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X
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Rejected Date- 25/5/04

O.A/T.A No. 343/2002

R.A/E.P No. 04/04/04

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SECTION OFFICER (Judl.)

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 343 / 02
Misc. Petition No. _____ /
Contempt Petition No. _____ /
Review Application No. _____ /

Applicant (s) South Sunite v Longfellow

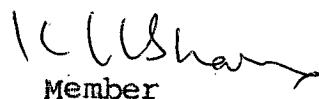
Respondent (s) -V.S.- h. o. p. t. m.s.

Advocate for the Applicant (s) B.K.Sharma, S.Senra, V.K.Nayak

Advocate for the Respondent(s) Miss U. S. Dan Cast

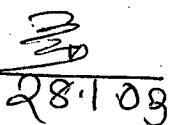
24.12.02 List again on 29.1.2003 to enable the respondents to file written statement.

No written statement has been filed.


Member


Vice-Chairman

mb


28.1.03

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

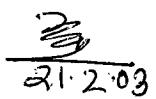
The Hon'ble Mr. S.K. Hajra, Administrative Member.

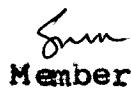
Mr. A. Deb Roy, learned Sr.

C.G.S.C. for the respondents stated that he has obtained necessary instruction on the matter and written statement in the process of filing. Accordingly, the respondents are allowed three weeks time to file written statement.

List on 24.2.2003 for further orders.

No written statement has been filed.


21.2.03

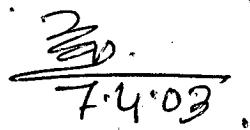

Member


Vice-Chairman

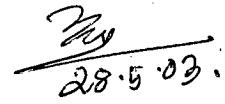
mb

24.2.2003 Pleadings are complete. List the matter for hearing on 8.4.2003. The applicant may file rejoinder, if any, within two weeks from today.

No rejoinder has been filed.


7.4.03

No rejoinder has been filed.


28.5.03

8.4.2003. Division Bench did not sit today, The case is adjourned to 29/5/2003.

No
8

8

21

29.5.2003

present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr. S.K. Hajra, Administrative Member.

put up again on 23.6.2003 for hearing in presence of Mr. A. Deb Roy, learned Sr.C.G.S.C.

No rejoinder has been filed.

20.6.03.

Member *

Vice-Chairman

bb

23.6.03

Adjourned. List for hearing on 6.8.03.

by order.

6/8/2003. Adjourned to 26/8/2003.

MS
L

26.8.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. K.V. Prahaldan, Member (A).

No rejoinder has been filed by the applicant.

MS
19/9/03

On the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents the case is adjourned. Mr. S. Sarma, learned counsel for the applicant has no objection. List again on 22.9.2003 for hearing.

K. V. Prahaldan
Member

Vice-Chairman

mb

22.9.2003 Put up the matter again on 21.10.2003 for hearing. In the meantime applicant may take necessary corrective steps.

K. V. Prahaldan
Member

Vice-Chairman

21.10.2003 Adjourned and again listed for
hearing on 18.11.2003.

17-11-03 Vice-Chairman

bb

Care is ready. *18.11.03* Present : The Hon'ble Mrs Lakshmi Swaminathan, Vice-Chairman.

The Hon'ble Mr S.K.Naik,
Administrative Member.

Shri S.Sarma, learned counsel for the applicant and Shri A.Deb Roy, learned Sr.C.G.S.C for the respondents.

It is relevant to note that the applicant has not challenged the rules/instructions issued by the respondents dated 14.5.1990 (Annexure-I) and particularly clauses (f) and (g) of that ~~Instructions~~ ^{Communication}. Mr. Sarma fairly submitted that ~~the~~ when the case was taken up for hearing on 22.9.2003, the same ~~is~~ lacuna was pointed out by the Bench and he had agreed to take necessary corrective steps. He submits that the applicant is unwell and, hence, he could not take the corrective steps. At his request one last opportunity is allowed and the case is adjourned to 20.11.03.

List on 20.11.03 as part heard. We however, observed that in the present form the O.A. is liable to be dismissed as we do not find any merit in this application, subject to any further submission to be made on the next date.

Deb Roy
Member

pg

JB
Vice-Chairman

Office Note	Date	Tribunal's Order
	20.11.2003	<p>Present: Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman Hon'ble Shri S.K. Naik, Administrative Member.</p> <p>Shri S. Sarma through proxy counsel Shri R. Lal, learned counsel for the applicant and Shri A. Deb Roy, learned Sr. C.G.S.C. for the respondents.</p> <p>Learned proxy counsel for the applicant seeks a day's adjournment on the ground that Shri S. Sarma is unwell but submits that the counsel will be present on 21.11.2003 as this is a part heard case. Learned Sr. C.G.S.C. has submitted that with regard to the facts on which a query was raised on the previous date, no junior to the applicant in Shillong Charge has been promoted as Income Tax Officer (ITO).</p> <p>List on 21.11.2003 part heard.</p> <p><i>S.K.Naik</i> Member</p> <p><i>Smt Lakshmi</i> Vice-Chairman</p>
nkm	21.11.2003	<p>Mr.S.Sarma, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondent Court time is over, and O.A. is released from part heard.</p> <p>List on 10.12.2003.</p> <p><i>S.K.Naik</i> Member</p> <p><i>Smt Lakshmi</i> Vice-Chairman</p>
22.12.03 Addl. Affidavit filed by the applicants' counsel, 10.12.03	bb	<p><i>No D/Benek</i> Advised. to 22-10-03</p> <p><i>B7A</i> In</p>

Office Note	Date	Tribunal's Order
<i>11.12.03</i> <i>Copy of the Judgment was sent to the Office for issuing the same to the applicant as well as to the Govt.</i> <i>C.G.S.C.</i> <i>Ab.</i>	23.12.2003 <i>mb</i>	<p>Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is disposed of. No order as to costs.</p> <p><i>W.D. Bhandarkar</i> Member</p> <p><i>B</i> Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. No. 111 343 of 2002.

DATE OF DECISION 23.12.2003

Smt. Sunita V. Langstieh APPLICANT(S).

..... Sri. S. Sarma ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

Union of India & Ors, RESPONDENT(S)

Sri A. Deb Roy, Sr.C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. MR JUSTICE B. PANIGRAHI, VICE CHAIRMAN

THE HON'BLE MR K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ~~Alexander~~ VICE Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 343 of 2002.

Date of Order : This the 23rd Day of December, 2003.

The Hon'ble Mr Justice B.Panigrahi, Vice-Chairman.

The Hon'ble Mr K.V.Prahladan, Administrative Member.

Smt.SunitaV.Langstieh,
W/o Sri John V.D.Langstieh,
Inspector, Office of the Chief Commissioner
of Income Tax, Aayakar Bhawan,
T.S.S.Road,Shillong,Meghalaya.

...Applicant

By Advocate Sri S.Sarma.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Department of Revenue,
Ministry of Finance,
New Delhi.

2. The Central Board of Direct Taxes
(CBDT), North Block, New Delhi-1.

3. The Chief Commissioner of Income Tax,
(CCIT), Aayakar Bhawan, S.V.Road, Pune.

4. The Chief Commissioner of Income Tax,
NER, Saikia Commercial Complex,
Srinagar, Guwahati-5.

5. The Commissioner of Income Tax,
Aayakar Bhawan, T.S.S.Road,Shillong,
Meghalaya.

...Respondents.

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

O R D E R (ORAL)

PANIGRAHI J.(V.C)

Briefly stated the facts of the present case ~~is~~ as follows:

The applicant joined as a direct recruitee Inspector on 27.1.1993 in Income Tax Department in the office of Income Tax Officer, Investigation, Kolhapur under Chief Commissioner of Income Tax, Pune. Subsequently she cleared the departmental examination meant for the Inspector on 6.7.1996. Looking to her performance the respondents had also confirmed her in the rank of Inspector on 28.1.1995. From recruitment rules it appears that an Income Tax Inspector after completion of 3 years regular service can be eligible for being considered in the post of Income Tax

eligible for being considered in the post of Income Tax Officer. The applicant has stated in the application that after completion of 3 years service and on passing the departmental examination she was not considered for promotion at Pune charge.

2. It appears that applicant's husband is working as a Group A Officer in the rank of Deputy Commissioner of Income Tax. He was posted in the office of the Commissioner of Income Tax, Pune in 1992. There is no dispute that the applicant's husband has all India transfer liability. He was accordingly transferred from Pune Zone to North Eastern Region, Shillong. Since the family life of the applicant might likely be affected therefore she made a representation for a transfer at the place of her husband's posting at Shillong. Her representation was accordingly considered and an office order has been passed by showing that she would be posted in Shillong charge against the vacancy meant for the direct recruit and the service rendered by her in Pune charge will not be counted towards the minimum service if any prescribed for her promotion to the higher grade. It was also indicated that the applicant shall be placed at the bottom seniority and she was denied to any transfer benefit such as advance pay, joining time as it was a transfer on her own volition.

3. She continued as an Income Tax Inspector direct recruit after accepting bottom seniority since 11.8.99. In the meanwhile certain vacancies had arisen in the post of Income Tax Officer and therefore the applicant made a representation for restoration of seniority which was not given any attention on account of inter charge transfer, the authorities were also not inclined to give any benefit to the applicant. Therefore, she challenged the validity of the order passed on 18/21.6.2001.

4. Mr S.Sarma, learned counsel appearing for the applicant has submitted that it is no doubt true that the applicant had submitted an appeal for inter charge transfer which was accepted by the authorities and accordingly she was posted at Shillong charge but atleast the applicant's past service at Pune as an Inspector should not be overlooked for considering her eligibility to the post of ITO. He has also invited our attention to an order passed by the Central Board of Direct Taxes (CBDT) dated 27.12.96 in which the CBDT relaxed in case of B.Shanti Kumar pursuant to the order passed in O.A.17/96 after consulting the Department of Personnel and Training. Why the same benefit shall not be given to her.

5. While examining the aforesaid contention we noticed that the respondents have also admitted in their written statement to have given such benefit to B.Shanti Kumar after consulting the DOP&T pursuant to the order passed by the Tribunal. But the respondents had justified that it was a singular case where ^{after} relaxation of the rules they considered the eligibility criteria of B.Shanti Kumar.

6. Mr A.Deb Roy, learned Sr.C.G.S.C. for the respondents while repelling the aforesaid contention have invited our attention that in this case the applicant with her eyes wide open accepted the condition that she would be placed at the bottom seniority at that stage, the applicant did not claim any such benefit that her past service at Pune would be taken into consideration atleast to consider her eligibility for the post of Income Tax Officer. After surrendering such benefit in coming over to Shillong, she cannot be permitted to approbate and reprobate. Her case may be considered only when she completed her eligibility criteria at Shillong after having served over 3 years as Income Tax Inspector.

7. While going through the various contentions raised at the Bar we find the CBDT have indicated in their order that in case of inter charge transfer at the request of the candidates no seniority at the old station shall be credited in the account of the officer so transferred. He/She shall have to accept the bottom seniority at the transferred place under the Zone the incumbent is working. We also found a precedent in the case of B.Shanti Kumar where the department had relaxed pursuant to the order passed in O.A.17/96 of Hyderabad Bench. While appreciating the contention of Mr Sarma, we had an occasion to go through the judgment passed by the apex Court in Union of India and others vs. C.N.Ponnappan reported in AIR 1996 SC 764. The identical question had been answered by Hon'ble Supreme Court quoted as under :

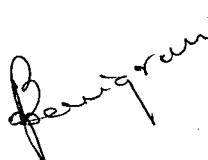
The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred."

From the rationale of the judgment, it is, therefore, made clear that the officer so transferred from one zone to the other shall get the benefit of past service only for the retiral benefit and experience for the purpose of promotion. No other benefit shall be given to the officer so transferred from one

zone to the other. Therefore, as per the judgment of the Supreme Court and also looking to the precedent case we direct the authorities to consider the case of the applicant for the purpose of her eligibility in the rank of Income Tax Officer by placing her at the bottom of the other eligible candidates for the aforesaid post; keeping due regard to the seniority which she gained at her previous place.

With the above observation the application is disposed of. No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(B.PANIGRAHI)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 343 of 2002

Sunita V Lengstieh

..... Applicant.

--VS--

Union of India & Ors.

..... Respondents

List of Dates

1. 27.1.93 Applicant joined the post of Income Tax Department on DR at Pune.
2. 6.7.93 She cleared the Departmental Examination as Inspector, Income Tax.
3. Note: For Promotion to the Grade of Income Tax Officer
a) 3 years regular service in the grade of Inspector.
b) Departmental Examination
4. Husband of the applicant is a Group-A officer in the rank of Deputy Commissioner of Income Tax
5. 1992 Since 1992 the husband of the applicant has posted under CCIT, Pune.
6. Note: Group-A officers of Income Tax Department have got all India Transfer liability.
7. 1999 By the year 1999 both husband and wife (applicant) were posted at Nasik under CCIT, Pune.
8. 24.4.99 Husband of the applicant was transferred to CIT (NER), Shillong.
9. 26.5.99 Applicant preferred a representation to CIT (NER), Shillong.
10. 2.6.99 The Asstt. Commissioner, Income Tax, Pune wrote a letter to the CCIT, Patna (HQ) enquiring about the accommodation of the applicant in CIT (NER) (Annexure-C).

Filed by
Alka Das
Advocate
22/12/2002

11. 14.6.99 Husband handed over the charge.
12. Applicant applied for EL from 30.6.99 to 11.7.99.
13. 5.7.99 Husband joined duty at Shillong
14. 2.8.99 Applicant was transferred to CIT, Shillong.
15. 10.8.99 Applicant was relieved from CIT, Nasik.
16. 11.8.99 Applicant was absorbed by CIT (NER), Shillong
17. 11.8.99 Applicant was given posting as Inspector of Technical Section CIT(NER), Shillong.
18. 26.7.99 Communication regarding No. Objection certificate.
19. 9.7.99 -do-
20. 14.5.98 Transfer guideline.
21. 30.8.99 Applicant submitted representation
22. 1.11.2000 Representation filed by the applicant.
23. 27.11.2000 Objection letter submitted by the applicant against the seniority list showing her to be junior most.
24. 28.12.2001, 12.6.2001 Reminder
25. 18/21.6.2001 Respondent rejected the case of the applicant.
26. 29.6.2001 The respondents communicated the impugned order dated 18/21-6.2001.
27. 2.7.2001 Representation submitted by the applicant.
28. 8.1.2002 Representation submitted by the applicant.
29. 17.5.2001 Guideline issued in respect of Annual General Transfer.
30. 8.2.91 Transfer guideline for Non-Gazetted staff.
31. 27.12.96 Order granting similar relief to the similarly situated employee.

9 OCT 2002

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THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

O.A. No. 343 of 2002

Sunita V. Langstieh

... Applicant

- Versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by : *Alsha D*
Advocate

1/2
Filed by
the applicant through
Niranjan Das
Advocate
7/10/02

THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
GUWAHATI

D.A. No. 343 of 2002

BETWEEN

Smt. Sunita V. Langstieh,
W/o Sri John V.D. Langstieh, working as
Inspector of Income Tax in the office of
the Chief Commissioner of Income Tax,
Aayakar Bhawan, T.S.S. Road, Shillong-
793008, Meghalaya.

... Applicant

AND

1. The Union of India, represented by
the Secretary to the Government of
India, Department of Revenue, Ministry
of Finance, New Delhi.
2. The Central Board of Direct Taxes
(CBDT) North Block, New Delhi-1.
3. The Chief Commissioner of Income Tax
(CCIT) Aayakar Bhawan, S.V. Road, Pune.
4. The Chief Commissioner of Income Tax,
NER, Saikia Commercial Complex,
Srinagar, Gauhati-5.
5. The Commissioner of Income Tax,
Aayakar Bhawan, T.S.S. Road, Shillong,
Meghalaya.

... Respondents

DETAILS OF APPLICATION

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

The present application is directed against the action on the part of the Respondents in not calculating the service rendered by the Applicant in the cadre of Inspector of Income Tax prior to her transfer to NER from Pune Region.

2. JURISDICTION OF THE TRIBUNAL :

8/2

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

4. 3. LIMITATION :

5. The Applicant further declares that the
6. application is filed within the limitation period
7. prescribed under Section 21 of the Administrative
8. Tribunals Act, 1985.

9. 4. FACTS OF THE CASE :

10. 4.1 That the present Applicant joined the Income Tax
11. Department as a direct recruit Inspector on 27.1.93 in
12. the office of the Income Tax Officer (Investigation),
13. Kolhapur under Chief Commissioner of Income Tax, Pune.
14. Thereafter she cleared the Departmental Examination for
15. Inspectors on 6.7.93. Thereafter her service as Income
16. Tax Inspector was confirmed on 28.1.95. In the month of
17. July 1996 she cleared the Departmental Examination for
18. promotion to Income Tax Officer. The Recruitment Rule
19. prevailing at that point of time for promotion to the
20. grade of Income Tax Officer were - (1) Three years
21. regular service in the grade of Inspector, (2) passing
22. the departmental examination for Income Tax Officer.
23. Inspite of passing her examination as early as July
24. 1996 itself, the authority could not effect her
25. promotion because of the reasons best known to them.

26. 4.2 That the Applicant is a citizen of India and as
27. such she is entitled to all the rights and privileges
28. as guaranteed under the Constitution of India.

29. 4.3 That under the Income Tax Department the grade of

Sov

Assistant Commissioner of Income Tax and above are categorised as Group-A, Officers as Group-B, and Inspector of Income Tax together with other Ministerial cadres as Group-C. The Central Board of Direct Taxes has divided the entire country into Regions/charges. Regions are headed by Chief Commissioner of Income Tax who is also the cadre controlling authority. In a few charges, it was the Commissioner of Income Tax who was the cadre controller. This set up was prevailing up to the year 1999. In the year 2001 there has been some changes in the said official set up. In the instant case the Respondent No. 4 is the cadre controlling authority of the Applicant.

4.4 That the husband of the Applicant is a Group-A officer in the rank of Deputy Commissioner of Income Tax and since 1992 he had been posted under CCIT Pune Region. As per the transfer policy guidelines issued by CBDT, the Group-A officers are subjected to All India Transfer liability. After completion of 8 years of continuous posting in a particular region, the officer is compulsory to be transferred out from the said region, with the option of choice place of posting. After completion of tenure, one may get back his posting again in original region, but that will be subject to a total length of maximum 14 years.

A copy of said transfer policy guideline is annexed herewith as Annexure-A.

4.5 That by the year 1999, both the Applicant and her husband were posted at Nasik under CIT Nasik (under the



CCIT Pune Region). As the Applicant's husband's period of stay in Pune region was coming to a close, he submitted his transfer proforma wherein in column 6 of the said proforma, he furnished the particulars of his wife (Applicant). The said proforma was sent to CBDT, New Delhi through CCIT (Pune Region).

4.6 That the Under Secretary to the Government of India, Ministry of Finance, issued an order dated 24.4.99 by which the husband of the Applicant was transferred to North eastern region under CIT (NER) Shillong as cadre controlling authority (under Patna CCIT).

4.7 That as the details of the Applicant was furnished by the husband in the transfer proforma, it was assumed that her transfer would follow. However, the Applicant could come to know that a "No objection Certificate" from CIT NER (Shillong) is required. The Applicant therefore sent a letter dated 26.5.99 making a request for her accommodation under CIT (NER) and to that effect to issue such "No objection certificate".

A copy of the said letter dated 26.5.99 is annexed as Annexure-B.

4.8 That the aforementioned letter dated 26.5.99 was followed by another letter dated 2.6.99 by the Applicant reiterating the request for her absorption under Commissioner of Income Tax (CIT) NER and to that effect to issue necessary "No objection certificate". Acting on the said letter dated 2.6.99, the Assistant Commissioner of Income Tax (Head Quarter) office of the



CCIT, Pune, issued a letter to the CCIT, Patna, indicating the fact that she was eligible for such transfer with a further request to intimate the possibilities if she could be accommodated.

A copy of the said letter dated 2.6.99 is annexed as Annexure-C.

4.9 That after the issuance of the aforesaid letter the applicant was under the bonafide belief that she would be given her due transfer under CIT, NER on the ground of husband and wife's same place of posting circular. On the other hand, the husband of the applicant on 14.6.99 handed over the charge of the post held by him. The applicant applied for earned leave from 30.6.99 to 11.7.99 and accompanied her husband who reported for his duties at his transferred post on 5.7.99. The applicant had taken leave and was under the legitimate expectation that during this period her case would be considered by the authorities for transfer to CIT, NER, in the light of Office Memorandum's issued by Government of India for posting of husband and wife at same station.

4.10 That after long persuasion finally on 2.8.99, the Additional Commissioner of Income Tax (Head Quarter) (Admn), Office of the CCIT, Pune, issued an order bearing No. PN/EST/058/SVL/99-2000/2068 dated 2.8.99 by which the applicant was transferred to Shillong under CIT, Shillong, with an observation that her seniority in Shillong will be reckoned from the



date she resumed duty in Shillong, below all the Inspectors including permanent and temporary. In the said order the Respondents sought for an undertaking from the Applicant regarding acceptance of conditions laid down in the said order. Under compelling circumstances, she had to give her undertaking as she already shifted from Nasik with her husband after availing leave. Since Annexure-C order did not indicate the terms she took leave and shifted from Nasik to Shillong.

A copy of the said order dated 2.8.99 is annexed as Annexure-D.

4.11 That the aforementioned order dated 2.8.99 was followed by another consequential order dated 10.8.99 by which she was relieved from CIT, Nasik. The Commissioner of Income Tax, Shillong then issued order dated 11.8.99 by which the applicant was absorbed by CIT, NER. In the said order also the Respondents also reiterated the stand that she will not be entitled to carry her seniority and she will not be entitled to joining time, joining time pay, traveling allowance as the transfer was made at her own request. By another order dated 11.8.99, she was given the posting as Inspector of Technical Section under CIT, NER.

Copies of the orders dated 11.8.99 are annexed as Annexure-E & F respectively.

4.12 That the Applicant states that as per the endorsement reflected in the absorption order dated 11.8.99 the Respondents have mentioned the letter dated



26.7.99 and another order issued by CIT, NER it is seen that there has been internal communications regarding issuance of "No Objection Certificate."

Copies of the aforesaid letter dated 26.7.99 and 9.7.99 are annexed herewith as Annexure-G & H respectively.

4.13 That it is pertinent to mention here that the Annexure-D order dated 2.8.99 has been issued in terms of the instruction contained in the Board's letter dated 14.5.90, wherein the criteria for transfer of non-gazetted staff from one charge to another under CBDT has been mentioned. In the instant case the Respondents have invoked the guideline contained in clause 2 (f) of the said guideline dated 14.5.90. Since it was a peculiar case, the the Respondents should have invoked clause 2 (h) and 3 which deal with the facts of posting of husband and wife and the power of relaxation.

A copy of the guideline dated 14.5.90 is annexed as Annexure-I.

4.14 That the Applicant being aggrieved by the aforesaid loss of seniority and having only thereafter obtained a copy of the said instructions, preferred a detailed representation dated 30.8.99 to the Chairman CBDT as the instructions contained relaxing clauses. In her said representation, she made it known to the authority concerned that she had no occasion to go through the Annexure-I, guideline dated 14.5.90 as it was never supplied to her. It was also highlighted that



the husband of the Applicant since holding a Group-A post will again be posted to another station after 8 years and the Applicant again will have to face the same consequences in respect of her seniority. The copy of the representation was sent to the Chairman, CBDT, through proper channel. However, the representation was never replied to by the Respondents even after repeated persuasion. It has not known whether the representation ever reached the Board.

A copy of he said representation dated 30.8.99 is annexed as Annexure-J.

The Applicant craves leave of this Hon'ble Tribunal to treat the representation to be a part of this OA.

4.15 That the Applicant states that by about October, 2000, the CCIT, NER, Guwahati started functioning as a new cadre controller of NER in place of CIT, Shillong. The Applicant preferred another reminder/representation dated 1.11.2000 to the CCIT, NER, Guwahati to recommended her case to the Board.

A copy of the representation dated 1.11.2000 is annexed as Annexure-K

4.16 That a tentative seniority list of Inspector, Income Tax, NER, was circulated wherein the Applicant has been shown to be juniormost in the cadre. The Applicant submitted her objection letter to that effect.



A copy of the said objection letter dated 27.11.2000 is annexed as Annexure-L.

4.17 That the Applicant submitted another reminder dated 28.12.2001 which was followed by another representation dated 12.6.2001.

4.18 That the representations although were addressed to the Chief Commissioner of Income tax, but the Additional Commissioner of Income Tax, (HQ) issued a letter dated 18/21.6.2001 which was communicated to her by a letter dated 29.6.2001, by which her representations in respect of correction of seniority have been rejected.

A copy of the order dated 29.6.2001 enclosing the order dated 18/21.6.2001 are annexed herewith as Annexure-m & M1 respectively.

4.19 That since the Respondents did not adhere to the Departmental Rule for sending the representation through proper channel, the Applicant preferred yet another representation dated 2.7.2001 directing to the Member, central Board of Director Taxes for restoration of her seniority. The aforesaid representation however was never acted upon. The Applicant submitted yet another representation dated 8.1.2002 but same also failed to evoke any positive response from the Respondents. The husband of the Applicant in January, 2002 visited the office of the CBDT and the Chairman, CBDT referred the matter to the Joint Secretary (Administration) to look into the matter. The Joint Secretary (Administration) CBDT was of the opinion that


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if the Applicant again goes back to her earlier CCIT, Pune, she may regain her seniority and consequential promotion to Income tax Officer. However, inspite of such persuasion nothing came out in positive and hence this application.

Copies of representations dated 2.7.2001 and 8.1.2002 are annexed as Annexure-N & O respectively.

4.20 That the Applicant states that the husband of the Applicant in his transfer pro-forma indicated the fact that his wife (Applicant) also an employee of the Department and the Respondents fully knowing about the fact ought to have considered her case taking into consideration the guidelines issued by Government of India from time to time. It is pertinent to mention here that the Government of India from time to time has been issuing various guidelines in respect of posting of husband and wife in a same station and trying to follow the spirit in almost all identical cases which are not covered by the said guideline. Mention may be made of Office Memorandum dated 3.4.86 issued by Government of India in this regard. It is also pertinent to mention here that the 5th Pay Commission also has recommended the fact and the need of posting of husband and wife in a single station. The CBDT also mentions their clause in all its transfer policy instructions.

4.21 That the Applicant at the time of transfer of her



husband was under the bonafide belief that her case would be considered taking into consideration the Office Memorandum dated 3.4.86 which was been reiterated by the recommendation of 5th Central Pay Commission but the Respondents instead of considering her case in the light of Office Memorandum dated 3.4.86 took the aid of Office Memorandum 14.5.90 by which she had to loose her by which she had to loose her seniority. Even, in the said Office Memorandum dated 14.5.90 there has been a clause of posting of husband and wife in a single station as well as relaxation but those two clauses have not been taken into consideration while considering her case for absorption in NER. The husband of the Applicant is now due for promotion to the grade of Joint Commissioner, Income Tax, in the event of such promotion he may be transferred to some other region and accordingly the Applicant again will have to loose her seniority, and as such she would never be under the zone of consideration for promotion to Income Tax Officer which is a post having all India seniority.

The Applicant craves leave of this Hon'ble Tribunal to rely and refer upon the Office Memorandum dated 3.4.86 at the time of hearing of this case.

4.22 That the Applicant begs to state that at the time of consideration of her case for transfer from Pune to Shillong, the Respondents never apprised the Applicant about her such loss of seniority and even the Office Memorandum dated 14.5.90 as well as the internal



communications dated 26.7.99 and 9.7.99 were not communicated to the Applicant. It is stated that since the Applicant was going to loose her seniority it would have been proper for the Respondents to apprise the Applicant about the fact and having not done so the Respondents have acted illegally and have violated the settled principles of "Next Below Rule".

4.23 That the Applicant states that at the time of her husband's transfer, she simply made application for her transfer to Shillong but the Respondents have failed to take into consideration the intent and purpose of such representation and invoked a wrong guideline instead of invoking the guideline meant for transfer of husband and wife in a single station. it will not be out of place to mention here that apart from these guidelines, there are various guidelines wherein emphasis has been made to retain husband and wife in a same station of which mention may be made of the Chairman, CBDT's additional guidelines dated 17.5.2001 and the guideline issued by the CBDT, dated 8.2.91.

Copies of the aforesaid guidelines are annexed herewith and marked as Annexure-P & Q.

4.24 That the Applicant begs to state that on posting in NER, the Central Government Civilian Employee used to get special incentives like weightage for promotion, tenure of posting, special mention in CR, SDA etc. But in the instant case the Applicant has been made to loose her seniority without any valid reason. In fact taking into consideration statute by the Income Tax



Act, the duties and responsibilities of the Inspectors of Income Tax, the Respondents should have treated the cadre to be all India cadre. In fact, direct recruitment in the grade of Inspector is made from all India open competitive examination and it's promotional post i.e. Income Tax Officer is 100% promotional post and the seniority of Income Tax Officer is maintained all India basis. Even the Recruitment Rule does not disclose the fact that on being recruited as Inspector of Income tax it will be on regional basis. For all practical purpose the cadre of Inspector, Income tax bears all the requisite of being a All Indian Cadre. However, the Respondents have not yet declared the cadre to be all India basis for the reasons best known to them. Thus, appropriate direction need be issued to the Respondents to declare the cadre of Inspector, Income Tax to be a all India cadre.

4.25 That the Applicant states that the action on the part of the Respondents in down grading the seniority of the Applicant quoting irrelevant Rules without affording the Applicant the reasonable opportunity of being heard. The law is an incident of service and it cannot be treated as a measure of punishment. But in the instant case, there has been deviation and virtually the Applicant forego her seniority, lien etc. at the time of her transfer. In fact under the provisions of CCS(CCA) Rules, 1965, it is a major punishment.

4.26 That the Applicant begs to state that the



guideline contained in Office Memorandum dated 14.5.90 in violative of the principles guiding the field which was circulated vide Office Memorandum dated 4.11.92 in respect of determination of seniority and thus, same is not sustainable in the eye of law and liable to be set aside and quashed.

4.27 That the Applicant begs to state that the matter relating to continuing of past service was the subject matter in OA No. 17/96 before the Central Administrative Tribunal, Hyderabad Bench and to that effect the CBDT after consultation with the matter with DOPT, issued certain clarification and same was communicated vide letter dated 27.12.96.

A copy of the said communication dated 27.12.96 is annexed as Annexure-R.

4.28 That the Applicant begs to state that the issue pertaining to continuing of past service and other consequential benefits has been settled by the Apex Court in its various judgments and basing on those rulings and settled law this Hon'ble Tribunal also had occasions to deal with the similar matter granting relief to the aggrieved employees.

The Applicant craves leave of this Hon'ble Tribunal to rely and refer upon those rulings at the time of hearing of the case.

4.29 That the Applicant states that at present taking into consideration her seniority she is over due for her promotion to the Next Higher Grade for Income Tax



Officer and in fact, even her juniors in Pune Region have already been promoted to the said grade since January, 2002. On the other hand the Applicant cleared the requisite examination for promotion to Income Tax Officer in the year 1996, and she is a recruitee of 1993 as Inspector. Even the 1995 batch of Inspector working at Shillong got their promotion to Income Tax Officer but her case has not been considered on the count of her seniority at Shilling. Had the seniority at Pune (Nasik) been counted she would have promoted to Income Tax Officer even in the years 2000 or earlier. Had she been promoted to Income Tax Officer in due time the controversy in respect of loosing seniority would not have been there as the cadre of Income Tax Officer is an all Indian cadre, having all India transfer liability. It is therefore also the prayer of the Applicant through this application, to pray for an interim order directing the Respondents to consider her case for promotion to the Grade of Income tax Officer, taking into consideration her seniority from her date of appointment.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the action/inaction on the part of the respondents in not reckoning her seniority in her new place of posting taking into the aid of some irrelevant provisions is not sustainable in the eye of law and liable to be set aside and quashed.

5.2 For that the Respondents being a model employer



ought to have taking into consideration the provisions contained in the guidelines issued by Government of India from time to time in respect of posting of husband and wife in a single station while accommodating her in NER and also the various special incentives for opting to serve in the NER. Having not done so the Respondents have acted illegally and as such appropriate direction need be issued to the Respondents refixing her seniority taking into consideration her service under CCIT, Pune Region.

5.3 For that there having been definite guideline holding matter pertaining to posting of husband and wife, the Respondents ought to have considered her case for transfer from Nasik to Shillong under those guidelines without disturbing her seniority.

5.4 For that non-disposal of the representations filed by the Applicant addressed to the competent authority amounts to rejection and the so-called disposal order dated 18/21.6.2001 is not at all a disposal as the same was never forwarded to the competent authority.

5.5 For that down gradation in the matter of seniority is a major punishment under Rule 11 of the CCS(CCA) Rules, 1965 and the Respondents in the instant case while transferring the Applicant virtually punished her without affording any reasonable opportunity of hearing which is not sustainable in the eye of law and liable to be set aside and quashed.

5.6 For that in any view of the matter the entire action of the respondent are liable to be set aside and



quashed.

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

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

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

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

8. RELIEFS SOUGHT FOR :

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

- 8.1 To direct the Respondents to recast the seniority of the Applicant taking into consideration her service from the date of appointment and to promote her to the



Next High Grade i.e. Income Tax Officer, taking into consideration the revised/recasted seniority or alternatively her seniority may be refixed as per her earlier seniority in Pune Region.

8.2 To direct the Respondents being a unique case to invoke the relaxing provisions contained in 2(h) and 3 of the Office Memorandum dated 14.5.90.

8.3 To set aside and quash the order dated 18/21.6.2001 treating the same to be illegal and arbitrary.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED FOR :

During the pendency of the OA, the Applicant prays for an interim order directing the Respondents to count her seniority from her date of appointment and to recast her seniority and to consider her case for promotion to the grade of Income tax Officer on the basis of recasted seniority.

10.

The application is filed through Advocate.

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

i) I.P.O. No. : 76 576800

ii) Date : 3/10/02

iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Pune Region
on own paper

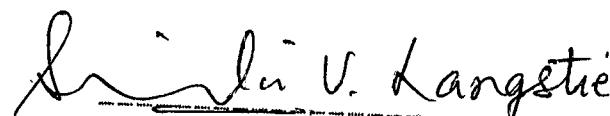
ITD

JW

VERIFICATION

I, Smt. Sunita V. Langstieh, wife of Shri John V.D. Langstieh, aged about 33 years working as Inspector of Income Tax in the office of the Chief Commissioner of Income Tax, Shillong, resident of Mawreh, Mawlai, Shillong-8, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 41, 42, 45, 417, 424, 423, 428 & 5 to 12 are true to my knowledge ; those made in paragraphs 43, 44, 46 - 416, 418 - 423, 426, 428, 429 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 1 th day of ^{October} September 2002.


Sunita V. Langstieh
Deponent

Below copy of Board's letter F.NO.A-35015/68/95-Ad.VI dated 08th May, 1998. 96

Sub:- Transfer guidelines for Group 'A' and Group 'B' Officers- Revision of - Regarding.

Sir,

I am directed to say that the existing transfer guidelines in respect of Group 'A' & Group 'B' officers in the Income-tax Department have since been reviewed by the Board. Some incentives are proposed to be provided to officers proceeding on deputation and to those who are posted in Eastern and Southern Regions. A copy of modified transfer guidelines is enclosed. Henceforth the transfers/postings will be made in accordance with the revised transfer guidelines.

Yours faithfully,

Sd/-

(B.K. ARORA)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

IMPORTANT/PROMPT CIRCULATION
No.FN/CC/EST/113A/98-99

Office of the
Chief Commissioner of Income-tax,
Pune. Dated:- 02nd June, 1998.

Forwarded to:-

01. All C.S.I.T./C.S.I.T.(A) in Pune Region and the DIT(Inv.), Pune for circulation amongst officers working under them.
02. All Officers in CCIT's office.
03. Income-tax Gazetted Services Association.
04. IRS Association.
05. Income-tax Employees Association, Pune.

Encl: As above.

(D.D. PRABHAKAR)
Asstt. Commissioner of Income-tax (Admn.
for Chief Commissioner of Income-tax, P

भाष्यकर आयुर्वत कार्यालय
पुणीक.

- 9 JUN 1998

OFFICE OF THE

Attested
W. D. D.
Advocate.
Solicitor.

Patel

100 (1/10)
Enclose to all.

DA

**TRANSFER GUIDELINES FOR GROUP 'A' AND
GROUP 'B' OFFICERS.**

3X

In supersession of existing orders on the subject, it has been decided that transfers in the Income Tax Department will hereafter be made as far as practicable in accordance with the guidelines indicated below:-

1. All Group 'A' officers will be liable for transfer at the commencement of the next financial year if they have completed 8 years of continuous stay in any cadre controlling Chief Commissioner/Commissioner's Region/Charge. This may be relaxed by the Board on compassionate and administrative grounds in appropriate cases. Periods spent on training and study leave at the same place or in the same Region/Charge (including similar assignments abroad) will count as continuous period of stay at that place or Region/Charge. The period spent by an officer on deputation basis out-side the IRS cadre either in CBDT in the Department of Revenue or Central deputation or deputation to other Departments/Organisations will be excluded for reckoning the period of stay of 8 years/14 years in a particular Region/Charge. A break of less than two years will be considered as continuous stay, in the same Region or Charge. For counting continuous stay, service in a lower grade shall also be taken into account.
2. Stay at a station will not exceed 8 years in respect of the metropolitan cities of Bombay, Calcutta and Delhi. This period may be restricted to 5 years in respect of the cities of Madras, Hyderabad, Ahmedabad and Bangalore. At other stations, the stay will normally be 3 years.
3. In metropolitan and other big cities, the officers will be rotated once in three years in such a way that they are not only transferred from one C.I.T. charge to another but they are required to perform different functions on transfer.
4. These principles will, also apply to the transfer of Group 'B' officers within the Region/Charge.
5. The total stay of an officer during the course of his entire career, in all grades, (in Group 'A') in a particular Region/Charge should not exceed fourteen years.
6. That officers at any level having rendered more than 3 years in any of the charges like Tamil Nadu, West Bengal, Kerala, North-East or Bihar will get preference in getting foreign training and also in getting preference for the place of their choice when they have completed their tenure in these regions.
7. The Assistant Commissioners of Income-tax posted in the Board from the field as Under Secretaries will get preference for foreign trainings and the place of their choice after their tenure in the Board has been over.
8. The cooling off period for being posted again to the same Region/Charge will be at least three years.
9. An officer is liable to be transferred to any part of the

Contd... 2/-...

NO NSK/EST./ACCTS/ dt.....15/10/81
Forwarded to all Dy. C.I.Ts/ Head of
Office / COs in C.I.T., Nasik Charge for
information and necessary action Report
Called for the above subject may please be
Submitted to this office by

AC. C.I.T. (10) (160), NIS

Attested
By
Advocate.

T.T.O. Mysore, Est. Nasik

N/25/81

entry at any time at short notice on administrative grounds.

10. (i) On promotion officers will normally be transferred irrespective of their period of stay except where they have come to that Region less than two years earlier.

(ii) Group 'B' officers on promotion to the grade of ACIT would also be transferred out of the Region except in those cases where the officer has less than three of total service left at the time of promotion.

These exceptions will, however, be subject to the availability of vacancies in the Region concerned at the relevant time of promotion.

11. An officer may opt for a transfer one year before he is due on stay basis or in anticipation of promotion if it suits his convenience.

12. Persons who have less than two years service left may not be transferred on stay basis or after promotion if it is practicable to retain them in the same Region/Charge.

13. Officers who have got less than 3 years of service to retire may be posted to their Home Town/State at their own request provided that they have not been so posted at any time during the last 10 years.

14. Husband and wife will be retained at the same station to the extent possible.

15. Subject to the availability of vacancies, two Principal Office Bearers (Viz. President, Secretary and Treasurer) of the recognised Associations/Federations may be allowed to continue at the Headquarters of that Association/Federation till the next general transfers.

16. As far as possible, transfers from one region to another in the same State should not be made e.g. Lucknow Region to Kanpur Region and vice versa and Bombay Region to Pune Region and vice versa.

17. Officers at the level of C.I.T. should not be posted on transfer from a metropolitan city to a nearby station.

18. On completion of their training at NADT, the probationers may not be posted to their Home State, except on extreme compassionate grounds.

19. Attention of all officers is invited to Rule 20 of the CCS (Conduct) Rules under which no Government Servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government.

.....

Attested
V. D. D.
Advocate.

FROM:

ANNEXURE

B

MRS. SUNITA V. LANGSTIEH,
Income-tax Inspector,
Nashik (MAHARASHTRA).

Dated: 26-5-1999.

To,

The Commissioner of Income-tax - NER,
Post Box No. 20, Kharvalki Road,
Shillong 793 001 (MEGHALAYA)

39

(Through proper channel - through Chief CIT, Pune)

Respected Sir,

Sub: Inter-region transfer from CCIT, Pune Region
to CIT, NER. - Request for No Objection Certificate. Reg.

My husband Mr. John V.D. Langstieh, Dy. CIT has been transferred from Chief CIT, Pune Charge to CIT, NER vide corrigendum No. File A 22013/2/99-86 dated 13-5-99 to the CBDT Order of Annual General Transfers order No. 51 of 1999 dated 24-4-99.

I accordingly, hereby request for consideration of this application of mine to be accommodated under the CIT, NER Charge, and to kindly grant me No Objection Certificate to enable me to be posted at the same Charge with my husband.

Thanking you

Yours faithfully,

(MRS. SUNITA V. LANGSTIEH)

Enclosed copy to the file. -

R. S. P. 11/5/99

ed.

Attested
V. D. S.
Advocate.

TO: PH/PC/TS/7958/CVL/99/1170

Dated: 09.06.99.

To,

The Chief Commissioner of Income-tax,
P A T N A.

Sir,

Sub : Intercharge transfer from Pune charge to
CIT-NER charge in the case of Smt. Sunita
V. Langstein, Inspector regarding -

Please find enclosed an application for
intercharge transfer from Pune charge to CIT-NER charge in the
case of Smt. Sunita V. Langstein, Inspector.

92. The official joined the department as Inspector on
27.01.93 in Pune charge. She has completed three years service in
present grade as stipulated in Board's letter dated 14.05.90 and
thus fulfills all the requisite conditions required for
intercharge transfer. The official has requested for an
intercharge transfer on domestic grounds as her husband
Shri. John V. D. Langstein, Dy. CIT has been transferred to CIT-NER
vide Board's order dated 24.04.99.

93. If the above named official can be accommodated in
CIT-NER charge the same may kindly be intimated to this office.

Yours faithfully,

G.D. PRABHAKAR
Asstt. Commissioner of Income-tax (HQ) (Admin.)
for Chief Commissioner of Income-tax, Pune.

Copy to : 01. CIT Nasik.

02. The official concerned through CIT Nasik.

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ANNEXURE - D

No. PN/CC/EST/1998/BUL/99-2000

Office of the
Chief Commissioner of Income-tax,
Pune. Dated : 02.08.1999

P R E C E P T

Smt. Sunita V. Langstein, Inspector of Income-tax, whose transfer has been approved in terms of the instructions contained in Board's F.NO.A-22020/76/ER-Ad.VII dated 14.08.1998, is transferred and posted as Inspector of Income-tax, in the charge of the Commissioner of Income-tax, Shillong. She should report for duty as soon as she is relieved by the Commissioner of Income-tax, Nagpur, but not later than 30 days from the date of receipt of posting orders from the Commissioner of Income-tax, Shillong.

(1) The above official has been posted in Shillong charge against the vacancy to be filled in by direct recruitment. Her seniority in Shillong charge will be reckoned from the date she joins in Shillong charge. Her name will be placed below all Inspectors (whether permanent or temporary) in Shillong charge on the date of joining. The term of Smt. Sunita V. Langstein, Inspector in Pune charge will be suspended under F.R.14. The services rendered by her in Pune charge will not be counted towards the minimum service, if any, prescribed for promotion to the higher grade.

(2) She will not be entitled to any transfer benefits, advance of pay, joining time etc. as the transfer is made at her own request.

Ed/- (R.C. SHARMA)
Addl. Commissioner of Income-tax (HQ) (Admin.)
for Chief Commissioner of Income-tax, Pune.

To : Mr. N. K. Mukherjee
Kind atttn:

(i) S. K. K. Singh, M.A.(U.P.), M.A.L.

(ii) S. K. Tarkha, M. Charkha, M.C.C.A., M.A.L.

132/3
N.D.
Advocate.

- 25 -

421

1. 2. 3.

Copy to :

a1. CIT Nasik. (2 copies).

With a request that a declaration agreeing to conditions mentioned in the order may please be obtained from the official and pasted in the Service Book before issue of relieving order.

a2. CCIT Patna W.R.T.F. No. CCIT/PAT/Estt./VII-4/99-288A/3616 dated 26th July, 1999.

a3. CIT Shillong.

a4. The official concerned through CIT Nasik.

a5. The guard file.

(P.D.PRAYHAKAR)
Asstt. Commissioner of Income-tax (HQ) (Admin.)
or Chief Commissioner of Income-tax, Pune.
S.P.

M
4/8/99

S.C.

2

W.D.M.
Advocate

- 26 -

Ω R D E R

Dated Shillong the 11th of August, 1999

Smti Sunita V. Langsteih, Inspector of Income-tax, attached to the charge of the Commissioner of Income-tax, Nasik whose services have been placed at the disposal of the Commissioner of Income-tax, Shillong vide Chief Commissioner of Income-tax, Pune's No. FN/CC/EST/058/SVL/ 99-2000/2068 dated 02-08-99 is hereby posted in the same capacity in the Office of the Commissioner of Income-tax, Shillong.

'On release from the charge of the Commissioner of Income-tax, Nasik, Smti Langsteih, is directed to report for duty to the Office of the Commissioner of Income-tax, Shillong.

Smti Langsteih, will be absorbed in the North Eastern Region charges against the direct recruitment quota and her seniority will be reckoned from the date she joins duty in North Eastern Charges and her name will be placed below all the Inspector of Income-tax (whether permanent or temporary) in the North Eastern Region Charges on the date of her joining. The services rendered by her in the Pune Charge will not count towards the minimum service, if any, prescribed for promotion/confirmation/appointment to any higher grade/post.

Smti Langsteih, is liable to be transferred/posted for duty to any of the office in the Income-tax Department of North Eastern Region charges under control/jurisdiction of the Commissioners/Director of Income-tax in North Eastern Region. She is not entitled to joining time, joining time pay, travelling allowances as the transfer is made at her own request.

Sd/-
(V. Tochhawng.)
Commissioner of Income-tax,
Shillong

Contd., 2.....

Attested
W. S.
Advocate.

PL-A

- 27 -

.....9.....

Memo No. E-4/76-77/CT/SH/ 13202

dt. 11-08-99

Copy forwarded for information to

1. CCIT, Patna, with reference letter CCIT/PAT/Estt/VII-4/99-2000/5646 dated 26-07-99.
2. CCIT, Nayakar Bhawan, 12, Sadhu Vaswani Road, Pune-411001 with reference to his No. PN/CC/EST/3VL/99-2000/2068 dated 02-08-99.
3. CIT, Kendriya Rajaswa Bhawan, Cadkari Chowk, Old Agra Road, Nasik- 422002 for necessary action.
4. Official concerned.
5. ZAO, CBDR, Shillong
6. Bill Section CIT's Office, Shillong
7. DCIT, Vig. Shillong
8. Personal file



(S. Kharpor.)
Deputy Commissioner of
Income-tax, Headquarters,
for Commissioner of Income-tax.

Attested
W. Kharpor
Advocate.

OFFICE OF THE COMMISSIONER OF INCOME TAX
AAVAKAR BHAWAN: POST BOX-20 : SHILLONG
PIN-793001

ANNEXURE - F

Q R D E R

Dated Shillong the 11th August, 1999

The following transfer of Group-C officials in the various Section of the O/O Commissioner of Income-tax, Shillong are hereby ordered.

Sl. No. Name of the officials and designation From To

01. Smti Ajanta Das, IIT	ITO, System	ITO, Judicial
02. Smti Sunita V. Langstieh, UOP IIT		ITO, Technical
03. Shri Khaliquur Rahman, UDC	ITO, System	ITO, B&S
04. Shri Krishna Mohan Kukunoru, LDC	ITO, Judicial	ITO, System

(S. Kharpor.)
Deputy Commissioner of
Income-tax, Headquarters,
for Commissioner of Income-tax

MEMO NO. E-16/76-77/CT/SH/ 13307-13318

dt. 11-08-99

Copy forwarded for information to

1. Officials concerned
2. ITO, System, Shillong
3. ITO, B&S, Shillong
4. ITO, Technical, Shillong
5. Bill Section CIT's Office, Shillong
6. JCIT, System, Shillong

(S. Kharpor.)
Deputy Commissioner of
Income-tax, Headquarters,
for Commissioner of Income-tax

Approved
W. S. S.
Advocate.

San John
भारत सरकार

कायांत्रिय मुख्य आयवार आयुयत
(झारां, उडीसा, उत्तर प्रांत और)
कायांत्रिय राज्य भवन, योरलन्द पटेल मार्ग, पटना-800 001

GOVERNMENT OF INDIA
OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX
(Bihar, Orissa & North Eastern Region)
CENTRAL REVENUE BUILDING, BIRCHAND PATEL MARG, PATNA-800 001

Officer : MUKHTIYA AAYANKAR
Phone : 222347 & 223147
PBX : 220680 To 220683
224020 To 224022
224024 To 224026
224028
Fax No. : 0612-234556
E-Mail address: ccitpat@blih.nic.in

F.No. CCIT/EST/Estt. VII-4/39-2000/17646

Dated: Patna, the 26th July, 19

To

The Chief Commissioner of Income-Tax,
12, Sadhu Vaswani Road,
Patna.

Sir,

Sub: Intercharge transfer of Smt. Sunita Langstih, I.T.I. from
Pune charge to Shillong charge - reg.

I am directed to refer to your letter F.No. PN/CC/EST/058/SVL/98-99/J, dated 19/06/99 on the above subject and to convey the "No Objection" of the C.C.I.T., Patna for the intercharge transfer of Smt. Sunita Langstih, I.T.I. from Pune charge to Shillong charge on the condition that she will be ~~absorbed~~ junior most in the I.T.I. cadre of Shillong charge and her date of seniority will be reckoned from the date of absorption in the new cadre. Smt. Sunita Langstih will not be entitled to T.A./D.A. for reporting at new place of posting in Shillong.

If these conditions are acceptable to the applicant, her services may be placed at the disposal of C.I.T., Shillong.

Yours faithfully,

(S.K. Prasad)
Income-Tax Officer, (HQ) Admin.
For: Chief Commissioner of Income-Tax, Patna.

R.S.
Advocate.

आयकर आयुक्त

गोप नगर 20 शिलांग 793001

OFFICE OF THE COMMISSIONER OF INCOME-TAX

Post Box 20, Shillong-793001 (MEGHALAYA)

Telegarm - Aaylar

Office : 223587, Fax : (0364) 223758

F. No. E-29/24-75/Pt-I/CT/SII/ 10111

Date 1.7.2001

ANNEXURE - H

To
The Chief Commissioner of Income-tax,
Central Revenue Building,
Patna-800 001.

Sir,

Inter-charge transfer from Chief CIT, Pune
charge to CIT, NER charges - Smti Sunita V.
Langstieh, Inspector - Regarding -

Kindly refer to CCIT, Pune's letter F.No. PN/CC/EST/
058/SVL/98-99/1130 dated 09-06-99 addressed to the CCIT, Patna
regarding inter-charge transfer of Smti Sunita V. Langstieh,
Inspector of Income-tax from CCIT, Pune charge to CIT, NER charges.

02. In this connection I am to inform you that there is
no objection to the absorption of Smti Langstieh, as per relevant
Rules. She would however, be absorbed if, such condition fulfilled
that her first appointment was made from unreserved category.
Further, she shall not be ranked senior to any official who belongs
to batch available/selected during the recruitment year.

Yours faithfully,

(V. Tochhawng)
Commissioner of Income-tax,
SHILLONG.

7/6

- 11 -

Attested
by
Advocate

F.No.A-22020/76/R9-Ad.VII
Government of India
Ministry of Finance
(Central Board of Direct Taxes)

New Delhi, the 14th May, 1990

To
All Head of Department Under CBDT

Sir,

Sub:- Transfer of non-gazetted staff from one charge to another Charge under Central Board of Direct Taxes-Delegation of Powers to Heads of the Department-

I am directed to refer to Board's letter F.NO. A-22020/77/R6-Ad.VII, dated 30.6.1986 regarding transfer of non-gazetted staff from one Charge to another on compassionate grounds.

2. The instructions contained in the above mentioned letter have been reconsidered consequent on the recent changes in the concept of confirmation and lien. As a result of such reconsideration, it has been decided that requests for inter-charge transfer of non-gazetted staff on really compassionate grounds may here-in-after be considered by the Cadre Controlling Authorities on merits and transfers, where considered necessary, may be effected subject to the observance of the following conditions

- (a) No request for inter-charge transfer shall be entertained in respect of posts, recruitment to which is made 100% by promotion (e.g. Tax Assistants, Head Clerks, Supervisors Gr. I and II Stenographers Gr. II and I etc.).
- (b) Requests for transfer on compassionate grounds shall be entertained only in respect of posts recruitment to which is made either by direct recruitment or partly through direct recruitment and partly through promotion.
- (c) No request for inter-charge transfer shall be entertained from a person (who may otherwise be eligible to make such a request under (b) above) unless he or she has put in at least three years of service, in that grade.
- (d) A person who seeks transfer, should apply to the head of the Department/Chief Commissioner/ Director General under whom he is working, who will, on being satisfied, take up the matter with his counter-part in the charge to which the employee seeks transfer. The latter head of the Department will examine the request on merits and pass necessary orders for

Contd...2

Non
Recd

absorption of the person seeking transfer. Such request shall be considered and conceded only against a clear vacancy. His decision in the matter shall be final. No request for re-transfer shall be entertained under any circumstances.

(e) The direct recruits coming on transfers will be shown against direct recruitment quota and promotees against the promotion quota.

(f) The service rendered in the old Charge will not be counted in the new charge for the purpose of seniority. He/she will be placed at the bottom of the list of the employees of the concerned Cadre in the new Charge. Seniority in the cadre in the Charge to which person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merit whose inter-se-seniority is not regulated by date of joining.

(g) On transfer, the transferee will forfeit all claims for promotion/confirmation in the old Charge. He/she will be eligible for promotion/confirmation only in the new Charge in accordance with the seniority allotted to him on transfer.

(h) As far as possible, efforts should be made to retain husband and wife at the same station.

(i) The transferee will not be entitled to any joining time and transfer-travelling allowance.

3. Heads of the Department shall exercise the powers delegated to them in the matter of effecting inter-charge transfers on compassionate grounds in accordance with the above terms and conditions. If, in any case, relaxation of these terms and conditions becomes necessary, prior approval of the Board should invariably be obtained.

4. The powers delegated to the Heads of the Department in the matter of inter-charge transfer can be exercised only in respect of employees of the Income-tax Department and not in respect of transfer of employees of any other office/department/ministry.

5. A written undertaking to abide by the requirements and conditions should be obtained from the employee seeking inter-charge transfer in the enclosed proforma before the transfers are actually effected.

6. These instructions take effect from the date of issue and in supersession of earlier instructions issued vide File No. A-22020/37/Ad.VII dated 30.6.86.

Yours faithfully,
Sd/- HARDEEN SINGH
UNDER SECRETARY TO THE GOVT. OF PUNJAB
TEL. NO. 345535

Attested
W. D. S.
Advocate.

ANNEXURE

SERVICE PARTICULARS

1. Name of the Government Servant:
2. Native place of the Government Servant:
3. Date of Birth:
4. Educational Qualification:
5. Date of joining the Income-tax Department:
6. Period of service in different grades with dates:
7. Whether permanent/Temporary:
8. Whether Departmental promotee or Direct Recruit in the present grade:
9. Departmental Examination passed:
10. Reasons for transfer:

UNDERTAKING/DECLARATION

I hereby undertake to abide by the terms and conditions of the Board's letter F.No. A-22020/76/89 Ad.VII dated 14.5.90 in the event of my transfer to.....

1. My seniority in the charge will start from the date of my reporting for duty in the charge.
2. I am willing for posting anywhere in.....
3. I shall not claim any T.A. joining time, advance or pay etc.

Name :-

Designation :-

Memo No. IV-E-22/60-61/CT/64956-5036 dt. 25.2.91
Copy Forwarded to All CSIT(A)/DCSIT/ACSIT/ITOs/TROs/DDIT(Inv)/
Sr.A.R. ITAT/EE(Vel) for information and necessary action.

(R. Das.)
Assistant Commissioner of
Income-tax, Headquarters,
for Commissioner of Income-tax

Arrested
Under
Advocate.

MRS. SUNITA V. LANGSTIEH,
 Income-tax Inspector,
 O/O Commissioner of Income Tax,
 Nayakar Bhawan, Post Box No.20,
 Shillong - 793 001 (Meghalaya).

ANNEXURE A

- 34 -

Dated, 30th of August, 1999.

To

The Chairman,
 Central Board of Direct Taxes,
 North Block
New Delhi - 110 001.

(Submitted through proper channel)

Respected Sir,

Sub :- Restoration of seniority - Inter-charge transfer - request for-
 Regarding -

I am submitting this prayer of mine for kind consideration of restoration of my seniority which has been deemed to be annulled due to my recent inter-charge transfer. My transfer was granted as per terms contained in para 2 of Board's Instruction F.No.A-22020/76/89-Ad.VII dated 14th May, 1990, and one of the conditions stated therein was that the service rendered in the old charge will not be counted in the new charge for the purpose of seniority ..(Para 2(f)

My application for transfer was on family grounds since my husband - Shri John V.D. Langstieh, IRS, DCIT - being liable for All-India transfer was transferred.

For reasons that I will elaborate hereunder, my prayer may kindly be considered sympathetically, as the said Board's Instruction also contains provisions to cover instances like in my case, viz;

- Para 2 (h) : 'As far as possible, efforts should be made to retain husband and wife at the same station'.

Contd....2...

Attested
 Your
 Advocate.

- Para 3 : '..... If, in any case, relaxation of these terms and conditions becomes necessary, prior approval of the Board should invariably be obtained.'

Also, Government of India Memorandums/Orders, cited hereafter, may also kindly be applied sympathetically in my case.

02. BACK GROUND.

I was appointed in the Income-tax Department as a direct recruit Inspector on 27th of January, 1993, in the Pune charge under the Chief Commissioner of Income-tax, Pune.

I was duly confirmed in the grade in November, '96 I also passed the Departmental Examination for Income Tax officers in 1996. I was therefore due for promotion as Income-tax Officer.

My husband - Shri John V.D. Langstieh, DCIT-vide Board's Order F.No.A-22013/1/99-Ad.VI dated 24th April, 1999 was transferred on All India basis from Pune Charge to NER Charge.

I therefore, also put in my transfer request application seeking transfer from Pune charge to NER Charge.

I was granted my transfer vide CCIT, Pune order No.Pn/CC/Est/058/SVL/99-2000/2068 dt. 02.08.1999 and absorbed in NER Charge vide CIT, Shillong order dated 11th August, 1999 wherin inter-alia the conditions as per the aforesaid Board's Instructions dt. 14th May, 1990 were cited namely;

"Smt Langstieh will be absorbed in the North Eastern Region Charge against the direct recruitment quota and her seniority will be reckoned from the date she joins duty in North Eastern Region Charge and her name will be placed below all the Inspectors

Contd...3....

*Amelia
W.D.
Advocate.*

59

of Income-tax (whether permanent or temporary) in the North Eastern Region Charge on the date of her joining. The services rendered by her in the Pune charge will not count towards the minimum service, if any, prescribed for promotion/confirmation/appointment to any higher grade/post."

As per the above, I have therefore lost all my seniority of 6 years.

03. BOARD'S INSTRUCTIONS/GUIDE LINES.

3.1 As mentioned earlier, my seniority has been deemed to be annulled as per clause (f) of para 2 of the aforesaid instruction.

However, clause (h) of the same para 2 provides that:

'As far as possible, efforts should be made to retain husband and wife at the same station'.

3.2 Para 3 of the aforesaid instruction provides: '..... If, in any case, relaxation of these terms and conditions becomes necessary, prior approval of the Board should invariably be obtained.'

In this connection, I may be allowed to mention that at the relevant time of submitting my application, I was not aware of the contents of the instruction. Further, due to the urgency, as my husband had just been transferred. Hence, I could not submit this petition earlier for obtaining the prior approval of the Board.

3.3 My husband, belonging to IRS Group-A, DCIT, is governed by the transfer guidelines contained in Board's F.No.A-35015/68/95-Ad.VI dated 08th May, 1998, where it is also laid down in point 14 thereof:

'Husband and wife will be retained at the same station to the extent possible'.

Contd....4.....

*W.D. W.D.
Advocate.*

3.4

When my husband submitted his transfer proforma, as provided as per Board's letter F.No.A-35015/6/99-Ad.VI dated 27th January, 1999, duly filled in, it was specifically provided in column.6 thereto :

'If your spouse is employed please give complete details'.

My husband had accordingly mentioned my name, cadre, and other details.

4.

GOVERNMENT OF INDIA MEMORANDUMS/ORDERS.

A. On Seniority.

4.1

Seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. (GOI, Dept. of Per.&Trg, O.M.No.20011/5/90-Est, (D), dated 4th November, 1992).

4.2

The relative seniority of all direct recruit is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. (Para 2.1 of GOI, Dept. of Per. & Trg., O.M. NO.22011/7/86-Estt(D), dt. 3rd July, 1986 - on consolidated orders of seniority).

4.3

In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his

Contd.....5...

MS
V.D. Venkateswaran
Advocate

parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from -

- the date he has been holding the post on deputation

or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later

(Para 3.4.1. of same OM mentioned above).

B. ON CONFIRMATION.

4.4 Confirmation will be made only once in the service of an official which will be in the entry grade.

Seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation.

(G.I., Dept. of Per. & Trg., O.M. No.20011/5/90-Estt(D), dated 4th November, 1992).

C ON PROMOTION :

There are instructions relating to deputation /foreign service, which may be applied synonymous in my case, which are :

4.5 The names of officers who are on deputation, either on their own volition or in public interest (including foreign service), should also be included in the list submitted to the DPC for consideration for promotion in case they come within field of choice for promotion and fulfil the prescribed eligibility conditions.

Contd....6....

*Attested
W.D.
Advocate.*

(Instruction 4.3.1 of consolidated Instructions, part-III, Dept. of Per. & Trg., O.M. No.220011/5/86-Estt(D), dt. 10th April, 1989.).

4.6. Very often a certain number of years of service in the lower grade is prescribed as a condition for becoming eligible for consideration for promotion to a higher post/grade. In such cases, the period of service rendered by an officer, on deputation/foreign service, should be treated as comparable service in his parent Department for purposes of promotion as well as confirmation.

(Instruction 4.3.2. of above referred O.M.)

D. POSTING OF HUSBAND AND WIFE AT THE SAME STATION.

4.7 It is the policy of the Government that as far as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to lead a normal family life. The guidelines given below are illustrative and not exhaustive. Government desires that in all other cases the cadre controlling authority should consider such requests with utmost sympathy.

Guideline (iii) : Where the spouses belong to the same Central Service - the cadre controlling authority may post the spouses to the same station.

Each case will have to be dealt with keeping in mind the spirit of the guidelines and the larger objective of ensuring that a husband and wife are, as far as possible and within the constraints by administrative convenience, posted at the same station.

(G.I., Dept. of Per. & Trg., O.M. No.28034/7/86-Estt(A), dated 3rd April, 1986).

Contd.....7....

Arrested
W.R.O.
Advocate.

5. There is also the peculiar factual circumstance in my case, wherein, even in future, whenever my husband is transferred/posted out of the charge, on promotion or regular transfer or otherwise, as he belongs to the Indian Revenue Service, the same plight will befall me in that I will always be the juniormost and keep losing my years of seniority, everytime.

6. In the light of provisions contained in the Board's Instruction itself, other instructions, favourable Government of India Memorandum/orders, and the peculiar circumstance of my case, mentioned all in preceding paras above, I therefore, pray for sympathetic consideration by the Board for restoring my seniority from the date of appointment, i.e. from 27th January, 1993.

Thanking you.

Yours faithfully,

(MRS. SUNITA V. LANGSTIEH)

INSPECTOR,
O/O CIT, NER, SHILLONG.

Attested
W.D.
Advocate.

MRS. SUNITA V. LANGSTIEH,
Income-tax Inspector,
O/o Commissioner of Income Tax,
Aayakar Bhawan, Post Box No.20,
Shillong - 793 001 (Meghalaya)

ANNEXURE - K

- 41 -

Dated, 1st November, 2000.

To

The Chief Commissioner of Income-tax,
North Eastern Region,
Saikia Commercial Complex, 2nd Floor,
Sreenagar, G.S. Road,
Guwahati - 781 005.

(Submitted through proper channel)

Respected Sir,

Sub : Request to the Board for restoration
of seniority - Inter-charge transfer
- Regarding .

I had earlier submitted a petition dated 30th August, 1999 to the Board through proper channel (Copy enclosed) which was forwarded to the Chief Commissioner of Income-tax, Patna vide CIT, Shillong office letter no. Per/S-481/99-2000/CT/SH/15208 dated 20th September, 1999 for kind consideration of restoration of my seniority as IIT due to the peculiar facts and circumstances of my case. However, till date I have not received any communication on this matter, and therefore I hereby once again request that my case be kindly brought to the notice of the Board.

02. The facts and circumstances are that I was appointed as Inspector under the charge of the CCIT, Pune on 27th January, 1993. My husband, Shri J.V.D. Langstieh, IRS, Deputy Commissioner of Income-tax was then also in the same charge. Subsequently, vide Board's transfer order dated 24th April, 1999, my husband was transferred to NER charge. In the circumstances, I also requested for inter-charge transfer, which was granted to me and I joined Shillong charge on 11th August, 1999. My inter-charge transfer was accorded as per the conditions contained in Board's instruction F.No.A-22020/76/89-Ad.VII dated 14th May, 1990 wherein as per one of the condi-

Attested
N.D.
Advocate.

Contd..... p/2.

tions, it was mentioned that I shall have to forgo my past service in the old charge and therefore my seniority will only commence from the date I join Shillong charge.

03.

At that time, due to urgency of the matter, I was not aware of the cited Board's instruction. Later when I obtained a copy and perused the same, I found that there is a specific para no.3 in the instruction itself, wherein if in any case, relaxation of the terms and conditions become necessary, prior approval of the Board should invariably be obtained.

Though I have defaulted in not obtaining the prior approval, since I was not then aware of the contents of the instructions, I however now request your goodself to kindly consider my case and forward the same to the Board for the peculiar facts and circumstances of my case as hereunder.

04.

The factual circumstances in my case is that my husband is having All India Transfer Liability. In the near future also he will be subjected to inter-charge transfer. Which follows that whenever he is transferred, I will always have to keep losing my seniority and become junior most. This will therefore affect my promotion prospect throughout my career every time.

05.

I therefore request your honour to kindly consider my case and recommend to the Board (Ad.vii) to consider restoration of my seniority from the date of initial appointment, i.e. from 27th January, 1993.

Thanking you.

Yours faithfully,

(MRS. SUNITA V. LANGSTIEH)
Inspector,
O/o Commissioner of Income-tax,
Shillong.

Attested
W. D. D.
Advocate.

K. J. Mohan
27/11/2000

- 43 -

ANNEXURE - L

Mrs Sunita V. Langstieh, ITI
O/O Commissioner of Income-tax
Shillong - 793 001.

TG

The Chief Commissioner of Income-tax
Saikia Commercial Complex,
Sreenagar, G.S. Road,
Guwahati - 781 005.

27-11-00.

(Submitted through proper channel)

(Kind attn.: Audl. CII, Hqrs.)

Respected Sir,

**Sub.: Objection to Seniority List of Inspectors, as
on 1st November, 2000 - Regarding -**

A copy of the Seniority List of Inspectors as on 1st November, 2000, prepared by your office and communicated under your office File No. E-96/Essatt. List/CCIT/CHY/2000-01/0532-6583 dated November 6th, 2000, was received in the office of the Commissioner of Income-tax, Shillong on November 20th, 2000. I have not yet received my copy, as the copies are yet to be prepared and circulated at this end.

I have however perused the same and I find I have cause to raise my objections.

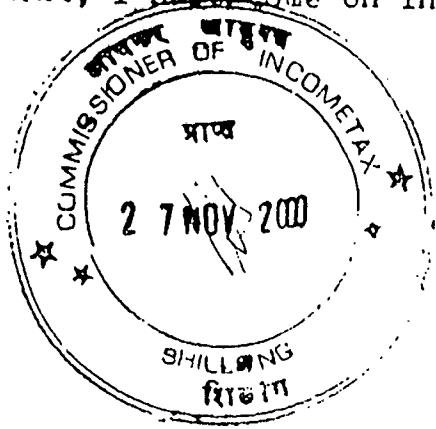
I am therefore, humbly putting in this petition which may kindly be taken note of, and considered. I may also mention that though in your aforesaid letter the date for objections is mentioned as by 18-11-2000, yet in view of the fact that the list itself was reviewed in the office of the Commissioner of Income-tax, Shillong, only on 20-11-2000, and the personal copies are yet to be circulated, this petition may kindly be accepted for consideration.

2. In the Seniority List prepared, my particulars are shown as :

Sl.No.	Name of Officer	Date of continuous service in the present trade	Remarks
162	S.V. Langstieh	11-08-99	-

The grounds for my objection are as under :

(i) Due to the transfer of my husband, who is serving in this same Department, I have come on inter-charge transfer from Pune on 11-08-99.



Attested
W. Mohan
Advocate.

Contd... Page 2

The conditions for my transfer were that I would be absorbed against the direct recruit quota, and would be placed at the bottom of the list of the concerned cadre, i.e. direct recruit cadre.

As it is not clear from the seniority list prepared whether I am placed at the bottom of the list of the direct recruit quota, I request that the names of the direct recruits may kindly be supplied for my clarification.

(ii) Board's instruction on inter-charge transfer contains a provision for relaxation of the conditions, to be considered by the Board itself.

Due to the peculiar circumstances of my individual case, which will keep on occurring in the future also, I have made my petition to the Board, dated 30th August, 1999 through the then Chief Commissioner of Income-tax, Patna, and also recently another reminder dated 1st November, 2000, through the Chief Commissioner of Income-tax, Guwahati.

I do feel I have strong grounds for Board's kind consideration for approval of relaxation, which is awaited and pending.

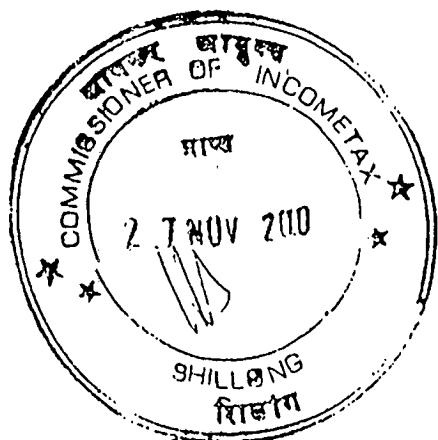
In this connection, there are also other legal remedies available to which I may resort to, if required.

In the circumstances, my "Date of continuous service in the present grade" is not 11-08-99 and therefore may kindly be clarified and mentioned in the "Remarks" column as "on transfer from CCIT, Pune - provisional - pending consideration by the Board."

Yours faithfully,

(Mrs. Sunita V. Langstieh)
Income-tax Inspector,
O/O CIT,
SHILLONG.

Shillong
Dated : 27th Nov, 2000



Attested

[Signature]

Advocate.

- 45 -

ANNEXURE - M

Dated, Shillong the 29th June, 2001.

To,

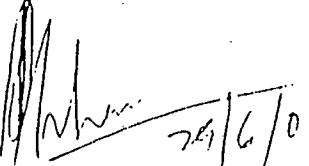
Mrs. Sunita V. Langstieh, ITI
O/O. The CCIT, Shillong.

Subject: i) Restoration of seniority on
Inter-charge transfer.
ii) Inclusion of name for consideration
by the DPC for promotion to the
post of JTO-

Please refer to your representations dated
1st November, 2000 and 28th February, 2001 on the
above subject.

I am directed to forward herewith a copy of
Chief Commissioner of Income-tax, Guwahati's letter
F. No. Per-93/SVL/CCIT/CHY/2001-02/2983 dated
18th/21st June, 2001 for your information.

Enclo: As stated above.


7/6/01
(R.L. Dkhar)
Income-tax Officer, Hqrs.
for Commissioner of Income-tax,
SHILLONG.

Attested
under
Advocate

मुख्य आयकर आयुक्त का कायात्ति, गुवाहाटी
गैरिया कार्यालय काम्पलेक्स, श्रीनगर, जी. सा. रोड, गुवाहाटी - 781 005

GOVERNMENT OF INDIA

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, GUWAHATI
Saikia Commercial Complex, Sreenagar, G. S. Road, Guwahati - 781 005

Ph.: 0361 - 225106
Fax: 0361 - 225118

F.No. Per-93/SVL/CCIT/GUY/2001-02/ 2983

Dated the 18th June, 2001.

21st

To

The Commissioner of Income-tax,
Aayakar Bhavan, Post Box - 20,
Shillong - 793 001.

Sir,

Sub : Representations of Smti. Sunita V. Langstieh,
Inspector, praying for -

- i) Restoration of her seniority in the grade of Inspector, on inter-charge transfer, and
- ii) Inclusion of her name for consideration by the DPC for promotion to the post of ITO --

Matters regarding

Kindly refer to your letters Nos. Per/S-481/99-2000/CT/SII/20142 dated 01.11.2000 and No. Per/S-481/99-2000/CT/SII/23916 dated 01.03.2001, under which ~~my~~ representations dated 01.11.2000 (with a copy of representation dated 30.08.1999 addressed to the Chairman, CBDT, New Delhi) and 28.02.2001 of Smti. Sunita V. Langstieh, Inspector of Income-tax, for restoration of her seniority in the grade of Inspector and inclusion of her name for consideration by the DPC for promotion to the post of ITO, were forwarded to this end.

2. In connection with the above, it is informed that seniority of Inspectors of Income-tax is maintained NOT on *all-India basis* but maintained Charge-wise (Cadre-controlling Charge-wise). Hence, seniority of an Inspector gets depressed following his/her inter-charge transfer. Inter-charge transfers of non-gazetted staff from one Charge/Region to another Charge/Region, on compassionate grounds, are permissible only in certain particular cadres (where there is element of Direct recruitment), that too, subject to certain specified terms & conditions, some of which (*not all*), at the time of considering the requests for inter-charge transfer, can be relaxed with the *prior approval* of the Board. As per Board's Circular No. A-22020/76/89-Ad. VII dated 14.05.1990, Inter-charge transfer depends on series of certain terms & conditions, and some of the *vital* conditions, *inter-alia*, are as under :-

- i) After inter-charge transfer of a Non-gazetted official, the services rendered by him/her in the *old Charge* will *not* be counted in the *New Charge* for the purpose of "Seniority". He / She will be placed at the *bottom* of the list of employees of the concerned cadre in the *New Charge* (i.e. Recipient Charge). Seniority of the official in the *New Charge* (on inter-charge transfer) will start from the day he / she reports for duty in the *New Charge*.

(Contd...to Page-2).

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Waran
Advocate.

Page-2.

ii) He / She will be eligible for promotion / confirmation *only* in the New Charge in accordance with the seniority in the cadre allotted to him / her on inter-charge transfer.

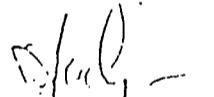
3. *Smti. Sunita V. Langstieh*, Inspector gave a declaration / an undertaking to the effect that - her seniority in N.E. Region Charge would start from the date of her reporting for duty in the Charge (i.e. Recipient Charge). And, on the basis of her undertaking, as aforesaid, her inter-charge transfer from *Pune Charge* to *N.E. Region Charge* was approved and she was absorbed in this Region against direct recruitment quota. She came to this Region on inter-charge transfer, *knowing fully well* that she would *lose her seniority*. After her inter-charge transfer to this Charge, *relaxation* of any of the specified terms & conditions, at this stage, *cannot* be *allowed*. There is *no* instance of precedence of grant of seniority, in such situation as hers. Moreover, any *such relaxation* in matter of grant of / restoration of seniority on inter-charge transfer, which may affect the seniority of others in the grade and may invite objections & bring in unnecessary litigation, *cannot* be *granted*. Her representation dated 01.11.2000 has got *no merit* whatsoever. Hence, the request of *Smti. Langstieh*, Inspector (who joined this N.E. Region Charge only on 11.08.1999 on inter-charge transfer) for *restoration of her seniority* in the grade of Inspector in this Region *with reference to the date of her initial appointment as direct recruit Inspector in Pune Charge on 27.01.1993* *cannot* be *acceded to*.

4. And, in view of the above, Smti. Langstieh's representation dated 30.08.1999, in the above matter, addressed to the Chairman, CBDT, New Delhi, cannot be forwarded.

5. As regards her ^{2nd} representation dated 28.02.2001 (quoted above), it is informed that her name, along with her seniors in the grade, will be included in the list of qualified Inspectors for consideration by the DPC for promotion to the post of 'Income-tax Officer (Group-B)', *provided* her name, at her *present seniority*, comes within the normal zone of consideration.

Smti. Sunita V. Langstieh, Inspector may kindly be informed accordingly.

Yours faithfully,


(A. M. SANGMA)

Addl. Commissioner of Income-tax, Hqrs.,

For, Chief Commissioner of Income-tax, Guwahati.

Memo. No. Per-93/SVL/CCIT/GIIY/2001-02/

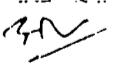
Dated 18.06.2001.

Copy to :- The Chief Commissioner of Income-tax, Post Box-20, Shillong - 793 001.²¹


(A. M. SANGMA)

Addl. Commissioner of Income-tax, Hqrs.,

For, Chief Commissioner of Income-tax, Guwahati.


Attested
W. M. Sangma
Advocate.

Smti. Sunita V. Langstieh, ITI,
O/o. Chief Commissioner of Income-tax,
Aayakar Bhavan,
M.G. Road,
SHILLONG-793 001,
(Meghalaya).

- 48 -

Dated 02nd July, 2001.

To
The Hon'ble Member(P),
Central Board of Direct Taxes,
North Block,
New Delhi-110 001.

ANNEXURE - 1

Respected Sir,

Sub:-Petition for Board's sympathetic consideration for restoration of seniority lost due to seeking of transfer to the charge to which my husband (having All India Transfer liability), belonging to the same Department, had been transferred to - request for restoration of my seniority with the 1993 batch of Inspectors in NER charge - regarding -

Please allow me to present before your honour, the facts and circumstances of my case for Board's kind and sympathetic consideration for restoration of my seniority that was lost on the occasion of my seeking transfer to the charge to where my husband had been transferred to.

I joined the Income-tax Department at Pune charge on 27-01-1993 as a direct recruit Inspector. My husband - Shri J.V.D. Langstieh, DCIT(IRS 1990 batch) - was at that time posted at Pune. Though we are both working under the same Central Government Department, yet he being an IRS officer (Group A), he is under All India Transfer liability; and as per prevailing norms, he cannot remain in the same CCIT charge for more than 8 years.

In 1999, vide Board's Order No.51 dated 24.04.1999, my husband was transferred to NER charge. I therefore also had to seek for my transfer to NER charge. In this process of my seeking transfer to the charge to where my husband had been transferred to, I was supplied with a form and was asked to submit my application in that form. The form was stated to be as per proforma prescribed under Board's Letter F.No.A22020/76/89-Ad.VIII dated 14-05-1990 wherein certain conditions were mentioned namely that I was to lose all my seniority.

I was not supplied with copy of the actual text of Board's letter, nor was I aware of its provision. The transfer of posting involved covering the huge distances from one end of the country to the other. Also, at that point of time, we were both posted at Nashik station which is quite distant from the CCIT headquarters at Pune. And with the various hectic attention

contd.... 2.

Attested

Advocate

grabbing chores connected with the transfer and shifting of residence, it was literally impossible for me to get a copy of the Board's letter within that intervening period.

Under these compelling circumstances, I had to submit my application as per that proforma.

My husband had already joined the NER charge on 05-07-1999, and I eventually got my transfer to NER charge on 11-08-1999.

2. It was only after I had joined the NER charge, after losing all my seniority, that I was able to obtain a copy of aforesaid Board's letter. It was only then that I saw that there was a provision (Para 3 thereto) wherein in deserving cases, relaxation of the terms and conditions could be done with the prior approval of the Board.

Having realised this, I very soon then put in my petition dated 30-08-1999 addressed to the Board, submitting it through proper channel, for consideration of the restoration of my lost seniority. Since nothing was heard even after more than 1 year, I put in reminder dated 01-11-2000 to the CCIT, Guwahati. Again I submitted further reminders dated 28.2.2001 and 12.06.2001 requesting that I be informed whether my petition had been forwarded to the Board.

Then now on 29-06-2001, I received copy of letter dt. 18-06-2001 of CCIT, Guwahati office informing me that my petition to the Board 'cannot be forwarded'.

Respected Sir, there has already been considerable delay of more than one and half years and ultimately by declining to forward my petition to the appropriate authority tantamounts to denial of the fundamental right to opportunity to present my petition before the appropriate authority.

I therefore have to place this petition directly before your good selves.

3. Sir, I request for Board's kind consideration for restoration of my lost seniority on the following please:

(i) As my husband belongs to the IRS(Group-A), he is under All India Transfer liability. As per prevailing norms, he cannot remain in the same CCIT charge for more than 8 years. Therefore, as has happened now, in future also he shall be transferred to any charge in India. In the compelling circumstances, I will also have to seek for my transfer, and therefore, every such time I will keep in losing my seniority and become the juniormost Inspector in which charge that my husband may be transferred to.

In my entire career, I can therefore never ever hope for even a single promotion.

contd...3.

Asstt
WDM
Associate

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(iii) It is the principle of the Government of India that husband and wife be posted at the same station. This also finds place in point 2(h) of the Board's letter. Further, we are in the same Department.

This is in fact the substance and the *raison d'être* for my having to seek transfer to the charge to where my husband had been transferred to. However, in the process it has technically been treated as inter-charge transfer and therefore as per the extant guidelines, I have to forego all my seniority.

(iii) It is also the policy of the Government of India to encourage government servants to serve in the North East Region. Various incentives and concessions are offered to attract government servants to serve in the North East.

In the same analogy, my case be sympathetically considered.

(iv) It is also the policy of the Government of India that a government servant gets at least 2 promotions in the entire career.

If I will have to keep on losing my seniority, I shall never ever get a single promotion in my entire career, not even under the recently introduced Assured Career Progression (ACP) Scheme.

(v) When this compelling need to seek for transfer arose, I straight forward applied for it, I never thought of dabbling with circumventing devices like deputation, leave, lien, etc. where it could have been possible for me to retain my seniority at the old charge.

(vi) I had cleared the Income-tax Officers' Examination since 1996, but if I have to lose my seniority I will have to restart to qualify for the eligible period of service, and by the time I re-complete my eligible period and hope for being covered under the zone of consideration for promotion, my husband would be due for his next transfer, and therefore all hope of ever getting the prospects of even a single promotion, will vanish.

As my case may be unique, I therefore request for Board's kind and sympathetic consideration as provided for in Para 3 of the applied aforesaid Board's letter F.No.A-22020/76/09-Ad.VII dated 14-05-1990, for restoration of my lost seniority,

based on my pleas and the policies of the Government of India as mentioned above, otherwise I will be facing a bleak future of not even hoping for a single promotion at all throughout my entire career, just because I had to seek transfer to the charge to where my husband had been transferred to.

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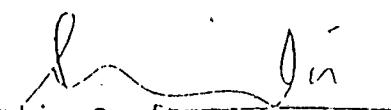
Annotated
W.D.M.
etc.

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68

As I joined the Department on 27-01-1993, restoration of my seniority in the cadre of Inspectors in North Eastern Region may kindly be considered accordingly as deemed fit.

Yours faithfully,


 (Smti. Sunita V. Langstieh)
 Inspector of Income-tax,
 O/o. Chief Commissioner of Income-tax,
 Shillong.

Copy to :-

* The Chief Commissioner of Income-tax, Nayakar Bhavan, M.G.Road, Shillong-793 001, for kind information.

S.I. -

(Smti. Sunita V. Langstieh)
 Inspector of Income-tax,
 O/o. Chief Commissioner of Income-tax,
 Shillong.

Arrested
 [unclear]
 Advocate.

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ANNEXURE - O

- 52 -

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ANNEXURE - O

Smti. Sunita V. Langstieh, ITI,
O/o. Chief Commissioner of Income-tax,
Aayakar Bhavan,
M. G. Road,
Shillong - 793 001,
(Meghalaya).

Dated the 03rd Jan., 2002.

To

The Hon'ble Member (P),
Central Board of Direct Taxes,
North Block,
New Delhi- 110 001.

Respected Sir,

Sub:- Petition requesting Restoration of my Seniority in NER Charge.
Or, request for Board's kind consideration for Re-transfer back
to Pune CCIT charge with Restoration of Seniority - reg.

I joined the Department in CCIT Pune charge as a Direct Recruit Inspector on 27th January, 1993.

My husband is an IRS Officer of 1980 batch, then posted at Pune.

As he had by the year 1999 completed his tenure under CCIT Pune charge, and as he is under All India Transfer Liability, he was transferred inter-charge to North Eastern Region.

Under the circumstances, I had to put my application seeking for transfer to N.E. Region, which I got on 11th August, 1999 on the condition that I am to lose all my seniority. At that relevant juncture and due to the hassles of shifting residence, etc. I blindly submitted my application for transfer. I did not then possess a copy of the Board's inter-charge transfer guidelines (F.No A-220207088-AD-VII dt. 14th May, 1990).

In the guidelines, there is a provision in para (3) thereto wherein the Board could relax the terms and conditions of the transfer in deserving cases.

Being of the belief that mine was a unique and deserving case, I had since August 1999 put in my petitions to the Board for kind consideration for restoration of my seniority in the NER charge.

However, till now, after two and a half years my fate is still uncertain.

As it is now, it seems that I can never ever expect in my entire career for my promotion to the grade of Income-tax Officer.

My husband will very shortly be completing a tenure of 3 years in the difficult North Eastern Region. Further, he is on the verge of being promoted to the grade of Joint Commissioner of Income-tax, and is liable to be transferred inter-charge again. In the present scenario I would have to lose my seniority all over once again.

When I had put in my petitions for restoration of seniority in NER charge, I was quite hopeful that seniority would be restored as the facts and circumstances of my case were very unique and deserving.

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Widow
Advocate.

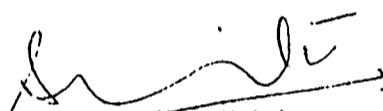
Hoping that my seniority would be restored, I would by now be in line for promotion to the grade of ITO. Thereafter, Inter-charge transfers along with my husband to anywhere in India with my husband would not matter as I would also be under All India Transfer Liability and the seniority in the ITO grade is at All India level.

However, unfortunately this expectation of mine does not appear to become so.

Under these circumstances, I request that if another option could be considered which is re-transfer back to the CCIT Pune charge with restoration of seniority. This seems to be the only plausible way available to me to ever get my promotion to the grade of ITO. After my promotion, I can join my husband anywhere in India as I would also be under All India Transfer Liability, and the issue of losing seniority will never arise again. On the part of my husband too, being on the verge of promotion to the grade of JCIT and having completed 3 years tenure in the NE Region, he can seek transfer to the charge where I would be. Either way, we can thence thereafter be adjusted in any future postings of either of us anywhere in India.

Under these circumstances, I therefore humbly request of the Board that if, as per earlier petitions, my seniority in NER charge cannot be restored, then if my case could kindly be considered for Re-transfer back to CCIT Pune charge with Restoration of Seniority

Yours faithfully,


(Smt. Sunita V. Langstieh)
Inspector of Income-tax,
O/o. Chief Commissioner of Income-tax,
Shillong.

Copy to :-

The Chief Commissioner of Income-tax, Aayakar Bhavan, M. G. Road,
Shillong- 783 001, for kind information.

(Smt. Sunita V. Langstieh)
Inspector of Income-tax,
O/o. Chief Commissioner of Income-tax,
Shillong.

Affested
W. D. S.
Advocate.

FROM: A. BALASUBRAMANIAN, CHAIRMAN(CBOT)
TO: ALL CADRE CONTROLLING DEPT.

ANNEXURE - F

ADDITIONAL GUIDELINES FOLLOWED IN THE ANNUAL GENERAL
TRANSFERS - 2001-2002.

1. Number of transfers arising on account of promotion will be minimum. In other words the officers on promotion will not be disturbed if they have not completed the normal tenure in the respective places. Transfers will be effected only if there are not enough vacancies in the higher cadre.
2. The officers having their spouses employed in the transferable Central Government posts will be posted together in a particular place, as far as possible.
3. Officers having their children studying in the final years of X, XII and degree classes will be given some weight while considering their representation for retention.
4. Other things being equal, officers whose performance has been found to be excellent will get priority in the posting of their choice locations. Officer whose performance has been poor will not be given important/choice posts.
5. Officers who have been working in the hardship areas will get their choice of posting on priority basis, as compared to others.
6. The request transfers will be considered only when the officers have put in at least two years service in the respective places unless it is warranted by extraordinary situations of medical problems.
7. Officers having serious health problems either for themselves or spouse or children will get priority, while compared to normal cases.

A. Balasubramanian

(A. Balasubramanian) 17/5/2001
Chairman, CBOT

ANNUAL
GENERAL

TRANSFERS

2001-2002

Copy of F.No.A-22U19/12/89-Ad.VII, dated. the 8th Feb. 1991,
Govt. of India, Ministry of Finance, Department of Revenue,
Central Board of Direct Taxes.

Subject: Transfer gridollues for Non-Gazetted
Staff.

To

All Chief Commissioners of Income Tax,
All Director's General of Income Tax,

Sir,

A copy of the revised and upto date transfer guidelines
for non-gazetted staff is enclosed. It is requested that
the contents of these guidelines may be brought to the notice
of all concerned.

Yours faithfully,

Sd/- O. M. L. Malhotra, Ad.VII

Revised Transfer guidelines (Non-gazetted Staff)

In sometime past it has been felt in the Board that it
would be useful to frame guidelines for transfer of Officers
and Staff by the Commissioner of Income Tax within their
charges. Wide variations in the transfer policy relating
to transfers within the charges have often been led to
discontent. Cadre Controlling Commissioners of Income Tax are
therefore requested to follow these guidelines as far as
possible in effecting transfers within their charges. They
are, of course at liberty to make modification to these
guidelines bearing in mind local conditions, after discussion
with the service associations concerned. It would, however,
be noted that no radical departure from the guidelines will
be available, except for sound reasons.

Guidelines for transfer of Staff:

Normally all Group 'D' officials and Group 'C' officials
upto and inclusive of Tax Assistant (including UDCs and
Ordinary Grade Stenographers) should not be transferred out
of place to place periodically. To this principle, the
following are the exceptions:

1. On Promotion, a person should be transferred from the
place he is working to another place. However, if a vacancy
in the grade/cadre in which the person has been promoted, is
available at the same station he may be adjusted/posted
against the vacancy, as far as possible, subject to admini-
strative constraints and exigencies of service. If the
promotion comes in the middle of the year, the transfer may
be effected with the next annual general transfers unless
the official finds it convenient to be transferred immediately.

No transfer need, however, be effected merely on
promotion to the grade of Tax Assistants".

2. A person may be transferred to another place at his own
request on grounds of hardship if this can be done without causing
equal hardship to some working at the place where he wants to
go.

3. A person may be transferred from one place to another
place on administrative grounds, namely, where there are
numerous complaints against him and there is some reason
to believe that the complaints were justified, or where
exigencies of service required his posting to another place.

As
Under

for rotation

2. Within bigger cities a person must be transferred from one circle to another once in three years. This rule ^{must} invariably be applied in respect of all officials who are working in Headquarters (particularly in the Confidential and Vigilance Sections of Commissioner's of Income Tax Office) or in administration this may be relaxed where it is considered absolutely essential in the interest of administration. While the Commissioner of Income Tax should bear in mind the need to provide opportunities for a person to acquire varied experience in the Department when making transfers, there will be no automatic rotation from field to non-field postings.

for / Supervisor

3. So far as Head Clerks and Supervisors Grade II and Grade I are concerned, they should be treated as one common category for the purpose of transfer. They should normally be transferred once in five years, from one place to another. These instructions ^{are} not considered mandatory and should be applied keeping in view of the local compulsions and in consultation with the Organisation. However, in the city charges of Bombay and Delhi as well as in other Big Cities they should be transferred from one circle to another for every three years. The principles which apply to Head Clerks and Supervisors will also apply to Inspectors.

Same Region

4. When transferring any official to any of the above categories from one place to another as far as possible they should be transferred with in the same region, University areas etc.,

Leftovers

5. In calculating the periods of three years or five years, care should be taken to ensure that an official is not transferred from one place to another in less than two years of his posting to that place. Further, persons who have less than two years left to retire from service should not be transferred under the above guidelines, except on compassionate or administrative grounds. In any case, where an official finds it convenient to seek a transfer a year earlier than he would be liable under the guidelines for educational or other reasons, he should mention it in the proforma and the request may be considered on merits to the extent possible.

6. Husband and Wife who will be retained on the same station to the extent possible.

*Arrested
Under
Advocate.*

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ANNEXURE R
F.No.C-18012/22/96-V&L
Government of India
Ministry of Finance
(Department of Revenue)
CENTRAL BOARD OF DIRECT TAXES



New Delhi, the 27th Dec., 1996

To

the Chief Commissioner of Income Tax,
Hyderabad

Subject: OA No.17/96 - Shri B. Shantikumar - OA.

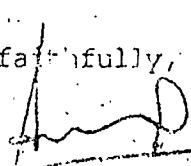
Sir,

Kindly refer to your office letter No.CON.CAT/141/96 dated 3.10.96. The matter has been examined in consultation with DOPT and the DOPT has now clarified the position as under:-

- i) Seniority gets depressed owing to inter-charge transfer,
- ii) Past service rendered in the relevant grade in the lending charge would, however, count towards fulfilment of eligibility conditions as prescribed in the relevant recruitment rules for promotion to the next higher grade, and
- iii) Seniors in the borrowing charge, who are not eligible, will be governed by the "note" mentioned in Column 12 of the Recruitment Rules.

In view of the above clarification from the DOPT and on the basis of available details on the file it seems that Shri B. Shantikumar was eligible for consideration for promotion to the post of ITO by the DPC held on 8.9.95, in case he is within the consideration zone at his present seniority i.e. after including his seniors who may not be eligible for promotion. His seniors, who are not short of requisite eligibility service by more than one year and have successfully completed their probation period, will also be required to be considered for promotion. It is, therefore, a case where a review of the DPC held on 8.9.95 is required to be held. Necessary action in this regard may kindly be taken and the CAT may also be informed of the latest position.

Yours faithfully,


(Sunil Verma)
Director (V&L)

Attested
by
Advocates.

24 FEB 2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ... GUWAHATI.

Filed by
(A. DES BOIS)

24/2/03
Sr. C. C. C.
C. A. T. Guwahati Bench

In the matter of -

O.A.No. 343/2002

Smt. Sunita V. Langstieh

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

AND

In the matter of -

Written Statement for and on behalf of the
Respondents No. 1, 2, 3, 4 & 5.

I, Kumud Ranjan Das, Addl. Commissioner of Income-tax(Vig.),
Guwahati, do hereby solemnly affirm and say as follows:-

01. That I am the Addl. Commissioner of Income-tax(Vig.), Guwahati and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in Written Statement the other contentions and statements may be deemed to have been denied. I am competent and authorised to file this Written Statement on behalf of the Respondents No. 1, 2, 3, 4 & 5.

02. That with regard to paras 1, 2 & 3 of the application the respondents beg to offer no comments.

03. That with regard to Para- 4.1 of the application the respondents beg to state that as regards records the respondents beg to offer no comment. But it is to be stated though the applicant passed the Departmental examination for ITOs in July, 1996 but the authority could not effect her promotion because of non-availability of required vacancies. Promotions to the post of ITOs are

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ordered whenever vacancies arose and that too on seniority basis. As the applicant was junior to her seniors, her promotion could not be effected.

04. That with regard to Para- 4.2, 4.3, 4.4, 4.5 and 4.6 of the application the respondents beg to state that as regards records the respondents beg to offer no comment.

05. That with regard to Para- 4.7 of the application the respondents beg to state that the husband of the Applicant belongs to **Group- A (IRS)** Service, whereas the applicant belongs to **Group-C** category. The post of Group-A is "**Gazetted**" and the post of Group- C is "**Non Gazetted**". Recruitment Rules, Seniority, Transfer Policy etc. in respect of **Group-A** **Gazetted** posts are *quite distinctly different* to those in respect of **Group- C Non-Gazetted** Cadre. While the "**seniority**" of **Group-A** officers is maintained on "**All India basis**" the "**seniority**" of officials belonging to **Group-C** posts is maintained **Charge - wise** (i.e. Cadre Controlling CCIT's Region/ Charge wise).

While the recruitment/ Selection to Group-A posts is made on All-India basis, but Group- C posts, it is made on Zone basis (i.e. North Eastern Region Zone). While the officers belonging to **Group-A** cadre are having All India transfer liability, the officials belonging to **Group-C** posts do not have any such all-India transfer liability. Group-C officials are liable to transfer only within the charge/ Region of the **Cadre-Controlling Chief Commissioner of Income-tax (CCIT)**. Transfer of Non-Gazetted staff from one charge to another charge is not normally permissible.

However, there is provision for inter-charge transfer of non-gazetted staff on really compassionate grounds, that too, only in certain specific grades of Group-C Non-gazetted cadre, where there is provision for direct recruitment, and subject to fulfillment & adherence to the specified sets of terms and conditions, as enumerated in the CBDT's circular No. A-22020/76/89 -Ad.VII dated 14-05-1990 [Annexure- I of the O.A.]

For the reason that details of the Applicant was furnished by her husband (a Group-A officer of the Department) in his Transfer Proforma at column- 6, it was wrong on the part of the Applicant to assume that her transfer would automatically follow along with the transfer of her husband. For one's transfer, one has to apply independently & separately to the concerned Competent Authority.

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For all- India transfer in the case of Group-A officers, CBDT is the competent authority. And for inter-charge transfer in the case of Group-C non-gazetted staff, the recipient Cadre Controlling CCIT is the competent authority to pass order of transfer or of absorption.

As per Rules, on Inter-charge transfer, to be eligible to seek inter-charge transfer, one has to put in at least 3- years service in the grade in which one seeks inter-charge transfer. And one who seeks inter-charge transfer is required to apply, along with his/ her bio-data (service particulars) and an "undertaking" (both in the prescribed forms), to the Cadre Controlling CCIT under whom he/ she is working, who will then, on being satisfied, take up the matter with his counterpart CCIT in the charge to which the official concerned seeks inter-charge transfer. The latter (recipient charge CCIT) will then examine the request of the applicant, subject to availability of the vacancy meant for direct recruits in the new charge and pass necessary orders for absorption of the official seeking inter-charge transfer, and his decision in the matter shall be final. And as per the said Rules, no request for re-transfer shall be entertained under any circumstances.

As the Applicant in the O.A. did not simultaneously apply for her inter-charge transfer to the concerned authority, at the relevant point of time, when her husband submitted his Transfer Proforma to the Board, the question of considering suo motto her case for inter-charge transfer to North Eastern Region charge did not arise at all.

06. That with regard to Para- 4.8 of the application the respondents beg to offer no comment.

07. That with regard to the statement made in Para- 4.9 of the application the respondents beg to state that the applicant's request as made out in her representation dated 26-05-1999 and 02-06-1999 for inter-charge transfer to North Eastern Region charge was defective, inasmuch as the representations did not contain her bio-data & "undertaking" as required under the extant rules. Moreover, the representation dated 26-05-1999 for inter-charge transfer ought to have been addressed to the Chief Commissioner of Income-tax, Pune charge under which charge she was working, and **NOT** to the Commissioner of Income-Tax, Shillong (Recipient charge). Despite defects as aforesaid, since her representation was forwarded by the CCIT, Pune on 09-06-1999 to the CCIT, Patna, the CCIT, Patna on the basis of a report dated 09-07-1999 (**Annexure-H** of the O.A.) from the **Commissioner of**

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→ Income-tax (CIT), Shillong (the then cadre Controlling Authority of North Eastern Region (NER) charge) conveyed by a letter dated 26-07-1999 (**Annexure-G of the O.A.**) to the CCIT, Pune the "No objection" for the inter-charge transfer of the applicant on the conditions that -

"She will be junior most in the ITI cadre of Shillong charge and her date of seniority will be reckoned from the date of absorption in the new charge. Smti. Sunita V. Langstieh will not be entitled to T.A./ D.A. for reporting at new place of posting in Shillong. If these conditions are acceptable to the applicant, her services may be placed at the disposal of the CIT, Shillong".

On receipt of the "No objection" from the CCIT, Patna in regard to the proposed inter-charge transfer & absorption of the applicant in NER charge, the CCIT, Pune by an order dated 02-08-1999 placed the services of the applicant at the disposal of the CIT, Shillong for final absorption on transfer, mentioning in the order dated 02-08-1999 (**Annexure - D of the O.A.**) that -

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"Her seniority in Shillong charge will be reckoned from the date she joins in Shillong charge. Her name will be placed below all Inspectors (whether permanent or temporary) in Shillong charge on the date of joining. The lien of Smti. Sunita V. Langstieh, Inspector in Pune charge will be suspended under FR-14. The services rendered by her in Pune charge will not be counted towards the minimum services, if any, prescribed for promotion to the higher grade. She will not be entitled to any transfer benefits, advance of pay, joining time etc. as the transfer is made at her own request".

The CCIT, Pune also directed the CIT, Nasik (under whose jurisdiction the applicant was posted) to obtain from the official (Smti. Langstieh) a "Declaration" agreeing to the conditions mentioned in the order dated 02-08-1999 and to keep pasted the said "Declaration" in the Service Book before issue of the release order. And, accordingly, the Applicant consciously submitted an "Undertaking" (Declaration) regarding acceptance of the conditions as mentioned in the aforesaid order.

On receipt of the CCIT, Pune's aforesaid order dated 02-08-1999 and on her release on 10-08-1999, the CIT, Shillong finally passed an order dated 11-08-1999 (**Annexure- E of the O.A.**) posting her (the Applicant in the

O.A.) in the same capacity (i.e. Inspector) in the O/o the Commissioner of Income-tax, Shillong and mentioning therein that she would be absorbed in the North Eastern Region (NER) charge against the direct recruitment quota and further specifying therein the same terms & conditions, as were spelt out in the CCIT, Pune's order dated 02-08-1999 (**Annexure- D of the O.A.**) The policy of posting of husband and wife in the same station in NER charge was thus taken care of.

While the husband of the Applicant, in pursuance of CBDT's order dated 24-04-1999, joined in NER charge (at Shillong) on 05-07-1999 on transfer from Pune charge, the Applicant (Smti. Sunita V. Langstieh) joined at Shillong on 11-08-1999, on inter-charge transfer from Pune charge, as per CIT, Shillong's order dated 11-08-1999. Hence, there was not much delay in processing & considering the case of the Applicant for her inter-charge transfer. The time taken in shuttling correspondences with different authorities in connection with her inter-charge transfer was very reasonable.

Posting of **husband & wife** in the same place/ station is **not binding**. Para- 2(h) of the CBDT's circular dated 14-05-1990 on Inter-charge transfer says that -

" **As far as possible**, efforts should be made to retain **husband & wife** in the same station".

In the instant case, the applicant (Smti. Langstieh) and her husband are governed by distinctly different sets of Transfer Policy/ guidelines, Recruitment rules etc. And, hence, the retention/ posting of **husband & wife** in the same station may not always & normally be possible and maintainable. Despite that, both of them (**husband & wife**) were posted to the same station in NER charge, on their transfer from Pune charge.

The **belief** of the Applicant (Smti. Langstieh) that on the basis of her representations dated 26-05-1999 & 02-06-1999 and the CCIT, Pune's letter dated 09-06-1999 (addressed to the CCIT, Patna), she would be transferred & posted in NER charge **on the ground of husband & wife's same place of posting** was based on wrong notion and had got no legitimate footings whatsoever, in view of distinctly different sets of rules/ transfer policies etc. Incidentally, it is mentioned here that inter-charge transfer also depends on the availability of vacancy (meant for direct recruit/ promotees, as the case may be) in the grade in the recipient charge.

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However, inter- charge transfer of the Applicant from Pune charge to NER charge ultimately materialised and was effected within a very reasonable time (within one month five days of her husband's transfer) and she was posted at Shillong where husband was posted. And she joined at Shillong on 11-08-1999.

08. That with regard to the statement made in Para- 4.10 of the application the respondents beg to state that the CCIT, Pune by an order dated 02-08-1999 (**Annexure- D of the O.A.**) placed the services of the Applicant at the disposal of the CIT, Shillong for her absorption in NER charge & for passing necessary orders of posting. In the said order dated 02-08-1999, the terms & conditions of inter-charge transfer were clearly spelt out and the Applicant was asked to furnish an "**Undertaking**" as to the acceptance of the conditions laid down in the said order. And the Applicant accordingly furnished an "**Undertaking**" consciously.

Annexure- C to the O.A. is not an order. It is a letter dated 09-06-1999 of the CCIT, Pune (addressed to the CCIT, Patna), under which the petition of the Applicant for inter-charge- transfer was forwarded to the CCIT, Patna, for consideration.. Hence, the question of indicating the terms & conditions in the said inter-official correspondence did not arise.

Copy of the "**Undertaking**" dated 09-06-1999 is annexed hereto and marked as **Annexure - RI**.

09. That with regard to Para- 4.11 & 4.12 of the application the respondents beg to offer no comment.

10. That with regard to Para- 4.13 of the application the respondents beg to state that Clause - 2 (f), 2 (g), 2 (h) and 3 of the CBDT's circular dated 14-05-1990 on Inter-charge transfer are quoted/ mentioned below :-

Clause- 2 (f) :- The service rendered in the old charge will not be counted in the new charge for the purpose of Seniority. He/ She will be placed at the **bottom of the list** of employees of the concerned cadre in the **new charge**. Seniority in the cadre in the charge to which person is transferred will start from the day that person reports for duty in that charge. However, he/she will not rank senior to any official who belongs to a batch selected on merit whose inter-se seniority is not regulated by the date of joining.

Clause- 2 (g) :- On transfer, the transferee will forfeit all claims for promotion/ confirmation in the old charge. He/ She will be eligible for promotion/ confirmation only in the new charge in accordance with the "**seniority**" allotted to him/ her on transfer.

Clause- 2 (h) :- As far as possible, efforts should be made to retain **husband and wife** at the same station.

Clause- 3 :- Heads of the Department shall exercise powers delegated to them in the matter of effecting inter-charge transfers on compassionate grounds in accordance with the above terms & conditions. If in any case, relaxation of these terms & conditions becomes necessary, prior approval of the Board should invariably be obtained.

Unless there is any representation, the Respondent can not suo motto invoke the provisions as contained in Clause- 2(h), as because the Applicant and her husband belong to different cadres (Non-gazetted Group-C and Gazetted Group-A) which are governed by distinctly different sets of rules & guidelines (such as, Recruitment Rules, Transfer Policy etc.) However, when the Applicant applied for inter-charge transfer to NER charge, her case was duly considered and her inter-charge transfer was effected, and by invoking the clause- 2(h) of the CBDT's circular dated 14-05-1990, she was posted to the same station where her husband was posted (Shillong).

As regard power of relaxation, it is vested with the Board. The applicant fulfilled the eligibility conditions for her inter-charge transfer, such as - (i) she is a direct recruit and belongs to a grade (Inspector) where there is provision for direct recruitment, and (ii) she had completed the required three- years' service in the grade of Inspector in Pune charge (old charge) for being eligible to seek inter-charge transfer. Hence, the question of grant of relaxation to the Applicant, is so far as the aforesaid **two** criteria are concerned, did not arise.

Relaxation cannot be granted to all terms & conditions. Relaxation of the clause- 2(i) of the Board's circular dated 14-05-1990 (regarding grant of T.A./ D.A., joining time etc.) could be granted, as such relaxation would not, in any way, affect others, in the grade, in the new charge. After transfer, no relaxation can be granted. But relaxation of the terms & conditions as spelt out in clause 2(f) & 2(g) of the Board's circular dated 14-05-1990 (regarding Seniority,

Promotion/ Confirmation etc.) cannot be granted by the Board, as such relaxation would affect the inter-se seniority of others (i.e. existing officials) in the grade, in the new charge and would invite counter objections from others in the grade and bring in unnecessary litigation.

The Applicant knew very well that her "seniority" in the grade of Inspector on inter-charge transfer to the new charge would get depressed. Had she applied for grant of relaxation of the clause- 2(f) and 2(g) at the time of her representation for inter-charge transfer, her transfer to NER charge would have never materialised. Her prayer now for grant of seniority in the grade of Inspector in the NER charge with reference to her date of her initial appointment on 27-01-1993 as Inspector in Pune charge (old charge) in relaxation of the clause- 2(f) of the Board's circular dated 14-05-1990), and that too, after her inter-charge transfer, is just like "*putting the cart before the horse*".

Incidentally, it is mentioned here that the inter-charge transfer of the applicant was made at her own request and **NOT** in **public interest**. And, hence, the question of grant of "Seniority" in the case of the absorbee applicant in the new charge, with reference to her initial appointment as Inspector on 27-01-1993 in Pune charge, does not arise.

II. That with regard to the statement made in Paras- 4.14 and 4.15 of the application the respondents beg to state that the Applicant made a representation dated 30-08-1999 (addressed to the Chairman, Central Board of Direct Taxes (CBDT) for restoration/ grant of "Seniority" in the cadre of Inspector in new charge, in relaxation of the terms & conditions as mentioned in the Board's aforesaid circular dated 14-05-1990. She made the representation through proper channel. At that point of time, CIT, Shillong was the cadre controlling authority. The CCIT's office, Guwahati (the new Cadre Controlling Authority) started functioning from February, 2000.

Ignorance of rules & guidelines on Inter-charge transfer (Board's circular dated 14-05-1990), on the part of the Applicant, cannot be an excuse. As the rules on inter-charge stand, every time the Applicant seeks interchange transfer along with transfer of her husband, she will face the same consequences in respect of her seniority (depression in seniority).

It is not at all factually correct that her representation dated 30-08-1999 (addressed to the Board Chairman) was **not** disposed of/ replied to by the Respondents. Her representation dated 01-11-2000 (under which the representation dated 30-08-1999 was also enclosed) and dated 28-02-2001 were

disposed of and replied to by the CCIT, Guwahati on 21-06-2001 (vide Annexure - M of the O.A.). But her representation dated 30-08-1999, addressed to the Chairman, CBDT, was not forwarded to the Board, as her representation had got no merit, and this fact was also intimated to the applicant, through a letter dated 21-06-2001 to the CIT, Shillong (vide Annexure - M of the O.A.).

12. That with regard to the statement made in Para- 4.16 of the application the respondents beg to state that the Applicant's representation dated 27-11-2000 (Annexure- I of the O.A.) was examined. Her seniority was correctly placed at the bottom of all officials in the grade of Inspector as on the date of her joining on 11-08-1999 in NER charge, on inter-charge transfer from Pune Region, in accordance with the CBDT's circular dated 14-05-1990 and the CCIT, Pune's and CIT, Shillong's orders dated 02-08-1999 and 11-08-1999 respectively. However, the mistake in the " date of continuos service in the present grade" (in column 8 of the Gradation List as on 01-10-1999), as pointed out by the Applicant by her representation dated 27-11-2000, was rectified and shown correctly in the relevant column in the Gradation List as on 01-10-2000, published subsequently.

13. That with regard to the statement made in Para- 4.17 of the application the respondents beg to state that the applicant misquoted the date of her reminder representation as 28-12-2001. It may be dated 28-02-2001 which was disposed of by the Respondent No. 4 on 21-06-2001 (vide Annexure - M of the O.A.).

14. That with regard to the statement made in Para- 4.18 of the application the respondents beg to state that the point raised by the Applicant is very flimsy. It is not necessary that all communications should be issued under the signature of the CCIT. While disposing her representation dated 01-11-2000,30-08-1999 (addressed to the Chairman, CBDT) and 28-02-2001 for grant of "**seniority**" and "**Promotion**" to the post of ITO, the Addl. CIT (Headquarters) of the CCIT's office, Guwahati, acting for and on behalf of the CCIT, Guwahati, issued the letter dated 21-06-2001 to the CIT, Shillong intimating therein that the requests of the Applicant (Smti. Langstieh) could not be acceded to and also that, in view of the reasons and facts, as detailed in the letter dated 21-06-2001, her representation dated 30-08-1999 (addressed to the Chairman, CBDT) could not be forwarded. The letter was issued with the approval of the CCIT, Guwahati.

There was nothing wrong in issuance of the letter dated 21-06-2001 under the signature of the Addl. CIT (Headquarters) of the CCIT's office, Guwahati. Incidentally it is mentioned here that the Govt. Of India/ CBDT

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issues all letters and correspondence under the signature of a Deputy Secretary or Under Secretary.

15. That with regard to the statement made in Para- 4.19 of the application the respondents beg to state that as regards the contention of the Applicant that " the Respondents did not adhere to the Departmental Rule for sending the Representation", it is mentioned here that the CCIT (Respondent No. 4) cannot take the role of a " Post Office" and act as a mere " forwarding agent" or a "Rubber Stamp", and forward one's representation on any matter (addressed to any higher authority), without proper examination as regard the merit of the representation. Merely because the Applicant addressed her representation to the higher authority (CBDT Chairman), the same could not be forwarded without examining the issues raised therein. When an issue can be solved/ settled/clarified at local level, in accordance with the existing instructions/ circulars/ rules, such issue cannot be referred to the higher authorities. Since the points / issues raised by Applicant in her representation dated 30-08-1999, addressed to the Chairman, CBDT(regarding restoration/ grant of seniority and Promotion to the next higher grade) were duly clarified with reference to the extant rules as enunciated in CBDT's circular dated 14-05-90 by a letter dated 21-06-2001, her representation dated 30-08-1999 was not forwarded to the Board.

As regard the Applicant's representations dated 02-07-2001 and 08-01-2002 addressed to the Member (P), CBDT, and the CBDT's (Joint Secretary, CBDT)unofficial advice/ suggestion to the husband of the Applicant, in the matter of Applicant's seniority and promotion etc., it is mentioned here that the Respondent No. 4 is not aware of the aforesaid representations of the Applicant. The said representations were purportedly sent direct to the Member (P), CBDT, New Delhi, by the Applicant, by passing the Respondent No. 4. And hence, no comment on the said representations and advice claimed to have made by the Joint Secretary, CBDT, New Delhi.

16. That with regard to Para- 4.20 of the application the respondents beg to state that the statement is similar to that of Para-5 above.

17. That with regard to the statement made in Para- 4.21 of the application the respondents beg to state that the statements are similar to that of paras 7 & 10 above.

18. That with regard to statement made in Para- 4.22 of the application the respondents beg to state that the Applicant applied for inter-charge transfer on 26-05-1999. Her application was forwarded by the

CCIT, Pune to the CCIT, Patna on 09-06-1999, with a copy thereof endorsed to the applicant. The applicant had been on Earned Leave with effect from 30-06-1999 and accompanied her husband to Shillong where her husband (a Group-A officer of the Department) reported for duty on 05-07-1999. She was out of her Headquarters " Nasik" for quite a long time.

The letter/ correspondence dated 09-07-1999 (referred to in the O.A.) was an internal official correspondence from the CIT, Shillong to the CCIT, Patna (vide Annexure-H of the O.A.), under which the CIT, Shillong conveyed " **No objection**" to the absorption of the applicant in NER charge, spelling out therein the condition that -

" She shall not be ranked senior to any official who belongs to a batch available/ selected during the recruitment year".

The correspondence dated 26-07-1999, as referred to in the O.A. (vide Annexure- G of the O.A.) was also an internal communication between the CCIT, Patna and the CCIT, Pune , under which the CCIT, Patna (on receipt of the CIT, Shillong's aforesaid letter dated 09-07-1999) conveyed the " **No objection**" to the CCIT, Pune, regarding the inter-charge transfer of the applicant from Pune charge to Shillong charge, and in the said letter dated 26-07-1999, the terms & conditions regarding seniority, TA/ DA etc. were also mentioned, besides specifying therein the following requirement:-

" If these conditions are acceptable to the applicant, her services may be placed at the disposal of CIT, Shillong."

Without applying for the certified copies of the aforesaid two official internal communications dated 09-07-1999 and 26-07-1999 (between the two authorities), how the applicant could managed to obtain copies of those two internal correspondences is a matter to be looked into departmentally. However, since the applicant managed the copies of those two letters, she was well aware of the terms & conditions of inter-charge transfer, long before.

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Clause- 5 of the CBDT's circular dated 14-05-1990, on inter-charge transfer, clearly states, inter-alia, that-

“ A written “ ***Undertaking***” to abide by the required terms & conditions should be obtained from the employees seeking inter-charge transfer, in the enclosed proforma before the transfers are actually effected.”

And the proforma for the “ ***Undertaking/ Declaration***” is as under-

“ I hereby undertake to abide by the terms & conditions of the Board's letter F. No. A-22020/76/89-Ad.VII dated 14-05-1990, in the event of my transfer to _____

(i) My seniority in the _____ charge will start from the date of my reporting for duty in the charge

(ii) I am willing for posting anywhere in _____ charge.

(iii) I shall not claim any TA, Joining time, Advance of pay etc.

Name _____

Designation _____ ”

In the CCIT, Pune's order dated 02-08-1999 and the CIT, Shillong's order 11-08-1999, the terms & conditions regarding the inter-charge transfer were clearly spelt out, and copies of both the orders were also endorsed to the applicant, and also to the CIT, Nasik under whom the applicant was working in Pune charge.

The CCIT, Pune, in his endorsement (of the order dated 02-08-1999) to the CIT, Nasik, directed him to obtain from the applicant -

A “declaration” agreeing to the conditions mentioned in the order dated 02-08-1999 and to keep pasted the said declaration in the Service Book of the official before issue of release order.

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And, accordingly, the applicant consciously filed the required declaration/ undertaking abiding by the terms & conditions of the Board's circular dated 14-05-1990 (as spelt out in the aforesaid order dated 02-08-1999 of the CCIT, Pune). The applicant also admitted in the O.A. that she filed the declaration / undertaking.

The applicant was duly apprised of the terms & conditions of the inter-charge transfer, especially regarding her seniority in the new charge and non-entitlement of TA/DA etc. Now she cannot say that she was not duly apprised that she would lose seniority, and allege that the Respondents had acted illegally. She is trying to misguide the Hon'ble CAT by misrepresenting and giving false information.

As regard the " **Next Below Rule**" (below FR-22), as referred to in the O.A., it is mentioned that it is not a rule of any independent application. It sets out only the guiding principles for the working of the rule/ for applications in any case in which it is proposed to " **regulate officiating pay**" . The working rule is to be taken to express " **convention**" which is commonly known as " **Next Below Rule**" . This rule deals with " **Proforma Promotion**" and is applicable in case of " **deputation**" under the Government outside the regular line of service. This rule is not at all applicable in the case of the applicant.

19. That with regard to the statement made in Para- 4.23 of the application the respondents beg to state that the CBDT's circulars dated 08-02-1991 (guideline regarding transfers of Non-gazetted staff) and dated 17-05-2001 (additional guidelines), as referred to in the O.A., inter-alia, state as under -

Officers having their spouses employed in the " **transferable**" Central Govt. Posts will be posted together in a particular place, as far as possible. That is, **husband and wife** will be retained in the same station to the extent possible.

As the applicant and her husband belong to two different cadres (Group-C Non-gazetted and Group-A, Gazetted) and are governed by distinctly different Transfer policies, the policy of " Transfer and Posting of **Husband & wife** in a same/ single station" in their cases can not be normally implemented. While the Group-A Gazetted officers are having all-India transfer liability, non-gazetted Group-C & D staff are entitled to transfer & posting only " **within the charge/Region**" and not outside the charge Region.

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However, when the applicant applied for inter-charge transfer to NER charge, her transfer to Shillong, where her husband was posted, was effected and thus the policy of posting **husband & wife** in the same station was implemented in the case of the applicant & her husband.

In this regard, details are mentioned against para 5 above.

20. That with regard to the statement made in para Para- 4.24 of the application the respondents beg to state that the all categories of Central Government employees are not entitled to get the special incentive on posting to N. E. Region. As per extant rules, and as per the Apex Court's Judgment dated 20-09-1994 (in Civil Appeal No. 3251 of 1993 with Civil Appeal Nos. 6163-81 of 1994), only officers not belonging to N. E. Region, having all-India transfer liability in the truest sense (i.e. Whose selection/ recruitment/ promotion are made on the basis of all-India common seniority), on their posting to N. E. Region on transfer from outside the N.E.Region, are entitled to Special Duty Allowance (SDA). Besides SDA, some other facilities such as tenure posting of 2-3 years, concession on children education allowance, LTC (Hometown) and double House Rent Allowance (HRA), if the families are kept in the old station, are also available. But there is no provision for grant of "**weight age in promotion**", as claimed by the applicant in her O.A.

In the Income-tax Department, only Group-A Gazetted officers (who are not residents of NER) and who have all-India transfer liability, on their posting to NER on transfer from outside the NER, are entitled to the special incentives. Group-B Gazetted officers (ITOs), Group-C & D non-gazetted staff are not entitled to SDA as they do not have all-India transfer liability. (Reference- Supreme Court's judgment dated 20-09-1994).

The All India Cadre of Income Tax Department begins at the level of Asstt. Commissioner of Income-tax. This is a Group-'A' post which is filled 50% through promotion of Income-tax Officers and 50% by direct recruitment through Union Public Service Commission. The level of Asstt. Commissioner of Income-tax is the entry grade for Indian Revenue Service. There is no all India Cadre below the level of Asstt. Commissioner of Income-tax. All Income-tax Officers and Income-tax Inspectors are borne on the cadre strength of the concerned region/charge, and do not have the status of an All India cadre. Their liability to serve is normally limited to region/charge in which they are appointed and seniority also maintained region/charge wise basis. One third of the posts of Income-tax Inspectors are filled through direct recruitment while 2/3rd are filled through promotion

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from lower levels. The recruitment of Income-tax Inspectors is made through Staff Selection Commission and merit list is prepared on regional basis depending on the options exercised by the candidates. At the recruitment stage itself, it is clear that Inspectors are recruited for regions/charges and do not have all India character. It is well established policy of the Government to recruit lower cadres on region/charge wise basis and to have an All India cadre only at the level of Asstt. Commissioner of Income-tax.

Hence, the claim and prayer of the applicant, having no merit whatsoever, deserve no consideration and are liable to be rejected.

21. That with regard to the statement made in Para- 4.25 of the application the respondents beg to state that the rules on inter-charge transfer are not at all irrelevant, and no irrelevant rules were quoted or taken into account while fixing her inter-se seniority in the grade of Inspector in the new charge/ Region (i.e. NER). The rules in the matter of seniority is crystal clear, without any ambiguity whatsoever. One has to lose and forgo seniority on inter-charge transfer. The applicant, after inter-charge transfer, cannot sit/ take the place over the existing employees in the grade, in the new charge.

In the case of the applicant, there was no deviation or departure from the existing rules as regard maintenance of her seniority in NER charge. Depression in seniority is not a punishment within the meaning of CCS (CCA) Rules, 1965. The applicant has no knowledge of the CCS(CCA)Rules, 1965. Nowhere in the CCS(CCA) Rules, it is mentioned that depression in seniority is a major punishment.

22. That with regard to the statement made in Para- 4.26 of the application the respondents beg to state that the instructions dated 04.11.1992 relates to de-linking seniority from confirmation whereas instructions dated 14.05.1990 deals with inter-charge transfer from one Cadre Controlling Authority to another Cadre Controlling Authority in a situation where seniority in respect of Group-'C' post is maintained charge wise. The guidelines in respect of determination of seniority are not at all violative of the **General Principles of Seniority** in respect of the " *absorbees*"

23. That with regard to the statement made in Para- 4.27 of the application the respondents beg to state that the clarification by the V&L Section of the CBDT vide letter dated 27.12.1996 refer to in the OA pertains to an individual case which were issued by them after consultation with DOP&T. Even in this case it was clarified that " seniority gets depressed

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AO

owing to inter-charge transfer". It was, however, clarified that the service rendered in the lending charge would count towards fulfillment of eligibility conditions. It, therefore, implied that service rendered in the old charge was not to be taken into consideration while fixing seniority in the new charge. As such, the case referred to in the OA does not support the applicant's contention.

24. That with regard to the statement made in Para- 4.28 of the application the respondents beg to state that no specific case laws/ judgments by the Apex Court/ CAT, in the matter of seniority in respect of the situation as that of the applicant, have been cited by the applicant in her instant O.A. Hence, no comment.

25. That with regard to the statement made in Para- 4.29 of the application the respondents beg to state that the situation as regard vacancy position and promotions from feeder grades may differ from charge to charge. It may be a fact that juniors of the applicant in Pune charge might have been promoted to the post of ITO. It entails that had the applicant been in Pune charge, she would have got her promotion to the post of ITO there, at her seniority as was allotted to her in that charge. But, for that, she can not claim "**that seniority**" in NER charge, and promotion in NER charge on the basis of her seniority in Pune charge.

It is not at all factually correct that 1995 - batch of Inspectors of Shillong charge (i.e. NER charge) got their promotion to the post of ITO. Inspectors of NER charge/ Region, upto the 1993- batch (that too, not all of 1993- batch) have so far got their promotion to the post of ITO . By giving false and incorrect information, the applicant is trying to misguide the Hon'ble CAT.

As per CBDT's circular dated 27-12-1996 (Annexure - R of the O.A.), past service rendered by the applicant in the grade of Inspector in the lending charge (Pune charge) was also taken into account towards fulfillment of eligibility conditions (i.e. 3- years qualifying service in the feeder grade) for promotion to the next higher grade i.e. ITO, in the new charge i.e. NER charge.

As the name of the applicant, at her present seniority, as allotted in NER charge as on the date of her joining (11-08-1999) in NER charge, came within the normal zone of consideration, her name was duly included in the lists, along with her seniors, for consideration for promotion to the post

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of ITO by the DPCs held on 18-06-2001 and 20-11-2001 for the Recruitment Years 2000-01 and 2001-02 respectively. But, according to the vacancies available in the post of ITO, for the Recruitment years 2000-01 & 2001-02, promotions could be made upto the 1993- batch of Inspectors (that too, not all Inspectors of 1993-batch).

Even though, the applicant was an entrant (direct recruitee) of 1993 in Pune charge (old charge), she was treated as an entrant of 1999 in NER charge (new charge), as per extant rules, and her seniority in NER charge was accordingly placed at the bottom as on the date of her joining in the new charge. Allotment of her seniority in NER charge was correctly & rightly done. Many of the qualified & eligible Inspectors, senior to the applicant could not yet be promoted as ITO, for want of vacancies. Fulfillment of eligibility criteria i.e. Passing of the Departmental examination for ITO and completion of 3-years of qualifying service in the feeder grade i.e. Inspector (1- year service out of 3- years relaxed by the President of India this time only as a one time measure) does not in itself confer right to a claim for promotion to the post of ITO.

In view of the above, the applicant at her present seniority in NER charge could not be promoted to the post of ITO. Seniority in the cadre of ITO (on promotion from Inspector) is maintained on all-India basis, only for the purpose of next promotion to the Group-A post of ACIT. But, the ITOs do not have all- India transfer liability. ITOs can be transferred from one charge/ Region to another charge/ Region along with the posts, provided the lending charge agrees to surrender such posts of ITOs (out of allocated sanctioned strength), in favour of the new charge (recipient charge), to facilitate the transfer of the intending incumbents. The applicant has misguided the Hon'ble CAT that the ITOs are having all-India transfer liability.

26. That with regard to the statement made in Para- 5.1 of the application, the respondents beg to state that no irrelevant provisions were invoked by the Respondent No. 4 in fixing the seniority of the applicant in NER charge, as alleged by the applicant.

27. That with regard to the statement made in Para- 5.2 of the application, the respondents beg to state that the Respondent No. 4 did not act anything illegally in the matter of fixing seniority of the applicant, as alleged by her. Her past service rendered in Pune charge can not, in any way, be counted and taken into consideration for the purpose seniority in the NER charge. Her claim for seniority is unjust, unwise & unreasonable and hence, not

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tenable & is therefore, liable to rejection. Her allegations against the Respondents are also baseless and unfounded and hence, are not tenable. The matter is explained in detail in the foregoing paras.

28. That with regard to the statement made in Paras 5.3 & 5.4 of the application the respondents beg to state that the applicant's representations for grant of seniority in the grade of Inspector and for promotion to the post of ITO were disposed of by the Respondent No. 4 on 21-06-2001 and the fate of her representations was duly communicated to her by the CIT, Shillong on 29-06-2001 (vide Annexure- M of the O.A.).

29. That with regard to the statement made in Para- 5.5 of the application the respondents beg to state that as a policy decision, a non-gazetted official on inter-charge transfer has to lose and forgo seniority. And the applicant consciously furnished an undertaking to that effect. Losing of seniority on inter-charge transfer is not a punishment either minor or major, within the meaning of Rule-II of the CCS (CCA) Rules, 1965 & hence, the question of giving the opportunity of being heard to the applicant, did not arise, and that too when the applicant was fully aware of the Govt. Policy / rule on inter-charge transfer. The applicant misquoted the Rule-II of the CCS (CCA) Rules in this context.

30. That with regard to the statement made in Para- 5.6 of the application the respondents beg to state that the action of the Respondent No. 4 was just and proper, and was in consonance with the policy/ rules & regulations framed by the Govt., and hence, the claim and prayer of the applicant are liable to rejection.

31. That with regard to the statement made in Paras- 6 & 7 of the application the respondents beg to offer no comment.

32. That with regard to the statement made in Para- 8 of the application the respondents beg to state that the O.A. filed by the applicant has got no merit whatsoever and is, therefore, liable to be dismissed.

33. That with regard to the statement made in Para- 8.1 of the application the respondents beg to state that the applicant is not entitled to relief in the matter of seniority in the grade & promotion to higher grade. Her seniority in NER charge can not be refixed/ recast with reference to the date of her initial appointment on 27-01-1993 in Pune charge, and she can not be

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placed above the existing employees in the grade, in contravention of the CBDT's circular dated 14-05-1990, and she cannot be promoted to the post of ITO on the basis of recasted seniority (as suggested by the applicant) which will be detrimental to the interest of others.

34. That with regard to the statement made in Para- 8.2 of the application the respondents beg to state that the provisions contained in clause-2(h) of the CBDT's circular dated 14-05-1990 was invoked and accordingly the applicant on her inter-charge transfer was posted to the same station (Shillong) where her husband was posted.

As regard provision of relaxation as contained in clause-3 of the CBDT's circular dated 14-05-1990, the matter has been duly explained against para-10 above.

35. That with regard to the statement made in Para- 8.3 of the application the respondents beg to state that the action of the Respondent No. 4 was neither illegal nor arbitrary. The reply given by the Respondent No. 4 under letter dated 21-06-2001 clarifying the points/ issues raised by the applicant in her representations (including the representation dated 30-08-1999 addressed to the Chairman, CBDT,) was very much in accordance with the rules, procedure & policy as laid down by the Govt.

36. That with regard to Paras- 8.3(i) & 8.4 of the application the respondents beg to offer no comments.

37. That with regard to the statement made in Para 9 of the application the respondents beg to state that the applicant is not entitled to any interim relief in the matter of her seniority in the grade or next promotion. Her prayer is liable to be dismissed.

Verification

VERIFICATION

I, Kumud Ranjan Das, presently working as Additional Commissioner of Income-tax(Vigilance), Guwahati, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statement made in paras

are true to my knowledge and belief and those made in paras

being matter of records, are true to my information derived therefrom and the rests are my jumble submission before the Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this twenty-eighth day of January, 2003 at Guwahati.



Kumud Ranjan Das.

DECLARANT.

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Annexure - R 1

ANNEXURE
SERVICE PARTICULARS

1. Name of the Government Servant : SMT: SUNITA V. LANGSTIEH
2. Native place of the Government Servant : AGRA
3. Date of birth : 13-11-69
4. Educational Qualifications : B.Sc.
5. Date of joining Income-tax Department : 27-1-93
6. Period of service in different grades with dates : INSPECTOR SINCE
27-1-93
7. Whether Permanent/Temporary : PERMANENT
8. Whether Departmental Promotee or Direct Recruit in the present grade : DIRECT RECRUIT
9. Departmental Examinations passed with year(s) of passing : INSPECTOR'S EXAM-93
ITO'S EXAM -96
10. Reasons for transfer : HUSBAND'S TRANSFER
11. Category : -

UNDERTAKING/DECLARATION

I hereby undertake to abide by the terms and conditions of the Board's letter F.NO.A-22020/76/89-Ad.VII dated 14.05.90 in the event of my transfer to CIT-NER CHARGE.....

01. My seniority in the CIT-NER charge will start from the date of my reporting for duty in the charge.
02. I am willing for posting anywhere in CIT-NER..... charge.
03. I shall not claim any T.A, joining time, advance of pay etc.

Dt : 9-6-99.

SIGNATURE : 
NAME : SUNITA V. LANGSTIEH
DESIGNATION : INSPECTOR
D.D.O : -

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24/12/03

bm

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Filed by

the applicant through
Alsha Das, Esq.

Advocate
22/12/2003

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 343 of 2002

Sunita V Lengstieh

..... Applicant.

--VS--

Union of India & Ors.

..... Respondents

IN THE MATTER OF

An affidavit highlighting additional statement of fact with a prayer to treat the same to be a part of the OA.

The humble petition on behalf of the applicant above named:-

MOST RESPECTFULLY SHEWETH

1. That the applicant above named seeking relief towards counting her past service towards eligibility for promotion to the post of Income Tax Officer, has preferred the above noted OA before the Hon'ble Tribunal. In the said OA the applicant has made the following prayer;

"8.1. To direct the Respondents to recast the seniority of the Applicant taking into consideration her service from the date of appointment and to promote her to the Next High

Grade i.e. Income Tax Officer, taking into consideration the revised/ recasted seniority or alternatively her seniority may be refixed as per her earlier seniority in Pune Region.

8.2. To direct the Respondents being a Unique case to invoke the relaxing provisions contained in 2(h) and 3 of the Office Memorandum dated 14.5.90.

8.3. To set aside and quash the order dated 18/21.6.2001 treating the same to be illegal and arbitrary.

2. That the applicant states that the clause 2(g) of the said OM date 14.5.90 (Annexure-I) indicates forfeiture of future plane relating to promotion etc. at the time of transfer on own request. It has also been clarified that the person transferred on his own request will be eligible for promotion /confirmation with the seniority allotted to him on transfer. The applicant although has made a categorical prayer for counting of her past service but has made any categorical challenge to the particular clause and hence this affidavit praying for addition of prayer for quashing the clause 2(g) of Annexure-I OM dated 14.5.1990 and its subsequent clarifications treating same to be unconstitutional and violative of Article 14 and 16 of the Constitution of India.

3. That the applicant during filing of the OA has not incorporated the above prayer due to inadvertence and to

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that effect this affidavit has been filed praying for addition of the aforementioned prayer with a further prayer to treat this affidavit to be a part of this OA.

4. That this affidavit has been filed bonafide and to secure ends of justice.

In the premises aforesaid it is most respectfully prayed that Your Lordship would be graciously pleased to allow the applicant to challenge to the clause 2(g) of the OM dated 14.5.90 and its subsequent clarifications issued from time to time with a further prayer to treat this affidavit to be a part of the OA and/or pass any such order/orders as may be deemed fit and proper considering the facts and circumstances of the case.

And for this act of kindness the applicant as in duty bound shall ever pray.

AFFIDAVIT

I Smt Sunita V Langstieh, w/o Sri John V.D. Langstieh, working as Inspector of Income Tax in the Office of the Chief Commissioner of Income Tax, Aayakar Bhawan, T.S.S. Road, Shillong, Meghalaya, (Applicant in OA No.343), do hereby solemnly affirm and state as follows;

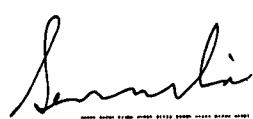
1. That I am the petitioner and I am acquainted with the facts and circumstances of the case. I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraphs 1 to 4 are true to my knowledge ; those made in paragraphs _____ being matters of records are true to my information derived therefrom. Annexures are true copies of the originals and grounds urged are as per the legal advice.

And I sign this affidavit on this the 18 th day of ~~December~~ of 2003.

Identified by me :

Usha Das,
Advocate



Deponent

Solemnly affirmed and
declared by the deponent
who is identified by Ms Usha
Das, Advocate on 18th day of
Dec, 2003

