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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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closed date-29/04/03

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FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 224 / 2002

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants. Sri Biswanath Brahma.

-Vs-

Respondant(s) UP 2002

Advocate for the Applicant(s) Mr M. Chanda, H. Dutta, S.K. Chogh

2 G. N. Chakrabarty

Advocate for the Respondant(s) CASE

Notes of the Registry

Date

Order of the Tribunal

23.7.02

By order dated 13.7.2002 the applicant was transferred from DEO, Guwahati to ADEO, Agartala and in his place the Respondent No.5 was transferred from Agartala to Guwahati. By the same order six other Officers were also transferred. The applicant challenged the order of transfer in O.A. 286/2001. By order dated 28.2.02 the said O.A. was finally disposed of directing the respondents to consider the representation preferred by the applicant. By the said order the applicant was also directed to submit fresh representation and the authority was directed to consider the same. By the impugned order dated 10.7.2002 the representation was finally disposed of. The applicant has now assailed the said order in this proceeding.

This application has been filed by the applicant in format with SO/ Supers IP.O vide NO. TG 577858 dt 7.6.2002. Laid before H.H. Court for orders.

B. N. Chakrabarty
22/7/02
S.O (J)

Contd/-


Contd.

23.7.02

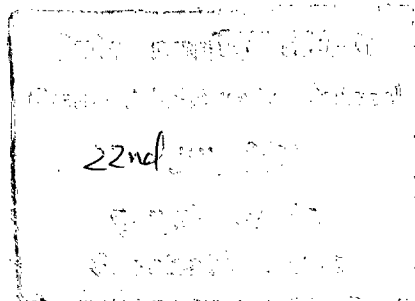
I have heard Mr. M.Chanda, learned counsel for the applicant and also Mr. A.Deb Roy, learned Sr. C.G.S.C. for the Respondents. On consideration of the materials and on perusal of the order, I do not find any valid ground for ^{invoking} ~~invoking~~ the power of judicial review in this proceeding. The authority considered his representation and rejected the same ^{on} giving clear reasons. Mr. M.Chanda, learned counsel for the applicant referred to the applicant's recent orthopaedic operation pursuant to his accident. The learned counsel also submitted that the applicant is also nearing his age of retirement.

In an application under section 19 of the Administrative Tribunals Act, the Tribunal is basically concerned with the power of judicial review of the decision making power, not on the merits of the decision. It is not an appellate power. On perusal of the pleadings and upon hearing the learned counsel for the parties, I do not find any discernible ground for invoking the power of Judicial Review. The application is thus liable to be dismissed and ~~thus dismissed~~. ~~be~~ Mr. M.Chanda, learned counsel for the applicant submitted that the authority may be directed to ~~be~~ ^{the applicant} posted in any neighbouring place of Guwahati where ^{his} family resides instead of Agartala more so in view of his retirement which is in the offing. This aspect of the matter can be addressed to the Respondents who are the competent authority to find out a way to redress the grievances of its employees. The dismissal of this application shall, however, not preclude the applicant to move the authority seeking modification of the transfer order. If the applicant make such representation the authority shall consider the same and take care of ^{the situation} as per law.

The application is accordingly dismissed. There shall, however, be no order as to costs.


Vice-Chairman

Order dtd 23/7/02
Communicated to the
Parties Connd & the
applicant



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. 224/2002
Sri Biswanath Brahma : Applicant
- Versus -
Union of India & Others : Respondents.

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Date 22.7.2001.

Filed by

Sijil Bhosh
Advocate

Biswanath Brahma

1. Filed by the applicant
by the Advocate Sri G. N.
Chakravarty advocate
on 23-7-02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O. A. No...../2002

BETWEEN

Sri Biswanath Brahma
Son of Thakur Singh Brahma
Working as Upper Division Clerk in the
Office of the Defence Estate, Guwahati Circle,
P.O. Silpukhuri, Guwahati - 781003.

... Applicant

- AND -

1. The Union of India,
Represented by the Secretary to the Government of India,
Ministry of Defence, New Delhi.
2. The Director, Defence Estate, Eastern Command,
13 Camac Street, (7th floor). Kolkata - 17.
3. The Director General, Defence Estates,
West Block - 4, R. K. Puram, New Delhi - 66.
4. Defence Estate Officer,
Guwahati Circle, Guwahati.
5. B. D. Hatibaruah, U. D. C.
Office of the ADEO Agartala,
P. O. Agartala (Tripura).

...Respondents.

Filed by
Sri Biswanath Brahma
Applicant
through:- Syed Hashim
Advocate 22.7.02

Biswanath Brahma

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned transfer and posting order no. 102/195/ADM/DE dated 13.07.01 issued by the respondent no. 3 whereby the applicant has been sought to be transferred from DEO, Guwahati to ADEO, Agartala violating the transfer and posting scheme dated 12.06.1997 and other professed norms as well as against the impugned letter dated 10.07.02 issued by the respondent no. 3 mechanically rejecting the representation filed by the applicant against the transfer order.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

The applicant further declares that this application is filed 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 initially joined under the respondents as a Lower Division Clerk (for short, LDC) in the year 1970 and was posted at Tezpur and continued there till 1975, however, Subsequently, he was transferred to the office of the respondent no. 4. The details particulars of transfer and posting of the applicant in different places during his service career are furnished hereunder.

Biswajit Borah

X

<u>Place of Posting</u>	<u>Tenure of Service</u>
DEO, TEZPUR	30.09.1970 - 07.04.1975
DEO, GUWAHATI	08.04.1975 - 10.10.1988
DEO, Bhubaneswar	11.10.1988 - 30.11.1989
DEO, TEZPUR	01.12.1989 - 03.05.1993
DEO, GUWAHATI	04.05.1993 - TILL DATE

4.3 That the wife of the applicant Smti. Daibakee Brahma is also working at present as UDA in the office of the District Agriculture Officer, Government of Assam, Ulubari, Guwahati-7 and as such, both the husband and wife are presently at the same station.

4.4 That by an order dated 13.07.01, which had been received in the office of the applicant on 24.07.01, he was sought to be transferred and posted to the office of the ADEO, Agartala. It may be relevant to mention here that the applicant is on the verge of his retirement and at the time of issuance of the order of transfer he had only three year's service in his credit.

A copy of the impugned Order dated 13.07.01 is annexed here with as Annexure - 1.

4.5 That it is pertinent to mention here that the Office Memorandum dated 12.06.1997 issued by the Government of India clearly postulates that in case where both of the husband and wife are working, in order to minimise the family problems, they should be invariably be posted at the same station if vacancy/post exists at the same station at appropriate level. This apart, in view of the recommendations of the 5th Central Pay Commission, persons on the verge of their retirement should not be disturbed by inflicting transfer which is because of giving them an opportunity to settle down in a place of his choice in the retired life. It may also be stated that the wife of the applicant is an employee of the State Government of Assam and as such there is no scope for her posting at Agartala in the State of Tripura. It may not be out of place to

Biswanath Brahma

mention here that there is a post existing in the appropriate level at Guwahati where the applicant could be easily accommodated.

A copy of the Office Memorandum dated 12.06.1997 is annexed herewith as Annexure - 2.

- 4.6 That the impugned transfer order mentioned that the transfer of the applicant to Agartala was on mutual basis although in fact, he had never applied for such a transfer rather made a representation on 24.07.01 for cancelation of the transfer order on the grounds that he was on the verge of retirement, his wife was suffering from Tuberculosis in Bone and furthermore his children were in the midst of their academic session and there was none to look after the family in the hour of need. The applicant in his said representation also referred to his earlier representation dated 18.07.01 where he had prayed for his retention in the same station at Guwahati.

A copy of the representation dated 13.07.01 is annexed herewith as Annexure - 3.

- 4.7 That unfortunately, neither of the representations yielded any fruitful result and as such apprehending an action from the ends of the respondents against him, the applicant approached this Tribunal in O. A. No. 286/2001 challenging, inter alia, the transfer and posting order dated 13.07.01. This Hon'ble Tribunal initially passed an interim order on 30.07.01 and stayed operation of the transfer order dated 13.07.01. The matter was duly contested by the respondents and it was finally heard and disposed of by order dated 20.02.02 whereby the Hon'ble Tribunal directed the respondents to dispose of the representation dated 24.07.01 filed by the applicant as per established norms. The Tribunal, by its said order, also directed the applicant to file a fresh representation to the respondents stating his grievances and in the event of his so doing, the respondents were directed to dispose of the same within three months of its receipt. The

Biswanath Borah

interim order passed by the Tribunal on 30.07.01 was, however, made operative till such disposal.

A copy of the order dated 20.02.02 passed in the O. A. No. 286/2001 is annexed herewith as Annexure - 4.

4.8 That in the meanwhile, unfortunately, the applicant met with an accident and suffered fracture of both the bones of his right leg. The injury was so serious that he had to be admitted in a hospital and operated upon. The operation in his right leg was done on 01.12.01 and five metallic screws were fitted in his leg in order to join the bones. He was discharged from the hospital on 03.12.02 and was advised complete rest for two months. It is pertinent to mention here that the applicant is still unable to walk properly and is under constant medical care from orthopedic surgeon. Only one of the five screws fitted in his leg has been removed till now and it is expected to take a long time to remove the other four.

A copy of the Discharge Certificate dated 03.12.01 issued from the hospital is annexed herewith as Annexure - 5.

4.9 That the applicant states that however, after passing of the above order by this Tribunal, he accordingly filed a representation on 04.03.02 to the respondent no. 3 narrating his difficulties in undergoing the transfer and prayed for favourable consideration of his case. But surprisingly, the respondent no. 3 mechanically issued a letter on 10.07.02 to the Principal Director, Defence Estate, Eastern Command, 13 Camac Street, (7th floor), Kolkata - 17, conveying rejection of the representation filed by the applicant holding that it was devoid of any merit. By the said letter, the respondent no. 3 also advised the respondent no. 4 to relieve the applicant after necessary formalities. The applicant, therefore, reasonably believes that he may now be relieved at any time by the respondent no. 4. It is stated that the letter issued by the respondent no. 3 did not advert to any of the grievances raised by the applicant in his representation dated 04.03.02 and is

Biswanath Brahma

not based on good reasons. The same is, therefore, liable to be declared unreasonable and arbitrary and is liable to be set aside.

Copies of the representation dated 04.03.02 as well as the letter dated 10.07.02 are annexed herewith as Annexure - 6 and 7 respectively.

4.10 That the applicant states that it was on the basis of a representation dated 16.02.2000 filed by the respondent no. 5 that the transfer order in respect of the applicant was issued in order to accommodate the respondent no. 5 at Guwahati. The respondent no. 5 reportedly had given choice for three places, namely, Guwahati, Jorhat and Tezpur. Therefore, there is no difficulty on the part of the respondents to accommodate the respondent no. 5 either at Tezpur or Jorhat and consequently the applicant can easily be retained at Guwahati. But, the respondents while passing the impugned order/letter have wholly overlooked this aspect of the matter. It is stated that the respondents have also ignored the beneficial provisions introduced by the Office Memorandum dated 12.06.1997 as well as the recommendations of the 5th Central Pay Commission on the issue of transfer of an employee who is on the verge of retirement while passing the impugned letter rejecting his representation. The action of the respondents is therefore liable to be declared illegal and arbitrary and the impugned order of transfer as well as the letter of rejection are liable to be set aside.

4.11 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 the letter of rejection are unreasonable, arbitrary and therefore liable to be set aside.

Biswajit Brahma.

- 5.2 For that, the applicant's wife is working under the Government of Assam and is posted at Guwahati and in this view of the matter, he has acquired a valuable right and as such entitled to have his case considered for his posting at Guwahati in terms of the O. M. dated 12.06.1997.
- 5.3 For that, the applicant had never submitted any representation/request for his mutual transfer as alleged in the impugned order of transfer and posting dated 13.07.01.
- 5.4 For that, the order of transfer has been passed when the applicant is on the verge of his retirement and has a service of only 2 years and 9 months in his credit and as such it is in violation of the recommendations of the 5th Central Pay Commission.
- 5.5 For that, the respondents while passing the impugned letter of rejection have erred in holding that the applicant has remained posted at Guwahati with effect from 05.05.1983 to date whereas in fact he has been at Guwahati with effect from 04.05.1993 and therefore the very basis/reason of rejecting his case is erroneous which renders the impugned letter liable to be set aside.
- 5.6 For that, the applicant needs specialised orthopedic care which may not be available at Agartala and on this ground alone the respondents ought to have considered his case favourably which not having been done have rendered the impugned letter of rejection unreasonable and liable to be set aside.
- 5.7 For that, the authorities have arbitrarily ignored the present physical condition of the applicant while passing the letter of rejection and the impugned letter has not been based on good reasons and therefore the same is liable to be set aside.

6. **Details of remedies exhausted.**

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

Biswanath Brahma

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had earlier filed an application before this Tribunal vides O. A. No. 286/2001 which has been disposed of on 20.02.2002 and at present no Application, Writ Petition or Suit involving the subject matter of this application has been filed or is pending before any Court or any other authority or any other Bench of the Tribunal.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the applicant be declared entitled to the welfare measure/beneficial provisions regarding posting of husband and wife at same place as introduced by the O. M. dated 12.06.1997 as well as the protection imposing restriction on transfer of employees who is on the verge of retirement as introduced by the recommendation of the 5th Central Pay Commission.

8.2 That the impugned order of transfer and posting issued in respect of the applicant under order no. 102/195/ADM/DE dated 13.07.01 by the respondent no. 3 be set aside and quashed.

8.3 That the impugned letter dated 10.07.02 issued by the respondent no. 3 rejecting the representation filed by the applicant against the transfer order dated 13.07.01 be set aside and quashed.

8.4 Costs of the application.

Binwadh Brahma

- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. **Interim order prayed for:**

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

- 9.1 That the Hon'ble Tribunal be pleased to restrain the respondents from relieving the applicant from his present posting at Guwahati or alternatively direct the respondents to allow the applicant at Guwahati till disposal of this application.
- 9.2 That the operation of the impugned transfer order dated 13.07.2001 be stayed till disposal of this application.

10.

This application is filed through Advocates.

11. **Particulars of the I.P.O.**

- i) I. P. O. No. : 76577858 dated 27.6.2002.
- ii) Issued from and payable at: G.P.O., Guwahati.

12. **List of enclosures.**

As given in the index.

Biswanath Brahma

14

VERIFICATION

I, Sri Biswanath Brahma, S/o Thakur Singh Brahma, aged about 56 years, working in the office of the Defence Estate Officer, Guwahati Circle, PO Silpukhri, Guwahati - 3 do hereby verify that the statements made in paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 22th day of July 2002

Biswanath Brahma
Signature

No. 102/195/ADM/DE
Government of India,
Ministry of Defence,
Dte General Defence Estates
West Block-4, R.K. Puram,
New Delhi - 110066.
13 Jul 2001.

To
The Director,
Defence Estates,
Ministry of Defence,
Eastern Command,
CALCUTTA.

Subject :- POSTING/TRANSFER : GROUP 'C' CLERICAL STAFF

1. On the recommendation of your vide your D.O. letter No. 360009/LC-1/XXXII/47 dated 20 Apr 2001 regarding posting/transfers of Group 'C' Clerical staff.

2. In view of above, it has been decided to make the following mutual posting/transfers :-

Name (S/Shri)	From	To
(a) BD Hatibaruah, UDC ✓ BN Brahma, UDC	ADEO Agartala DEO Guwahati	DEO Guwahati ADEO Agartala
(b) GM Paul, Steno PC Hazarika, Steno	DEO Siliguri DEO Guwahati	DEO Guwahati DEO Siliguri
(c) JS Bedi, LDC K. Barik, LDC	DEO Siliguri DEO Guwahati	DEO Guwahati DEO Siliguri
(d) NK Boro, LDC Ms. Sulochana Thapa, LDC	JD Shillong DEO Guwahati	DEO Guwahati JD Shillong

3. The above officials may be relieved of their duties immediately after payment of TA/DA advance.

4. The dates (FN/AN) of relinquishment/assumption of duty by the officials shall be intimated to this Dte General after the event.

A. V. Singh
for Director General
Defence Estates

Copy to :-

The Joint Director, DE, Shillong.

~~Spent Post~~ ✓ The DEO, Guwahati/Siliguri

The ADEO, Agartala

The CDA, Eastern Commands, Patna.

Office of the D.A.O.
Guwahati Office

PRE	24/7/2001
ADMIN	
QA	
Section	Admin
Date	24/7/2001

Altered from Account

Annexure-2

No. 28034/2/97-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, the 12th June, 1997

OFFICE MEMORANDUM

Sub : Posting of husband and wife at the same Station.

The undersigned is directed to say that on the subject mentioned above, Government has issued detailed guidelines vide O.M. No. 28034/7/86-Estt.(A) dated 3.4.1986. The Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organization at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

2. The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt.(A) dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence.

*Attested
for
Advocate*

3. It is further clarified that even cases where only the wife is a government servant, the concession elaborated in para 2 of this O.M. would be admissible to the government servant.

4. These instructions would be applicable only to posts within the same department and would not apply on appointment under the Central Staffing Scheme.

5. A copy of this Department's OM No. 28034/7/86-Estt.(A) dated 3.4.86 is enclosed for ready reference and guidance.

6. Hindi version of the OM is enclosed.

Sd/- Illegible
(Harinder Singh)
Joint Secretary to the Govt. of India
Tel. No. 301 1276

To

1. All Ministries/Departments of the Government of India.
2. Department of Women & child development.
3. The National Commission for Women, 4, Deendayal Upadhyay Marg, ITO, New Delhi.

Attested
Joint
Secretary

To,

The Director General, (Adm Sec),
Defence Estates,
Government of India, Ministry of Defence,
West Block-IV, Sector-I, Wing No. 3 & 7,
R.K. Puram, NEW DELHI-110 066.

(THROUGH PROPER CHANNEL)

SUBJECT : POSTING/TRANSFER OF SRI B.N.BRAHMA,UDC
OF DEO GUWAHATI CIRCLE, GUWAHATI

Respected Sir/Madam,

Most respectfully I beg to submit herewith the following few lines for your kind information and consideration please :-

- (a) From reliable source I came to know that my posting order is going to be issued from DEO Guwahati Circle to the office of the ADEO, Agartala. As such I made an application dated 18.7.2001 to you stating position so that my posting order may not be issued.
- (b) I sent the aforesaid application dated 18.7.2001 to you by Fax.
- (c) But unfortunately I have seen that vide your letter No.102/195/ADM/DE dated 13.7.2001 my posting order has already been issued and I have been posted from office of the DEO Guwahati Circle to office of the ADEO, Agartala.
- (d) In this connection, the following points are reiterated for your information and kind consideration please :-
 - (i) My daughter is studying Architecture Environment and for which I have to spent huge amount of money for her education.
 - (ii) Condition of health of my wife is also not good because she was suffering from Bone T.B. and my wife is working in

*Attested
J.N.
Borowah*

contd ...P-2...

Page --: 2 :-

State Government Service at Guwahati.
For her disease I have to consult Doctor
every now and then to check up the health
of my wife.

(iii) Incidentally your goodself is aware of
the fact that I have been posted from
Guwahati to Bhubaneswar and thereafter
Bhubaneswar to DEO Tezpur and DEO Tezpur
to DEO Guwahati. As per your orders, I
obeyed without any hesitation.

(iv) Moreover, I am going to be retired from
service on 30-4-2005 i.e. only 3 years
10 months are left.

(e) Besides above my old father aged about 94 years.

(f) If I have to go outside Guwahati then there is
none else to look after my old aged father.

(g) At this juncture if I have to go to office of
the ADEO, Agartala my entire family will suffer
and moreover it would not possible for me to
make both ends meet with my small income.

In view of the position explained above I earnestly
request you to kindly consider my case sympathetically and
my posting order to the office of the ADEO, Agartala may kindly
be cancelled.

For which act of kindness I shall remain ever grateful
to you.

In case your goodself not consider my request I have
no alternative but to go to CAT which may be permitted
please, Madam.

Thanking you,

Yours faithfully,

B. N. Brahma

(B. N. BRAHMA) UDC,
C/O DEO Guwahati Circle,
GUWAHATI-3

Station : GUWAHATI,

Dated the, 24th JULY, 2001.

Copy forwarded to IN ADVANCE :-

1. The Director General, (Adm Sec),
Govt. of India, Min. of Def,
R.K. Puram, New Delhi-110066.
2. The Director, DE (LC-I),
Min of Def, Eastern Command,
13, Camac Street (7th Floor)
Calcutta-700 017.

*Noted
J. N. Brahma
Agartala*

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 286 of 2001.

Date of Order : This the 20th Day of February, 2002.

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

Shri Biswanath Brahma,
U.D.C. Office of the Defence Estate
Office, Guwahati Circle,
P.O. Silpukhuri,
Guwahati- 781003.

... Applicant

By Advocate Sri M.Chanda.

- Versus -

1. Union of India,
Through the Secretary to the
Govt. of India,
Ministry of Defence,
New Delhi.

2. Director,
Defence Estates,
Eastern Command,
B Camac Street, (7th Floor)
Calcutta- 700017.

3. Director General,
Defence Estates,
West Block - 4,
R.K.Puram,
New Delhi-66.

4. Defence Estate Officer,
Guwahati Circle, Guwahati.

5. B.D.Halibaruah,
U.D.C.
Office of the ADEO Agartala,
P.O. Agartala (Tripura)

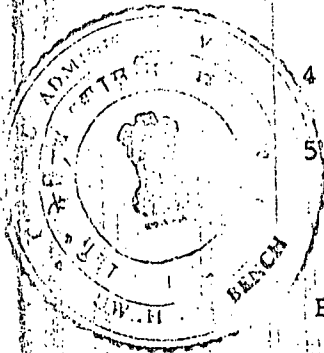
... Respondents.

By Sri A.Deb Roy, Sr.C.G.S.C.

ORDER

CHOWDHURY J.(V.C)

posting and transfer order of Group C clerical staff was issued vide Memo dated 13.7.2001. By one of the order the applicant an UDC in the office of the Defence Estate Officer, Guwahati Circle was transferred to the office of ADEO Agartala and in his place another UDC in the office of the ADEO Agartala was transferred to the office of the DEO Guwahati. By the same order



Advocate
Advocate
Advocate

six other officers were also transferred and posted. The applicant assailed the same order as contrary to the avowed policy of the Government for spouse posting. According to applicant his wife is serving at Guwahati as an employee under the Government of Assam. That apart she was suffering from bone tumor. It was also contended that the applicant was on the verge of retirement and therefore the aforesaid transfer order is against the policy of transfer of such persons.

2. The respondents submitted its written statement and contested the claim of the applicant. The respondents stated that the applicant's date of retirement is 30.4.2005 and therefore he has more than 3 years service left. It also contended that the office Memorandum dated 12.6.97 regarding posting of husband and wife at the same station would be applicable to the same department. The respondents also stated that the respondent No.5 submitted his transfer application dated 16.2.2000 giving 3 choice place of posting in which the first station was Guwahati.

3. I have heard Mr M.Chanda, learned counsel for the applicant and also Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. Mr Deb Roy submitted that since there is no violation of any statutory provision in transferring the applicant nor the same has been said to be violative of Article 14 and 16 of the Constitution, the impugned order of transfer is not liable to be interfered, more so in absence of any improper motive. On the other hand Mr M.Chanda submitted that all actions of the State must be free from arbitrariness and received fairness. The

applicant was entitled for a fair treatment of his case for spouse posting. The stand taken by the respondents for posting of husband and wife at the same station would be applicable only in the same department. The stand taken by the Respondents in this issue is not sustainable. The benefit of the policy of spouse posting is not confined to the same department alone. In my considered opinion it is a fit case in which the applicant may seek for ^{the} some remedial measure departmentally by submitting a representation. He has also mentioned about some personal problems which can only be considered by the department. In the circumstances I am of the opinion that the ends of justice will be met if a direction is given to the Director General, respondent No.3 to dispose of the representation dated 24.7.2001 as per established norms. The applicant is also directed to submit a fresh representation within 2 weeks from today narrating his grievances and if such representation is filed the respondents are directed to dispose of the same within three months from the date of receipt of the representation. Till disposal of the said representation the interim order dated 30.7.2001 shall remain operative.

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

Certified to be true Copy

प्रमाणित प्रतिलिपि

Sd/ VICE CHAIRMAN

Section Officer (A)

संयुक्त अधिकांश प्रमाणित प्रतिलिपि
Central Administrative Tribunal

Office of the Section Officer

Section Officer (A) Government of India

Section Officer (A) Government of India

PG

*Alister
Learn
Sd/-*

*NS
4/3/02*

11/5/12/2002

BARTHAKEUR CLINIC PRIVATE LIMITED

HOSPITAL

KHARGHULI, GUWAHATI-781004, ASSAM

☎ 546233, 543411

CASE SUMMARY AND DISCHARGE RECORD

Name Sri B.N. Brahma Age 56 YRS Sex M
 Permanent Address Kharghuli, Bhy-4 Ward C Bed No. 4
 Date of admission 30/11/07
 Present Address Date of Discharge 5/12/07
 Clinic No. 200/11/00
 Guardian's Name & Address C/o Thakur Singh Brahma Indoor No. 736/11/07
Kharghuli, Bhy-4 Consultant Dr M. Dasgupta

HISTORY
&
CLINICAL FEATURES

Patient was admitted with the 10/10
 inability to move @ ankle and pain on the
 chest following alleged R.T.A.

S/L BP-160/100mm

P-100/min

Chest - clear

CVA } NAD
H/A }

INVESTIGATIONS

3/12 Hb-14.5

Tt-8.800

BLU-54, 13, 2, 3

ESR-2

RBS-118

S Creat-1.2

S Bil-0.9 T-0.5

S GOT-65

S APT-54

G+TP-30

P A chest - Enclosed

Ech - Normal

CT scan brain - Enclosed

DIAGNOSIS

medial malleolus 2 # lower end of Fibula @
 # 3rd rib @ 2 crack # superior border of @
 spine scapula with essential hyperextension

TREATMENT

Open reduction 2 internal fixation done 1st on
 1/12/07. Malleolar screw in medial malleolus. 5 hole
 DC plate 2 screws in fibular foot slab applied.

COURSE IN HOSPITAL & CONDITION AT DISCHARGE

Stable

Admitted
 1st Dec
 2nd Dec

24

Rx

1) Ceftas 200mg

(16)

Sig - 1 tab 12 hrs x 8 days

2) Stando 5mg

Sig - 1 tab

daily in the morning to continue

3) Brufen 400

Sig - 1 tab

thru daily aft meal x 5 days

4) Infladase Forte

Sig - 1 tab

thru daily x 10 days

5) Cobaden Forte

Sig - 1 tab

daily aft meal

6) Nizer gel

Sig - To apply locally

Adv

Stitch removal on 11/12/01

Rest for 6 weeks

NO weight bearing

NO

11/12/2001

R

Be Lachin out - tube (w/ in and out)

Sig - To apply twice daily

Adv - Check up after 5 weeks

Counter Signature

Signature of M. O.
11/12

Attended
Lumbar
Advocate

CASH MEMO

M/s Kharghuli Pharmacy
KHARGHULI, GUWAHATI-4

Annexure - 5 (Series)

SL. No. 1178

Date 13/12/2014

& 2629

upto S.F.R.

B.N. Bhattacharya

Address

Qty.	Name of Medicine	Mfg.	Batch No.	Expiry Date	Amount Rs.	P.
Tablet	Betafolic	M.P.L.	4.8.70	4-7-2014	32.50	
TOTAL					32.50	

Prescribed by Dr. M. J. ...

Amount in words Twenty two fifty only

Goods once sold cannot be returned.

E. & O. E.

Signature

Plotted
for
Bhattacharya

No. C 30138

IDEAL PHARMACY

USING CHEMIST

ASING CHEMIST
No. 671KMP/513 & 514 Valid upto 31.....12.0
781 001 P- 511951.

Date: 8/12/01

Name & Address :

Sa. B. N. Brahmo

Rupees		The <u>h</u> <u>am</u> <u>up</u>		Total Rs.	388	2
--------	--	----------------------------------	--	-----------	-----	---

Prescribed by Dr.

ONCE SOLD CANNOT BE RETURNED

Sold by

Disturbed
Jenny
Adm. care

Date 6.12.61

15803

BOHAGI MEDICALS

G. S. Road, Uluber-
Guwahati - 781007
Phone :- 633992

Name..... T3 : N : Escobar

Prescribed Dr.

01/01/1985 Valid Until

PARTICULARS

DATE	PARTICULARS	AMOUNT	CHECK NO.	CHECK DATE	CHECK AMOUNT
124	212-2	212.00	212-2	12/2/02	212.00

196-40

Abstract

19440.

for BOHAGI INDICS

Signature _____

Goods Once Sold can't be taken back. For a mistake please contact

CONTACT	65	11/1
CONTACT	54	11/1
CONTACT	30	11/1

CARDIAC PROFILE

Large

CDK-ME

Phyllis Ann Devocati

10453

CAPITAL MEDICOS

1, ARUGS ROAD, CHAWWALLI-11007
KRI. NO. SMP-3649365

PH 511600

7/11/2001

Bentham N.H.

Quantity	NAME OF DRUGS	MILLIS	DRUG NO.	Exp. Date	AMOUNT Rs.	P.
5	Celbion	Glaxo	4512	9/82	6	A
3	Inj. Indasi	Centra	401	5/03	19	NO
TOTAL Rs.					25	A

The Sum of Rupees

DATE: 11/11/01

Twenty five

Signature

E & O.E.

Goods Once Sold can't be taken back. For any mistake please contact.

SGOT (AST) 65 iu/l
SGPT (ALT) 54 iu/l
GGT 30 iu/l

CARDIAC PROFILE

CPK
CPK-MB

Altered
Jain
Advocate

- 26 -

Annexure - 5 (Series)

BARTHAHUR CLINIC PRIVATE LIMITED HOSPITAL

BIOCHEMISTRY

13/2/2001, Guwahati- 781 004

Laboratory With Computerised Auto-Analyser

Clinic : 543411

Hospital : 546233

No. (6)	Date 30/11/2001
Name of the Patient Biswanath Brahma	
Age 55 Years Sex M	Ref. No. CN0804
Referred by Dr. ECPL.	

DIABETIC PROFILE			RENAL PROFILE & ELECTROLYTES		
TEST	RESULT	NRANGE/UNIT	TEST	RESULT	NRANGE/UNIT
Random Blood Sugar	118 mg/dl		Blood Urea		
Fasting Blood Sugar			S. Creatinine	1.2 mg/dl	
Post Prandial Blood Sugar			S. Sodium		
LIVER FUNCTION TESTS			S. Potassium		
S. Bilirubin (Total)	0.9 mg/dl		S. Calcium		
Albumin (Direct)	0.5 mg/dl		S. Chloride		
Albumin (Indirect)	0.4 mg/dl		S. Bicarbonate		
SGOT (AST)	65 iu/l		CARDIAC PROFILE		
SGPT (ALT)	54 iu/l		CPK		
GGT	30 iu/l		CPK-MB		

Handwritten signature and date

-26-

Annexure - 5 (Series)

31

BARTHAUR CLINIC PRIVATE LIMITED HOSPITAL

BIOCHEMISTRY

Kharagpur, Guwahati- 781 004

Laboratory With Computerised Auto-Analyser

Phone 543411

Hospital : 546233

Ref (6) Date 30/11/2001
Name of the Patient Biswanath Brahma
Age 55 Years Sex M Ref No CNO:04
Referred by Dr. ECPL.

DIABETIC PROFILE			RENAL PROFILE & ELECTROLYTES		
TEST	RESULT	RANGE/UNIT	TEST	RESULT	RANGE/UNIT
Random Blood Sugar	118 mg/dl		Blood Urea		
Fasting Blood Sugar			S. Creatinine	1.2 mg/dl	
Post Prandial Blood Sugar			S. Sodium		
LIVER FUNCTION TESTS			S. Potassium		
S. Bilirubin (Total)	0.9 mg/dl		S. Calcium		
Bilirubin (Direct)	0.5 mg/dl		S. Chloride		
Bilirubin (Indirect)	0.4 mg/dl		S. Bicarbonate		
S. GOT (AST)	65 iu/l		CARDIAC PROFILE		
S. GPT (ALT)	54 iu/l		CK-MB		
S. GGT	30 iu/l		LDH		
Plasma Protein (Total)			RHEUMATOLOGY PROFILE		
Albumin			ASO Titre		
Globulin			C-Reactive Protein		
A/G Ratio			Rheumatoid Factor		
Serum ALP			S. Uric Acid		
Phosphatase					
			LE Cell		
			OTHER TESTS		
Prediction Time	Test		S. Lipase		
	Control		S. Amylase		
Australia Antigen			HCV		
LIPID PROFILE			GGT		
S. Cholesterol			IV.1 and IV.2		
S. Triglyceride			Viral Test		
HDL Cholesterol					
LDL Cholesterol					
HDL Cholesterol Ratio					
			Glucosylated Haemoglobin		

Attested
Date 08/01/02

Signature
Date 08/01/02

BARTHAHAR CLINIC PVT. LTD.
HOSPITAL

Cable No. 543411
Hospital No. 540233

HAEMOGRAM REPORT
LABORATORY WITH COMPUTERISED AUTO-ANALYSER
KILARGHULLI, GUWAHATI 781 004

(4)
Name of the patient: Biswa Nath Brahma
Age: 55 Years Sex: M
Referred by: Dr. ECPL.
Date: 30/11/2001
Ref. No: CNO: 04

Test	Result	Test	Result
HAEMATOCRIT 14.5	5.4mm10004	P.C.V	
TOTAL WBC 8,800	Per Cent	M.C.V	
DIFFERENTIAL LEUCOCYTIC COUNT		M.C.H	
NEUTROPHIL	84 %	M.C.H.C	
LYMPHOCYTE	13 %	PARASITE I	
MONOCYTE	2 %	PARASITES	
EOSINOPHIL	1 %	PLATELET COUNT	
PLASMOGLOBULIN		BLEEDING TIME	
PLASMOGLOBULIN		COAGULATION TIME	
PLASMOGLOBULIN		PROTHROMBIN TIME	
PLASMOGLOBULIN		PATIENT'S	
PLASMOGLOBULIN		CONTROL	
PLASMOGLOBULIN		ERR	
PLASMOGLOBULIN		VDRL TEST	
PLASMOGLOBULIN		RAIN	
PLASMOGLOBULIN		HAUTOX TEST	
PLASMOGLOBULIN		Direct	
PLASMOGLOBULIN		Coombs Test Indirect	
PLASMOGLOBULIN		ABSOLUTE EOSINOPHIL COUNT	
PLASMOGLOBULIN		PLATELET COUNT	
PLASMOGLOBULIN		OTHERS	

[Signature]
M.B.B.S; D.C.P. F.C.I.P.
HON. PATHOLOGIST

*Attested
Law
Advocate*

- 28 -

Annexure - 5
(Series)

DARTTAKUR CLINIC PRIVATE LIMITED HOSPITAL

Laboratory With Computerised Auto-Analyses
Kharagpur, Guwahati-781 004

Clinic : 54411
Hospital : 546233

No. 5	Date 1.12.2000
Name of the Patient Biswa Nath Brahma	
Age 55 Years	Sex M
Referred by Dr. B.C.P.L.	Ref No. C.NO. 4

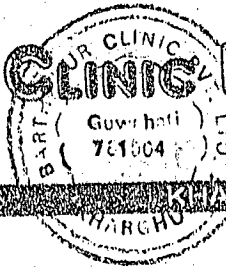
URINE

Physical Examination		Microscopic Examination	
Colour	Yellow	Crystal	Calcium Oxalate (+)
Quantity	30 ml		
Odour	Arromatic		
Sp. Gr.	Q.N.S	Pus Cells	1-2 /H.P.F
Sediment	Nil	Epithelial Cells	Nil
Chemical Examination		RBC	Nil
Reaction	Acidic	Bacteria	Nil
Sugar	Nil	Cast	Nil
Albumin	Nil	Others	
Phosphate	Nil		
Bile Pigment	Negative		
Bile Salt	Negative		
Urobilin	Notdone		
Others			

Altered
from
ADV 0.01

[Signature]
M.B.B.S. F.C.C.S.F
ACCT. PATHOLOGIST

**BARTHAKUR CLINIC PVT. LTD.
HOSPITAL**



Hos. : 546233
Clinic : 543411

Ref. No. 2001K/140

Date 03.12.2001

To whom it may concern

This is to certify that Mr. Biswanath Brahma, 56 years, of Rhaighuli was admitted into our hospital on 30/11/2001 with fractures of both bones of right leg, fracture rib following injury. He was operated on 01/12/2001 and discharged today with advice to take rest for two months w.e.f. today, the 3rd December 2001.

Resam
03/12/2001

Senior Medical Officer,
BARTHAKUR CLINIC PVT. LTD.
RHAIGHULI, GUWAHATI-781004

Attested
J. M. Advocate

**Barthakur Clinic Pvt. Ltd.
Hospital**

R. Nos. : 54333
C. No. : 54311

Ref. No. 2001K/140

Date 01.02.2002

To whom it may concern

Certified that I have seen Mr
Biswanath Barhmai, 56 yrs. of Kharagburi
today and advise him to take rest for
2 months w.e.f. today the 1st February
2002.

This is in continuation of our
previous certificate dt. 3.12.2001.

11/2/02

Attested
Dr. Advocate

36

To
The Director General
Defence Estates
West Block-4
R.K. Puram
New Delhi.

(Through Proper Channel)

Sub: Submission of representation for retention at Guwahati in terms of O.A. dated 20.2.2002 passed in O.A. No. 286/2001 by the Hon'ble Tribunal.

Respected Sir,

I like to draw your kind attention on the subject cited above and further beg to state that being highly aggrieved by the order of transfer and posting dated 13.7.2001 transferring me from Guwahati to Agartala at the lag end of my service. I approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, through O.A. No. 286 of 2001.

The aforesaid O.A. has been disposed of on 20.2.2002 by the Hon'ble Tribunal with a direction to submit a detail representation within a period of 2 (two) weeks from the date of receipt of a certified copy of the said order. Hence this representation praying inter alia for retention of my service at Guwahati on the following grounds:

- i. That I am on the verge of retirement and only 3 (three) years service is left in my credit, as such, in terms of the recommendation of the 4th Central Pay Commission I am entitled to continue in the present place of posting at Guwahati till the date of retirement.
- ii. That my wife Smt. Santi Dalboki Barua is also working as Upper Division Clerk in the department of Agriculture, Government of Assam at Guwahati. As such in terms of Govt. of India's Circular dated 12.6.1997 issued by the Department of Personnel and Training, I am also entitled to continue in the same station i.e. at Guwahati under the special scheme as laid down in the O.M. dated 12.6.97.

Attested
J. S. Advocate

37

iii. That I also met with a serious accident and sustained severe injury on my right leg, as such require constant medical attention and till date I am availing leave on medical ground from December 2001 and not in position to attend my duties till filing of this representation. Therefore you are requested to consider my case sympathetically for my retention at Guwahati on medical grounds also. Necessary supporting documents are enclosed for your kind perusal.

iv. It is further submitted that my son namel Althay Kumar Brahma and daughter Smti Shelja Brahma are now studying in Higher Secondary Third year in Commerce and H.S. First year in science respectively and my eldest daughter Smt. Shelley Brahma is studying in Master Degree in New Delhi.

In view of the above circumstances and especially considering my physical condition after the accident as stated above, you are requested to consider my case for retention at Guwahati sympathetically.

A copy of the judgment dated 20.2.2002 passed in O.A. No. 286/2001 and other relevant documents including the documents in connection with my medical treatment are enclosed for your ready reference.

An early action is highly solicited.

Encls : As stated above.

Date : 4th March, 2002.

Yours faithfully,

Biswanath Brahma
(BISWANATH BRAHMA)
U.D.C., Defence Estate Office
Guwahati Circle, P.O. Silpukhuri
Guwahati-781003.

Copy forwarded to in advance

1. The Director General (Adm. Sec.)
Govt. of India, Min of Defence
West Block - 4, R. K. Puram,
New Delhi - 110066.

2. The Director, DE (LE-2)
Govt. of India, Min of Defence,
Eastern Command,
13, Camac Street (7th Floor)
Kolkata - 17.

*Attested
Jame
Advocate*

BY SPEED POST.

No. 141/340/ADM/DE/2001
 Government of India,
 Ministry of Defence,
 Dte. Gen. Defence Estates,
 R.K. Puram, New Delhi-66.
 Dated 10 Jul, 2002.

To

The Principal Director,
 Defence Estates,
 Ministry of Defence,
 Eastern Command,
 13 Camac Street, Kolkata.

Subject : 'O.A. NO. 286/2001 : SHRI B.N. BRAHMA - V/S UOI
 AND OTHERS IN THE CAT GUWAHATI BENCH.

Reference your Dte. letter No. 360192/Tribunal/BNB/LC-1
 dated 5th April, 2002.

2. The representations dated 24.07.2001 and 4.3.2002 of Shri B.N. Brahma have been considered by the Competent authority in terms of order dated 20.02.2002 of the CAT, Guwahati Bench. It has been noted that the said official has remained posted in Guwahati for approx. twenty two years w.eff. 17.04.1975 to 10.10.1988 and 05.05.1983 to date, in his career of approx. thirty two years. His transfer was made on account of administrative exigencies and without malafide. His representations having been found devoid of merit have been rejected by the Competent Authority.

3. The DEO Guwahati may be advised to relieve the said official immediately after payment of TA/DA advance with the directions to report to ADEO Agartala in terms of the Dte. Gen letter No. 102/195/ADM/DE dated 13th July, 2001.

[Signature]
 for Director General,
 Defence Estates,

Copy to :-

The Defence Estates Officer,
 Guwahati Circle, Guwahati.

For necessary action.

Internal

File No. 102/195/ADM/DE

Office of the D.A.O.	
Guwahati Circle	
D.E.O.	_____
A.D.O.	_____
O.A.	_____
Encl.	_____
By	_____

Placed for Advocate