMS, NORTH EASTERN REGION, SHILLONG.

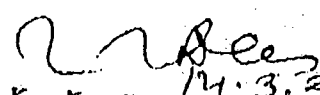
ORDER NO. 04/2000

Dated, Shillong the 14th March, 2000.

Subject : Transfer and posting, Rotation and Adjustment in the grade of Superintendent Gr. 'B' of the Commissionerate of Customs, N.E.R., Shillong - Order Reg.

In partial modification of order No. 1/2000 dated 27.1.2000 the Commissioner of Customs, North Eastern Region, Shillong is pleased to order the following posting and adjustment in respect of Superintendent Gr. 'B' of Agartala Customs Division with immediate effect in consideration of the representation of S/Shri B. Paul and S. K. Roy, Superintendents.

Sl. No.	Name of the Officer	Place of posting
1.	Shri B. Paul, under order of transfer to Sonamura LCS.	Law Branch of Agartala Divisional Office.
2.	Shri S. K. Roy, under order of transfer to Belonia LCS.	Retained at Sonamura LCS
3.	Shri S. Chakraborty under order of transfer to Law/Adjudication Branch, Agartala Divisional Office.	Adjudication Branch Agartala Divisional Office and additional charge of Belonia CPF until further order.


(K. K. Das)
14.3.2000
Commissioner of Customs
N.E.R., Shillong

C.No. II(3)9/ET/CC/Cell/SH/99/917-57(A)

Dated the 14th March, 2000

Copy forwarded for information and necessary action to

1. The Commissioner of Central Excise, Shillong.
2. The Joint Commissioner(P&V), Customs & Central Excise, Shillong.
3. The Chief Accounts Officer, Customs and Central Excise, Shillong.
4. The Pay & Accounts Officer, Customs and Central Excise, Shillong.
5. The Assistant Commissioner, Customs Division, Agartala.
6. Copy meant for the concerned officer(s) is/are enclosed.
7. The Administrative Officer, Customs Hqs. Shillong.
S/Shrt B... ..Superintendent
for compliance.
8. The General Secretary, Gr.'B' Superintendents' Association, Customs & Central Excise, Shillong.
9. The Senior PA to Commissioner of Customs, NER, Shillong.
10. Guard File.

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



ANNEXURE - 3

GOVT. OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS
NORTH EASTERN REGION
SHILLONG

ORDER NO. 18/2000
Dated, Shillong, The 15th December, 2000.

Sub:- Transfer & Postings, Rotation & Adjustments in the Grade of Superintendent
Group 'B' of the Commissionerate of Customs, N.E.R., Shillong-
ORDERS REGARDING.

The following transfer & postings, rotation & adjustments in the grade of Superintendent of Commissionerate of Customs, N.E.R., Shillong are hereby ordered with immediate effect and until further orders.

SL	NAME OF THE OFFICER S/Shri	PLACE OF POSTING FROM	TO
1.	D. Bhattacharjee	Moreh C.P.F. Imphal Customs Division	Tech./Sts./Adj. Branch Shillong Customs Division
2.	J. R. H. Diengdoh	Anti-Smuggling Unit Shillong Customs Division	Tech./Sts./Adj. Branch Dimapur Customs Division
3.	S.D. Pegu	Naharkatta Range III Dibrugarh Cen. Ex. Divn.	Anti-Smuggling Unit Dimapur Customs Division
4.	D.K. Nath	Tech./Sts./Adj. Branch Agartala Customs Division	Belonia C.P.F. Agartala Customs Division
5.	N. G. Seri	Belonia C.P.F. Agartala Customs Division	Tech./Sts./Adj. Branch Agartala Customs Division
6.	B.K. Deb	Anti-Smuggling Unit Agartala Customs Division	Disposal Unit Agartala Customs Division
7.	Samir Chakrabarty	Adjudication Branch Agartala Customs Division	Anti-Smuggling Unit Agartala Customs Division
8.	B. Paul	Law Branch Agartala Customs Division	DEPB & DEEC Work of Divisional Technical Unit Guwahati Customs Division
9.	Alok Chakrabarty	Ferryghat L.C.S. Karimganj Customs Division	Tech./Sts./Adj. Guwahati Customs Division
10.	S. K. Chakrabarty	Anti-Smuggling Unit Karimganj Customs Division	Law Branch Karimganj Customs Division
11.	B.B. Salkia	Tech./Sts./Adj Guwahati Customs Division	Ferryghat L.C.S. Karimganj Customs Division

Attested
[Signature]
 Adv.

N.L. Roy	Dharmanagar C.P.F. Karimganj Customs Division	Anti-Smuggling Unit Karimganj Customs Division
13 R.C. Dey	Law & Adjudication Karimganj Customs Division	Dharmanagar C.P.F. Karimganj Customs Division
14 K. Ahmed	Disposal Unit Aizawl Customs Division	Khawzawl C.P.F. Aizawl Customs Division
15 A. Ghosh	Divisional Office Dhubri Central Excise Divn.	Law & Appeal Cus. Hqs. Office, Shillong
16 P. S. Das	Disposal Unit Agartala Customs Division	Law & Suptdt. I/C, Dhaka- Agartala Bus Service Agartala Customs Division
17 K. K. Taneja	A/s / Narc./ Intt. Imphal Customs Division	Tech./Sts./Adj. Imphal Customs Division
18 S. N. Singh	Law & Disposal Unit Imphal Customs Division	A/s / Narc./ Intt. Imphal Customs Division
19 D. R. Saha	B.R.P.L. Range- II Dhubri Cen. Ex. Divn.	Disposal Unit Hqs. Office, Shillong.

(Handwritten Signature)
15.12.20
(K. K. DAS)

Commissioner Of Customs

Note: The order relating to the officer at Sl. No. 9 shall be dependant upon the outcome of decision of the Honble C.A.T., Guwahati Bench, in case No. 414/99.

The following officers in the grade of Superintendent of Customs Commissionerate, N.E.R., Shillong are hereby placed at the disposal of Commissioner, Central Excise, Shillong.

- | | |
|------------------|--|
| 1. Sri G. C. Das | <u>Anti-smuggling Unit</u>
Dimapur Customs Division. |
| 2. Sri S. Nalh | <u>Law & Appeal Branch</u>
Customs Hqs. Office, Shillong. |
| 3. G. Thaba | <u>Tech/Sts/Adn.</u>
Shillong Customs Division. |

The following officers are absorbed from Central Excise to Customs :-

- | | |
|---------------------|----------------------------|
| 1. Sri S. D. Pegu - | Naharkalia Range -III |
| 2. Sri D. R. Saha - | B.R.P.L. II Range |
| 3. Sri A. Ghosh - | Divisional Office, Dhubri. |

N.B.: 1. The following Superintendents will hold additional charges of the branches / units as shown against their names :-

March 2005.

2. Sri S. C. Das, Supdt., Badarpur C.P.F. - Silchar C.P.F.
3. Sri A. Das, Supdt., Tech./Adj., Hqs. - Shellabazar L.C.S.
4. Sri D. Bhattacharjee, Supdt., Tech./Sls./Adj. - A/s. Unit, Shillong Customs Division
5. Sri S.R. Dhar, Supdt., Tech./Sls./Adj. - Law & Disposal Unit, Aizawl.
6. Sri K. K. Taneja, Supdt., Tech./Sls./Adj. - Law & Disposal Unit, Imphal
7. Sri S.D. Pegu, Supdt., Anti-Smuggling Unit - Law & Disposal Unit, Dimapur.

N.B.: 2. One post of Superintendent of Customs Headquarters Office, Shillong is hereby temporarily diverted to Guwahati Customs Divisional Office until further orders.

N.B.: 3. All the above officers should be relieved latest by 16.01.2001.

(K. K. DAS)
15.12.2000

Commissioner Of Customs

C.NO. II(3)9/ET/CC/CELL/SH/2000/ 3842-949 (A) Dated:- 15.12.2000.

Copy forwarded for information & necessary action to :-

1. The Commissioner of Central Excise, Shillong.
2. The Commissioner (Appeals), Customs & Central Excise, Guwahati.
3. The Additional Commissioner (P&V), Customs & Central Excise, Shillong.
4. The Additional Commissioner (Tech.), Central Excise, Shillong.
5. The Assistant Commissioner (P&I), Customs Hqs., Shillong.
6. The Deputy / Assistant Commissioner of Customs / Central Excise (ALL). Copy meant for the concerned officer(s) is / are enclosed herewith for causing delivery.
7. The C.A.O., Customs & Central Excise, Shillong.
8. The P.A.O., Customs & Central Excise, Shillong.
9. The A.C.A.O., Customs & Central Excise, Shillong.
10. The Administrative Officer, Customs Hqs., Shillong.
11. The Br. P.A. to Commissioner, Customs.
12. The Superintendent _____ (All Units).
13. The Branch-in-charge of ET. II & III, Accts. I & II, Confidential/Vigilance Branch of Customs & Central Excise, Shillong.
14. Sri / Smtl. _____, Superintendent for compliance.
15. The General Secretary Group 'B' Superintendent Association, Customs & Central Excise, Shillong.
16. The Guard File.

(K. K. DAS)
15.12.2000

Commissioner Of Customs

Annexure-4 88

Annexure 3/A
31

F. No. A-35017/28/92-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 22015/20578-
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-12014/4/92
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 :

(1) 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..P/2

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 sensitive 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/EIB 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. (B) 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 :

- (i) 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

~~28~~ 28-21-34
34
Amendments (Contd.) 67.4

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

- (111) 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/- Illegible

To
The Hon'ble Commissioner,
Customs Commissionerate,
North Eastern Region,
Shillong.

(Through proper channel)

Hon'ble Sir,

Sub :- Humble prayer for retention at Agartala.

With profound respect, the petitioner craves for your kind and sympathetic consideration of the following facts and humble appeal for his retention at Agartala.

1. That Sir, the petitioner is a heart patient and had underwent balloon stent Angioplasty at B.M. Birla Heart Research Centre in the year 1997 and as per direction of the Medical Authority, the petitioner will have to stay with the family. (Xerox copy of the Medical Certificate enclosed marked Annexure "A").

2. That Sir, the petitioner will have to go for Coronary Artery By pass Grafting Surgery in the month of January, 2001 for the restoration of his heart condition (Xerox copy of the letter issued by Dr. Devi Shetty is enclosed marked Annexure "B").

3. That Sir, the daughter and son of the petitioner prosecuting their studies in Shishu Bihar Higher Secondary School under Tripura Board of Secondary Education (Xerox copy of the ~~letter-issued~~ certificate enclosed marked Annexure "C" and "D" respectively) and change of Board will badly hamper their education. Moreover, as per Rule no student will be able to appear in the Joint Entrance Examination unless she or he has studied last five years under the same Board.

Contd. . . p/2.

+30-
36

-:(2):-

4. That Sir, the petitioner joined in Customs after completion of four years in Central Excise at Sonamura C.P.F. on 6.3.2000 vide Estt. order No.01/2000 dated 27th January, 2000 communicated vide C.No. II(3)9/ET/CC/CELL/SH/99/275-317 dated 27.01.2000 (Xerox copy of the order enclosed marked Annexure "E") and again transferred from Sonamura C.P.F. to Law Branch, Customs Division, Agartala vide Estt. order No.04/2000 dated 14th March, 2000 communicated under C.NO.II(3)9/ET/CC/CELL/SH/99/947-57(A) dated 14th March, 2000 just after completion of one month (Xerox copy of the order enclosed marked Annexure "F") and subsequently joined on 10.05.2000.

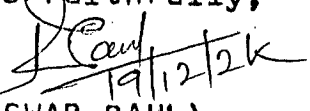
That Sir, only after completion of seven months in Law Branch, Agartala the petitioner again transferred to Guwahati vide Estt. order No.18/2000 dated 15th December, 2000 communicated under C.No.II(3)9/ET/CC/CELL/SH/2000/3842-949(A) dated 15.12.2000 (Xerox copy of the order enclosed marked Annexure "G").

6. That Sir, under no norms/policy the petitioner can be disturbed by way of transfer, posting in three occasion within a span of 10 (ten) months where change of Head Quarter is involved.

Under the above the petitioner fervently appeals to your goodself to have pity on the confronted problems and thus issue necessary order so that the petitioner can retain in any posting at Agartala and for which act of your kindness the petitioner will ever grateful to you.

Yours faithfully,

Enclo :- All the
Annexures cited above.


(BIRESWAR PAUL),
Superintendent (Law),
Customs Division, Agartala.

-31-

37

-(3):-

Copy submitted to the Hon'ble Chief Commissioner, Customs & Central Excise, 15/1, Strand Road, Calcutta with all the enclosures for favour of kind information please.


19/12/21

(NIRESWAR PAUL),
Superintendent (Law),
Customs Division, Agartala.



B. M. Birla Heart Research Centre

November 05, 1999

TO WHOM IT MAY CONCERN

I, Dr. T.K. Praharaj hereby certify that Shri Bireswar Paul, Superintendent, Customs & Central Excise Range (now posted at Agartala, as Superintendent Central Excise Range) is suffering from coronary artery disease and underwent a Coronary Angiogram which revealed Single Vessel Disease involving LAD. In view of viable myocardium in LAD territory he underwent Balloon and Stent Angioplasty (PTCA) to LAD on 17.07.1997.

In my opinion, Mr Paul should remain in such a place preferably with his family where adequate cardiac facilities including emergency cardiac treatment can be provided if he develops any cardiac emergency.

In view of his cardiac condition, he has been advised to have regular cardiac check-up at our Centre for long term benefit.

I have issued this certificate after going through the reports of last follow-up ~~check-up~~ from 03-11-99 to 05-11-99.

DR. TARUN K. PRAHARAJ, MD, AFPPCC
SENIOR CONSULTANT CARDIOLOGIST

Dr. Tarun K. Praharaj
MD AFPPCC FAIMS
Consultant Cardiologist
B. M. BIRLA HEART RES. CENTRE
1/1, National Library Ave, Cal-27



MANIPAL HEART FOUNDATION

(A unit of Manipal Hospital)



Agartala

Date: 17/11/2000

Mr. / Mrs. BIRESHWAR PAUL (49 years)

124, MUKUNDAPUR
E. M. BY PASS
NEAR SANTOSH PUR CONNECTOR
CALCUTTA - 78.
PH - 4167400 - 05

Dear Mr. / Mrs. B. PAUL

Thank you very much for choosing Manipal Heart Foundation as your choice for heart treatment.

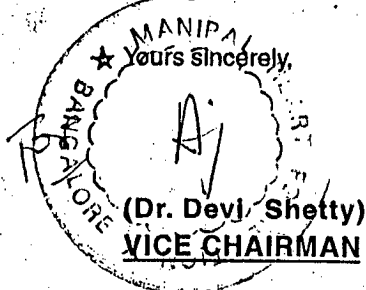
We are happy to offer you CABG treatment at our institute
It will cost Rs. _____/- for the angiogram and Rs. 1,50,000/- for surgery / angioplasty.
In case of valve replacement or stent implantation, the cost will be Rs. _____/-.

These are compact packages starting two days before the procedure and there are absolutely no extra charges after admission. We would like you to report on 4th JANUARY 2001.

The average requirement of blood for an operation is 5-6 units. We would expect five of your friends/relatives to donate blood of patient's group, in case of operation. If it is difficult for you to bring donors of the same group, the persons accompanying you can donate their blood irrespective of the group and for arranging the rest, we shall help them. Your relatives may have to go to few voluntary organisation with a request to send blood donors.

We do have few guest houses close to the hospital where it will cost you Rs. 250/- per day for a single room. However, these are full most of the time and we could guide you to get comfortable accommodation in the city. Please confirm your date of arrival well in advance for making necessary arrangements at our end.

In case of extra medical tests a sum of Rs. 3000/- to Rs. 7000/- will be required. This amount will be separately charged for individuals requiring the tests before admission.





Manipal Heart Foundation

INSPIRED BY LIFE

(A DIVISION OF MANIPAL HOSPITAL, BANGALORE)

-34-

Annexure-8

40

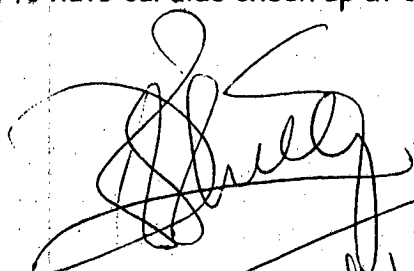

TO WHOM IT MAY CONCERN

(Ref. : Mr. Bisweswar Pal; Hosp. id. no. 43231)

I, hereby certify that Sri Bisweswar Pal, Superintendent of Customs & Central Excise (presently posted at Agartala, Tripura) is suffering from coronary artery disease and he was evaluated here from Jan 03, 2001, to Jan 05, 2001.

In view of his viable miocardium thallium report in LAD territory, he underwent balloon and stent angioplasty (PTCA) to LAD on July 17, 1997, at B M Birla Heart Research Centre, Calcutta.

In my opinion Mr. Pal, should remain in such a place specially with his family to follow the restrictions imposed on him. He has also been advised to have cardiac check up at our centre for long term benefit.

(Dr. Devi Shetty)
VICE CHAIRMAN

transferees 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.*¹

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 (Para 2)

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

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

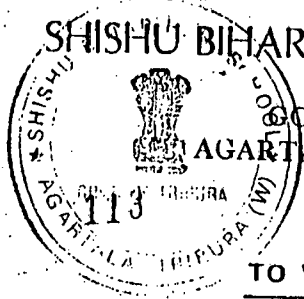
f A. Service Law — Appointment — Selection — Non-selection to a post abroad for want of adequate balance service to fulfil the condition to serve the employer for the requisite minimum period (two years in this case) after completing the normal tenure of such posting (three years in this case) abroad — 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

ANNEXURE - "C" 10



TO WHOM IT MAY CONCERN

Certified that Master/Miss Banabithi Paul
 S/O, D/O Bireswar Paul is/was
 a regular student of Shishu Bihar H. S. School, Agartala from Class I
 to X

His / Her Date of Birth according to our Admission Register is 07.03.1984

He / She is appearing / Appeared at Madhyamik / H. S. (+2 stage) Examination 1992²⁰⁰⁰ of Tripura Board of Secondary Education as a regular / continuing candidate and passed in Division.

He / She bears a good moral character with amiable conduct.
I wish him / her every success in life.

24/1/2000

Headmaster,
Shishu Bihan J. S. School,
Gantala, Tripura (WL)

Admission No-SB/42/93 Dt-5-5-93-37

ANNEXURE - "A" 10 (contd)

SHISHU BIHAR HIGHER SECONDARY SCHOOL
(ENGLISH MEDIUM)

GOVERNMENT OF TRIPURA
AGARTALA-799 001 : TRIPURA (WEST).

Dated, Agartala, the 7-4-2000

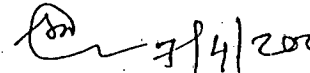
TO WHOM IT MAY CONCERN

Certified that Master/Miss Tapeswar Paul
S/O, Mr. Bireswar Paul is/was
a regular student of Shishu Bihar H. S. School, Agartala from Class I (One)
to VIII (Eight). He achieved merit Scholarship in the 1998.

His / Her Date of Birth according to our Admission Register is
09-08-1987

He / She is appearing / Appeared at Madhyamik / H. S. (+2 stage)
Examination 199 of Tripura Board of Secondary Education as a regular /
continuing candidate and passed in Division.

He / She bears a good moral character with amiable conduct.
I wish him / her every success in life.


(BALIE BHATIA CHAKRABORTY)
ASSISTANT HEADMASTER
Shishu Bihar H. S. School,
AGARTALA TRIPURA (W).

12 MAR 2001

गुवाहाटी न्यायापीठ
Guwahati Bench

38
Filed by:
the Respondents
through

Ujjal Kr. Goswami
Advocate
15/2/2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A No. 18/2001

Shri Bireswar Paul

versus

Union of India & Ors.

IN THE MATTER OF

Written statement on behalf of the
Respondents No. 2, 3, 4 & 5.

The above named Respondents beg to state as
follows

1. That the above named Respondents have received a copy of the OA and have gone through the same and have understood the contents thereof. Save and except the statements that are specifically admitted herein below all the averments made in the OA are denied by the answering Respondents.

2. That with regard to the statements made in paragraph 4.1 of the OA the answering Respondents donot offer any comment.

3. That with regard to the statements made in paragraphs 4.2 the answering Respondents state that in the year 1994, the Applicant was transferred to Agartala Customs Division. Although he was transferred to Central Excise, Silchar Division the next year 1995, it was as the Superintendent of Agartala Range and did

not involve any shifting of residence. Since 1994, the Applicant has been staying at Agartala, much beyond the normal tenure posting.

4. That with regard to the statements made in paragraph 4.3 of the OA the answering Respondents state that while the then Superintendent of Sonamura C.P.F. had approached the Hon'ble Central Administrative Tribunal at Guwahati and had obtained a stay against his transfer, it was not mandatory for the Commissioner to consider the placement of the Applicant at Agartala as prayed for, since he could have been placed at other stations under Agartala Customs Division. However, the prayer of the Applicant for placement at Agartala itself was considered. Regarding medical recommendation, it is for a stay in a place where immediate and efficient treatment is available. In this regard, better facilities are available at Guwahati than at Agartala.

5. That with regard to the statements made in paragraph 4.4. the answering Respondents stated that the advice is for immediate and efficient medical attendance which is available at Guwahati and much better than that available at Agartala. The Applicant during the period from February 2000 till date has been sanctioned Rs. 21,207.00 and has further applied for sanction of Rs. 1,20,000.00. Prior to that, during the period from 1997-1998, he was sanctioned an amount of totaling Rs. 1,87,000.00. He has made frequent trips to Calcutta where, after initial treatment at P.G. Hospital (Government Hospital), he switched over to B.M. Birla

Heart Centre, Calcutta, which is an expensive private medical unit. It was felt that he should have his preliminary treatment at Medical institutes in Guwahati that are reasonably competent and much better than those at Agartala. Instructions about his diet and stay with his wife will not be affected by his stay at Guwahati, rather, he will be able to avoid frequent trips to Calcutta for his regular check-ups. Accordingly, his transfer to Guwahati does not appear to have any negative impact as far as the necessities of his health are concerned. The instant transfer orders have been issued in accordance with the policy of annual general transfers as fixed and observed by the administration, and has covered in its ambit officers at various levels. As per transfer guidelines issued by the Central Board of excise and Customs. New Delhi, the General transfers' should be effected at the end of the academic year, i.e. the month of December considering the academic year December to January that is prevailing under the Commissionerate. The instant transfer order under challenge was issued on 15.12.2000. As such, it cannot be termed a violation of norms. Transfers in the All India Services, within a reasonable time, and in observance of proper procedures cannot be avoided and unless proved to be malafide cannot be called in question. The transfer order has been issued in administrative interest and the Hon'ble Tribunal will be reluctant to interfere with the same in the interest of good administration.

6. That with regard to the statements made in paragraph

4.5 the answering Respondents state that the Applicant's representation was under consideration. He has not been relieved so far. It may also be pointed out that the 'academic year/session' under reference here consists of a single year and not a couple of years as contended by the Applicant.

7. That with regard to the statements made in paragraphs 4.6 the answering Respondents state that the Applicant's allegations are baseless, mischievous and without merit. The transfer order has been issued on administrative requirements. The Applicant has not pointed out the fact that the earlier two transfers were within Agartala and did not involve transfer of residence. Also, the Applicant has completed his tenure at Agartala where he has been mostly posted since 1994. His posting at Sonamura within Agartala Division for one and half months also did not involve any shifting of residence as he was brought back to Agartala considering his representation by modifying order dated 27.1.2000 with another order No. 4/2000 dated 14.03.2000. This time, he has been posted out of Agartala strictly adhering to the professed norms and on administrative grounds in accordance with the policy of the Department to review transfers and postings. Hence these transfer orders cannot be objected to. At the same time, it is not possible for the administration that the children of the senior executive officers would be able to study in the same institutions throughout, although due consideration is given to such matters as far as practicable.

The medical problems being faced by the Applicant have not been disregarded. it will be pertinent to mention that recently, the Applicant had on 22.12.2000 applied for 4 (four) days casual leave from 1.1.2001 to 4.1.2001 with the note that commuted leave would be applied for the remaining period on return from leave. The Applicant had stated that this was for the purpose of proceeding to Bangalore for coronary artery by-pass grafting surgery on 31st december 2000. On his return to duty on 18.1.2001, application for commuted leave w.e.f. 1.1.2001 to 31.1.2001 was submitted, pre-fixing Saturday and Sunday on 30.12.2000 and 31.12.2000. The Applicant also submitted a fitness certificate obtained from the Medical Superintendent of G.B. Hospital, Agartala, dated 18.1.2001. However, it may be noted that no mention has been made of the surgery at Bangalore nor any documents submitted to this effect, on the basis of which the Applicant had applied for leave. Under these circumstances, it appears that the Applicant has misled his superiors. During the same period of leave availed for medical treatment, the Applicant moved this Hon'ble Tribunal on 16.1.2001.

8. That with regard to the statements made in paragraph 4.7 the answering Respondents states that the application is devoid of any merit.

9. That the answering Respondent submits that none of the grounds urged by the Applicants is sustainable and the Applicant is not entitled to any relief on those grounds. The DA is liable to be dismissed.

43
29
= 6 =

Respondents


10. That the answering, beg to submit that the points ^{very} raised by the Applicant against his present transfer lack merit and the OA is liable to be dismissed.

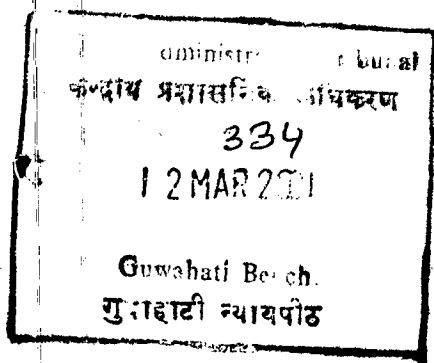
Verification

VERIFICATION

I Shri VISIELIE KEZO, aged about 36 years,
son of KEZO NEIKHWETSO, resident of ANIL NAGAR,
Guwahati-7 presently working as
DEPUTY COMMISSIONER OF CUSTOMS, GHY do hereby verify
and state that the statement made in paragraphs
1, 2, 9 are true to my knowledge and
those made in paragraph 3 to 8 [parwise refly] being
matters of records are true to my information derived
therefrom, which I believe to be true and the rest of
my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 15th day of
February 2001.


Deponent
Deputy Commissioner
CUSTOMS DIVISION
GUWAHATI,



Pailla Saouli Das.
28/02/2007

59,

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH,
GUWAHATI.

ORIGINAL APPLICATION NO. 18 OF 2001.

IN THE MATTER OF :

SHRI BIRESWAR PAUL,
Son of Late Nareswar Paul,
Resident of Ramnagar Road,
Road No.6 (West End) ,
P.O. Ramnagar, Agartala,
District - West Tripura.

.... APPLICANT.

* V_E_R_S_U_S_*

1) The 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,

Contd....P/2.

SOG
NY
18/3/01

Received by post
18/3/01

Paolha Sauti Das.
28/02/2007

52

- (2) -

Department of Revenue,
New Delhi.

- 3) The Commissioner of Customs,
N.E. Region,
Shillong.
- 4) Shri K.K. Das,
Commissioner of Customs,
N.E. Region,
Shillong.
- 5) The Commissioner of Central Excise,
N.E. Region,
Shillong.
- 6) Shri P.S. Das,
Superintendent,
Office of the Assistant Commissioner,
Agartala Customs Division,
Government of India,
Ministry of Finance,
P.O. Agartala,
Tripura.

.....RESPONDENTS.

A N D

IN THE MATTER OF :

Contd...P/3.

Parth Sarathi Das.
28/02/2007

59

- (3) -

Written objection of the Respondents No.6
against the application filed by the Applicant
under section 19 of the Administrative Tribunals
Act, 1985.

The Respondents Nos.6 above named most respectfully
submits as F O L L O W S :

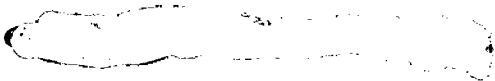
- 1) That, the instant application is not maintainable in
its present form.
- 2) That, the applicant only to harass the Respondents No.6
filed by the applicant by impleading the Respondents No.6 as
a party in the instant petition.
- 3) That, as per order of the Commissioner of Customs, N.E.
Region, Shillong, the answering Respondents No.6 transferred to
Law Superintendent, I/C Dhaka-Agartala Bus Service, Agartala
Division Customs, Division from Disposal Unit of Customs Division
Office, Agartala vide his order No. 18/2000 dated 15.12.2000

Contd...P/4.

Paolha - Saoul L. Das.
28/02/2001

54

- (4) -

communication under C.No. II/ET/CL/CE LL/SH/2000/3842-949 dated 15.12.2000. Accordingly, Assistant Commissioner of Customs relieved the answering Respondents No.6 from Disposal Unit and direction has been given to join Law & Superintendent I/C Dhaka-Agartala Bus Service, Akhura. As per direction given by the higher authority the answering Respondents No.6 as a duty bound officer duly joined ~~as~~ his new place of posting as Law & Superintendent I/C Dhaka-Agartala Bus Service of Unit of Customs Division Agartala on 17.1.2001 after handed over the complete charge of Disposal Unit on 16.1.2001 and accordingly joined his new place of posting . Therefore, the answering Respondents No.6 in noway disobeyed the transfer order and the said transfer order duly executed in time.

4) That, the applicant never stated any allegation against the answering Respondents ~~No.6~~ in his written application except the para 4.6 at page 11 of the application. As to the contents of the said para 4.6 the answering Respondent

Contd.....P/5.

Paolha Sec. 1/1/01
28/07/2007

5

- (5) -

submits that as per transfer order passed by the higher authority the answering Respondent complied with the said order and duly joined in his new place of posting on 17.1.2001 and still now he is serving his duty to the best satisfaction to his superiors. Therefore, the answering Respondent place of posting has no way effected the applicant.

5) That, the name of the answering Respondent be delated from the instant application because the answering Respondent never effected the applicant service and as such his name should be delated from the instant petition.

Under the circumstances stated above it is humbly prayed that your Lordship's would be graciously pleased to ~~struatk~~ struck off the name of the answering Respondent from the instant application filed by the applicant because the answering Respondent has already been joined his new place of posting and executed the said transfer order on 17.1.2001.

A N D

For this act of kindness the answering Respondent as in duty bound shall ever pray.

....P/6.

- (6) -

V_E_R_I_F_I_C_A_T_I_O_N

I, Shri Partha Sarathi Das, the Respondents No.6 above
named do hereby declare and verify that the statements
made in paras to are true to my knowledge gathered
from the official records and the rest are my submission
before the Learned Tribunal.

Sign this verification this day the
day of 28th Feb ,2001 at my official
chamber at Agartala.

Serve this written objection under Registered post
with A/D.

Partha Sarathi Das.
28/02/2001
DECLARANT