

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 256/02
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SECTION OFFICER (Judl.)

Wahle
28/11/17

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 256 / 2002

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants. Sri Shapan Kr. Dey.

-Vs-

Respondant(s) UOI & ors.

Advocate for the Applicant(s) M.K. Mazumdar, S.C. Biswas
S. Das & A. Basu

Advocate for the Respondant(s) Case

Notes of the Registry	Date	Order of the Tribunal
	9.8.02	Heard Mr. M.K. Mazumdar, learned counsel for the applicant. Issue notice to show cause as to why the application shall not be admitted. Also, issue notice to show cause as to why interim order as prayed for shall not be granted. List on 30.8.2002 for admission
25.7.2002 76-576500 Dy. Registrar.		
Steps taken mb 8/8/02		
Notices prepared and sent to De Section for issuing of the same to the respondents through Regd. post. Vide D.No-2222 to 2226 Dtd-19.8.02	mb 30.8.02	Heard Mr. M.K. Mazumdar learned counsel for the applicant and also Mr. A. Deb Roy, Sr. C.G.S.C. for the Respondents. It has been stated by Mr. M.K. Mazumdar learned counsel for the applicant that they have been
24.8.02		contd/

30.8.02

N
Order dtd 30/8/02
Communicated to
the Parties Council.
Dr

instructed not to press the appli-
cation as the applicant has already
taken the charge in new place of
posting . Accordingly, the applica-
tion is dismissed on withdrawal.

h
Vice-Chairman

lm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUAHATI BENCH : GUWAHATI

(An application Under Section 19 of the Administrative Tribunal Act,, 1985)

Title of the Case : O.A. No. 256 /2002

Sri Swapan Kumar Dey Applicant.

- Versus -

Union of India Respondent.

I N D E X

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Filed by

M.K. MAJUMDAR

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed in applicant
Through- M.K. Majumdar
(Advocate)
8-8-02

(An application Under Section 19 of the Administrative
Tribunal Act. 1985).

O. A. NO. /2002

B E T W E E N

Sri Swapan Kumar Dey

..... Applicant.

- AND -

1. Chief Engineer,
HQ. Eastern Command
Fort William
Calcutta - 21.
2. Chief Engineer
Shillong Zone (Army)
Shillong.
3. Commander Works Engineer
P.O. Dekargaon,
District - Sonitpur.
4. Gerrisian Engineer
Tezpur, P.O. Dekargaon,
Dist - Sonitpur.

(Swapan K. Dey) Contd....p/2

5. Prakash Lokre
B.S.O. Tejpur,
P.O. Dekargaon,
District - Sonitpur.

..... Respondents.

DETAILS OF THE APPLICATION.

1. Particulars of order against which this application is made:

This application is made against the impugned Order No. 131322/2/2001/SD/031/Engrs/EIC(1) dated 1st May, 2001 issued by the Respondent No. 1 posting/Transferring the applicant in the interest of the State.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which this application is made is well within the jurisdiction of your Hon'ble Tribunal.

3. Limitation :

The applicant further declares that the application has been filed within the prescribed time limit under the Administrative Tribunal Act, 1985.

(Swapan K. Das)

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 states that since his joining under GEP Balasere since 14.11.1986 he has served various stations in compliance every order and direction for transfer without making any prayer for ~~in~~ alteration.

4.3 That the applicant states that since 1986 the date of joining in the department to 1st May 2001 being the date of issue of the impugned order of Transfer he never made any representation against any order of transfer and obeyed with full satisfaction of the authority.

4.4 That the applicant states that since issue of the impugned order dated 1.5.2001 transferring the applicant from GE Tezpur to GE 586 EP. The applicant on receipt of the order contacted the BSO Tezpur and explained his difficulties in regard to move to the new place of posting within 31st July, 2001, hence, accordingly the matter was taken up by the local authority and asked him to submit representation to the Chief Engineer.

A copy of the Order dated 1.5.2001 is annexed as Annexure - 1.

(Swaran K. Dey)

4.5 That the applicant states that thereafter on 14 July 2001 stating interalia his difficulties point wise e.g. due to his out station stay he could not complet his office house, his wife is sick and under Medical treatment there is none to look after his wife, his aged old mother who was above 88 years presence at the time of her last breath and all the more there is marriage proposal of his daughter which is going to be solominised with a short. Under such circumstances he explained his inability to obey the Order and prayed for allowing him for short period stay.

A copy of the application dated 14.7.2001 is annexed as Annexure - 2.

4.6 That the applicant states that since filling of the representation which was routed through proper channel to the Head Quarter was pleased to take up the matter of posting of the applicant and consider sympithecally. However while examining the matter the authority also enquired about other encumbarance stay at the station for reconsideration of the applicants rejected on a technical manner on the gound of lacking substance and further ordered Vide letter No. 13/322/2/2001/SD/40/Engs/EIC(1) dated 20.12.2001, that the applicant should report within 31st Oct. 2001.

(Swapan K. Ray)

A copy of the letter is annexed as
Annexure - 3.

4.7 That the petitioner states that thereafter the
Gerrison Engineer on received of such order from Chief
Engineer Shillong Zone Communicated the State of B/S Cadre
in division and since there is large shortage of stuff it
was not possible to realise the applicant and requested to
cancell the order.

A copy of the order vide No. 1003/BS/
SK/680/EI dated 22.1.2002 is annexed as
Annexure - 4.

4.8 That the applicant state that thereafter the
applicant filed another representation exaggrating his
grievances against rejection of his prayer for fue days
stay at the station. In the said application the applicant
point out the denial of Justice and equal treatment
opportunity while rejecting the representation and prayed
for reconsideration of his posting after transferring thosoe
persons who have been allowed there since long.

A copy of the petition dated 31st May
2002 is annexed as Annexure - 5.

4.9 That the applicant states that in the said
representation he has categorically pointed out the various

(Swapan K. Das)

transferring and posting in his service life and also allowing others to stay in same place at the pleasure of the authority which are describe as below :-

Place of Posting	From	to	Total year, month & days.
1) GE(P) Balasore	14.11.86	30.8.88	1yr. 9mth, 28days
2) GE859 EWS	12.9.88	-16.12.92	4yr. 3mth, 4 days
3) GE 583 EP	29.12.92	-20.6.98	5yr. 5mth, 5days
4) GE Tezpur	01.7.98		

Name of other persons allowed to stay	date of joining	place
1) MES/237954 Sri S.K. deb, SK-11	1.7.94	GE Tezpur
2) J.C. Machari SK-11	1995	GE Tezpur.

4.10 That it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interest of the applicant as the Order of transfer and posting has been issued in total violation of the professed norms and also with malafide intention since there is official communication from the Respondent No. 4 to the Head Quarter also explaining the portion apart from the difficulties of the applicant.

That finding no other alternative, the applicant is approaching the Tribunal for protection of his legitimate

(Swapan K. Das)

right for bonafide reason and for the course of justice.

5. Grounds for relief(s) with legal provision(S):-

5.1 For that applicant has acquired a valuable and legal right for his retention in the same station on the basis of the transfer on tenure completion.

5.2 For that, there are other senior persons in the same station who have been retained at this sweet mill of the authority transferring the Applicant.

5.3 For that the applicant explained his inability on the ground of his age old mother aged about 90 years who is bedridden.

5.4 For that amongst other grounds the applicant also submitted that he is yet to complete his half constructed building, marriage of his daughter is to be solemnized within short as such he requested for allowing short period stay.

5.5 For that, the Respondent No. 4 in a communication have narrated the present staff strengths and requested for cancellation of the Order.

6. Details of remedies exhausted :

That the applicant states that he has no other alternative or other efficacious remedy available before him than to file this application. The applicant further states that he had no scope to file any representation against the impugned order of transfer and posting as because in the same order.

(Signature R. K. Day)

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

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 Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for :

Under the facts and circumstances stated in paragraph 4 of this application, the applicant prays for the following relief(s) :-

8.1 That the Hon'ble Tribunal be pleased to set aside & quashed the impugned order of transfer and posting vide Order No. 131322/2/2002/5.D/031/Engrs/EIC (1) dated 1st May, 2001 issued by the Respondent No. 1 (Annexure - 1).

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in service in his present place of posting at GE Tezpur.

8.3 Costs of the application.

8.4 Any other relief or reliefs as entitled to the applicant under the facts and circumstances stated above as deemed fit and proper by the Hon'ble Tribunal.

Swapna K. Dey

9. Interim reliefs prayed for :

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

9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned Order of transfer and posting vide Order No. 131311/2/2001/5.D/031/Engrs/EIC (1) dated 1st May 2001 issued by the respondent No. 1 (Annexure - 1).

10. That this application has been filed through advocate.

11. Details of the I.P.O.:

- i. I.P.O. No. : 79 576500 dt. 25.7.02
ii) Date of Issue : H.P.O.
iii) Issued from : G.P.O. Guwahati.
iv) Payable at : G.P.O. Guwahati.

12. Details of enclosures :

As stated in the Index.

Sevapan M. Dey.

VERIFICATION

I, Shri Swapan Kumar Dey, Son of S.K. Dey
aged about 42 years, resident of _____
Tezpur, District - Sonitpur, Assam, do hereby declare
that the statements made in paragraphs 1 to 4 and 6 to 12
are true to my knowledge and those made in paragraph 5
are the legal advice which I believe to be true and I
have not suppressed any material facts.

I sing this Verification on this the 7th day
August, 2002, at Guwahati.

(Swapan K. Dey)

SIGNATURE

POSTING ORDER NO. 14

Tele : 222-2700

Chief Engineer
HQ Eastern
Command Fort
William Calcutta-21.

132322/2/2001/5D/03/Engrs/EIC (I)

May 2001

Chief Engineers
Calcutta Zone, Calcutta
Shillong Zone, Shillong
Shillong Zone, Siliguri.
(AF) Shillong Zone, Shillong

(R & D) Pkt Secunderabad

ESD Kankinara

POSTING/TRANSFER ON TENURE-TURN OVERSK GDE-II.

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

<u>Sl.No.</u>	<u>MES No, name and</u> <u>Designation</u>	<u>Posted</u> <u>From</u>	<u>To</u>	<u>Move Date</u>
1	2	3	4	5
1.	MES-228946 Shri Tarapada Roy SK Gde-II	GE 859 EWS	CWE Calcutta	31 May 2001
2.	MES-183358 Shri N.K. Dhar, SK Gde-II	CWE Calcutta	GE 859 EWS	31 May 2001
3.	MES 263944 Shri P.K.Chakraborty SK Gde-II	ESD kaankinara	GE(I), (R&D) Chandipur	31 May 2001.
4.	MES. 467164 Shri R.K. Routh, SK Gde-II	GE(I)(R&D) Chandipur	ESD Kankinara	31 MAY 2001
5.	MES-2 35024 Shri R,K, SARMA, SK Gde-II	GE Guwahati	GE Khaprail	31 May 2001

Attested

Advocate.

Lt Col
SO-I (pers)

1	2	3	4	5
6.	MES 242428 Shri A C Gope, SK Gde-II	GE (I) AF Jorhat	GE Narangi	31 May 2001
7.	MES-232649 Shri SK Dey, SK Gde-II	GE Tezpur	GE 586 EP	31 May 2001

(item seven only)

2. Move will be completed in direct correspondence between the fmns/units concerned as directed.

3. Your attention is drawn to this HQ Letter No. 131306/1/89/Engr/ EIC(I) dated 31 Jan 96 is amended from time to time for strict compliance.

(G. Mazumdar)
Lt, Col

for Chief Engineer

Copy to :

CWE Calcutta CWE Tezpur CWE Shillong HQ 136 Wks Engrs
GE 859 EWS GE(I)(R&D) Chandipur GE Guwahati GE
Khaprail.
GE (I)(AF) Jorhat GE Barengi GE Tezpur GE 586 EWS

Internal :

EIR EID EDP Cell Master holder and office copy.

Attested

Advocate.

From
MES/232649
Shri S K Dey, SK-II
C/O GE Tezpur

To
Chief Engineer
HQ Eastern Command
Fort William
Calcutta-21

(Through Proper Channel)
Posting/Transfer

Respected Sir,

With due respect and humble submission I would like to approach your honour to explain certain personal problems related with my posting from GE Tezpur, my home station. Nearly half of my service I have rendered outside stations. Now I have been ordered for posting to GE 586 Engr Park Vide your HQ letter NO.131322/2/2001/5D/03/Engrs/EIC (I) dated 01 May 2001

2. Sir, the present circumstances does not allow me for a seperated life from away from my home due to the reasons as explained below:-

- (a) Due to long separation from my home town, I couldnot made a permanent settlement for which I am planning to construct a house for which construction works are being started.
- (b) My wife is sick and she is undermedical treatment, hence she may require my presence to take proper care. (Medical Certificate is attached herewith). At this stage my separation from the family may cause damages to our life.
- (c) My widow mother aged about 88 years is bedridden, and shed desire me with her at her last breathing.
- (d) Besides all above marriage proposal is going on for my daughter and hope that the ceremony is celebrated within a short period.

3. All of the above facts surround me with heavy pressure and put me into mental agency, and disturbed feelings. In this circumstances. if your kindness is allowed me to stay with my family members I shall be free from depression. At least taking into consideration of the desire of my aged widow mother, your great decision for a reconsideration of the posting order will highly be appreciated, this allowing me to work with the present home station peacefully.

Thanking you in anticipation.

Yours faithfully

Tezpur

(MES/232649 S K Dey)

14 Jul 2001

SK - II

Attested

Advocate.

(14)

ANNEXURE-III

Tele : 222-2700

Chief Engineer
HQ Eastern
Command
Fort William
Kolkata-21
20 Dec, 2001

131322/2/2001/5D/40/Engrs/EIC(I)

Chief Engineer
Shillong Zone
Shillong

POSTING?TRANSFER ON TENURE TURN OVER : SK II

1. Refer your letter No.70762/9/BS/190/EIC(I) dated 15 oct 01.
2. Application dated 14 Jul 2001 in respect of MES-232649 Shri S K Dey, SK Gde If of GE Tezpur has been considered sympathivcally snd examined in its entirety with a view to ensure that no natural justice is danied to the individual. However, it lacks substance and has been rejected by appropriate level at this HQ.
3. Please instruct GE Tezpur to despatch the individual to his new unit i.e. GE 586 Engr park forthwith and submit completion report by 31 Dec 2001.

(Prem Sagar)

SAO

Offg SOI (Pers)

For Chief Engr.

Accepted
Advocate.

Copy to :-

CWE Tezpur

GE Tezpur

ANNEXURE IV

Tele Mily : 2309.

Carrison Engineer
Tezpur
22 Jan, 2002

1003/BS/SK/680/E1

CWE Tezpur

POSTING/TRANSFER ON TENURE TURN OVER SK-TWO

1. Ref HQ CESZ Shillong sig No. 7010 dt 12 Jan 2002 & your sig No. 0-7020 dt 18 Jan 2002.
2. In this connection it is submitted that the state of B/S Cadre in this divn is an under :-

Sl.No.	Category	Auth	Hold	Def
<u>1</u>	supvr B/S-I	02	-	02
2.	Supvr B/S-II	02	-	02
3.	SK-I	01	-	-1

3. There are only 09 SK-II held by this Divn who are employed (incl stt) as under :

- a) AGE E&R-I & II - 02 Nos
- b) AGE E&T-I & II - 02 Nos
- c) ESO - 05 Nos. (Fur-02, Project Stores-01)
~~8/8/8~~
- d) Revenue Sec - 03 Nos
- e) Misa (Det) out Stn - 01 No

4. Since there is large def of ther Staff in this cadre, it is not possible to relieve MES/232649 Shri SK Dey, SK-II. Ub case he is reived the functioning of the area will come to stand still when addl. load of furniture contracts and addl. essers are coming up.

5. In view of above, it is requested that posting order in respect of the individual may kindly be got cancelled

(G Ashokan)
Major
Carrison Engineer

Copy to :

1. HQ CEEC Kokkata | for intro wrt HQ CESZ signed No quoted
2. HQ CESZ Shillong) above.

Advocate.

To

Chief Engineer
HQ Eastern Command
Fort William
Kolkata - 21

(Through proper channel)

Sub: POSTING/TRANSFER

Respected Sir,

Please refer to your HQ letter NO.131322/2/2001/SD/Engrs/EIC(i) dated 01 May 2001, my application dt.14 Jul 2001 and your letter No. 131322/2/2001/5D/40/Engrs/EIC(i) dt.20 Dec,2001.

Sir, I applied to your goodself on 14th Jul 2001 to reconsider my posting to GE 586 Engr Park ordered vide your letter dt.01 May,2001 under reference and in support of my request I submitted the problems. I am facing at present. But my said appeal has been twined down by your good offics vide letter under reference dt 20 Dec 2001 on the plea that my appeal lacks substance and thus has been rejected.

Sir, after rejection of my appeal I am repeatedly preasad to moveout to my new station and thus laft in such and ambrassing condition that I cannot date to take a firm decision to moveout leaving my ailing mother on bed.

Sir, in the letter of your No.dt. 20 Dec, 2001, a question of natural justice has been arison and msy I put the following details and seek proper justice on the matter please.

Sir, as a SK-II I served at GE(p) Balasore w.e.f 14 Nov.86 to 30Aug 38, at GE 859 EWS from 12 sept.88 to 16 Dec92, at 589 Engr Park 29 Dec 92 to 26 June 98 and at GE Tezpur wef 1.7.98 to till date. That sir, by this way I have rendered almost half of my service period out to serveat my home station at Tezpur allalong, but only for consideration to allow to me to stay at beside of my ailing mother till she breath the last..

Sir, on the other hand, I have been ordered for the posting after rendering my service for 3 years in the station whereas MES/287954 Shri S K Deb. SK-II who is serving in the station wef 1.7.94 and Shri G C Machari. SK-II wef 1995 has not been considered for posting out and hence may I request your goodself to reconsider my posting order and be posted out after the above longest stayees are ordered for posting for posting for the sake of natural justice please.

Thanking with anticipation.

Yours faithfully

(Swapan Kr, Dey)
SK-II
MES/232649

Station: Tezpur
Date: 31 May, 2002

Advance Copy: CEEC, KOLKATA
Copy to:

All Assam NES Employees Union: For into and necessary action.

Attested
Advocate.