

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

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O.A/T.A No. 158/2002

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SECTION OFFICER (Judl.)

FROM NO. 4
(SEE RULE 42)

SENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH;

ORDER SHEET

Original Application No. 158 /2002

Mise Petition No. /

Contempt Petition No. /

Review Application No. /

Applicants. Chandra Kumar Das

-Vs-

Respondant(s) 6012 ars.

Advocate for the Applicant(s) Mu Mr Chanda & Mrs N.D Goswami

Advocate for the Respondant(s) CASC.

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------------|---------|--|
| | 17.5.02 | Present : Hon'ble Mr. K.K. Sharma, Administrative Member. |
| C. 7G574598 13/5/2002 | | The application has been filed against the order No.360009/LC-1/XXXI-III/6 dated 14.5.2002 transferring the applicant from Guwahati to Shillong. The learned counsel for the applicant prays for an interim order. After hearing learned counsel for the applicant as well as Mr. B.C. Pathak, learned Addl. C.G.S.C. for the Respondents the application is disposed of at the admission stage. |
| 1) 4 copies filed only. | | The applicant joined as LDC in the Defence Estates Office and after normal promotions he is holding the post of Office Superintendent. The applicant is due to retire in February, 2004. |

W.Song
17/5/02

Contd/-

✓
It is stated that the applicant has four children studying in classes seven to eleven in Guwahati and the transfer has been made during the academic session.

Mr. M. Chanda, learned counsel for the applicant strenuously argued that as per recommendation of the 5th Pay commission the officer due for superannuation should be considered for posting to choice station.

The application is filed today. The applicant has not availed of normal remedies available to him. I feel that ends of justice will be met if a direction is given to the applicant to file a representation to the respondents giving reasons for his continuation in Guwahati. The applicant may file representation within two weeks from today. The respondents are directed to consider the representation and dispose of the same within three months from the receipt of the order.

The application is disposed of as above. Till the disposal of the representation the applicant shall not be disturbed from the present posting. There shall, however, be no order as to costs.

ReD
Bcp

23/5

K L Charn

Member

mb

17 MAY 2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

4
Filed by the applicant
through
Sri Chandra Das
Adv
Dated 17.5.02

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

Title of the case : O.A. No. 158 /2002

Sri Chandra Kamal Das: Applicant

- Versus -

Union of India & Others: Respondents.

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Filed by

Date : 17.5.2002

Manik Chandra
Advocate

Chandra Kamal Das

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

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

O.A. No. /2002

BETWEEN

Sri Chandra Kamal Das
Son of Late K.K. Das
Working as Office Superintendent
Office of the Defence Estate Officer,
Guwahati Circle,
P.O. Silpukhuri,
Guwahati-781003

.....Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi.
2. The Director
Defence Estates
Eastern Command
B Camac Street (7th Floor)
Calcutta-700017
3. The Director General
Defence Estates, West Block 4,
R.K.Puram, New Delhi-110066.

Chandra Kamal Das

4. The Defence Estate Officer,
Guwahati Circle,
Guwahati.

5. Mr. K.P. Das
Office Superintendent
Office of the Defence Estate Officer,
Tezpur, Assam.

.....Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the impugned transfer and posting Order NO 360009/LC1/XXXIII/6 dated 14th May, 2002 issued by the respondent no.2 whereby the applicant is sought to be transferred from DEO, Guwahati to JD, DE, Shillong in total violation of the professed norm of transfer and posting that too, when the applicant is on the verge of the retirement on superannuation and in the middle of the academic session of his children.

2. **Jurisdiction of the Tribunal.**

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

3. **Limitation.**

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. **Facts of the case.**

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

Chandra Prasad Dg

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4.2 That your applicant joined the post of Lower Division Clerk under the respondents in the year 1964. Thereafter, was promoted to the post of Upper Division Clerk in the year 1974 and was further promoted to the post of Office Superintendent in the year 1984 while he was posted at Shillong. The applicant was transferred and posted to different places during his service period since 1964 and carried out all the orders of transfer and posting being a loyal Government employee. The detail particulars of the order of transfers and postings of the applicant in different places during his service career.

4.3 That the applicant has now completed 38 years of service and he is to retire with effect from the month of February 2004 and therefore has only one year eight month's of service left in his credit.

4.4 That the applicant having four children who are studying in school and are in the midst of their academic session. The detail particulars of children are given below :

| Sl. No. | Name | Studying in/at |
|---------|---------------------|--|
| 1 | Sri Indra Kamal Das | Class XI (Kamrup Academy School) |
| 2 | Sri Naba Kamal Das | Class XI (B. Baruah College) |
| 3 | Miss Dharitri Das | Class X (Uzan Bazar Govt. Girls' School) |
| 4 | Miss Mridula Das | Class VII (Uzan Bazar Govt. Girls' School) |

4.5 That the applicant states that all of a sudden, the respondent authorities have issued the impugned order transferring him from Guwahati to Shillong without taking into consideration of the fact that he is on the verge of retirement and the such a transfer is in violation of the professed norm of the respondents. This

Chandra Lal Das

apart, the recommendations of the 5th Central Pay Commission also bars such a transfer when the employee concerned is on the verge of retirement.

Copy of the impugned order of transfer and posting dated 14.5.2002 is annexed as Annexure-1.

4.6 That the applicant states that apart from what has been stated above, the impugned transfer order is also bad for having been issued during the mid of academic session of his children. It is stated that the instant transfer order does not involve any public interest in it nor there is any exigency warranting such a transfer at this stage while the applicant is to proceed on retirement on superannuation very shortly.

4.7 That the applicant states that the respondents have acted arbitrarily and unreasonably in issuing the impugned order of transfer and posting and therefore the same is liable to be set aside and quashed so far as it relates to the applicant.

4.8 That it is stated that a mere perusal of the impugned order of transfer and posting dated 14.5.2002 it would be evident that the same is a routine nature of transfer and posting issued by the respondent no.2. As such it cannot be said that the said order of transfer and posting has been issued due to sudden administrative exigency. Therefore the impugned order of transfer and posting so far applicant is concerned is liable to be set aside and quashed on the ground that the same has been passed on the verge of the retirement of the applicant and also on the ground that the impugned order of transfer has been issued during the middle of the academic session of his children without any administrative exigency. It is relevant to mention here that the one of daughters of the applicant is reading in Assamese medium School and appearing in the ensuing HSLC examination under the Board of Secondary Education, Assam. Moreover, other son and daughter also studies in school and colleges and if the impugned order of

Chase Court Day

transfer is effected at this stage, the applicant will suffer irreparable loss and injury so far education of his children are concerned. Furthermore, the applicant being only bread earner of the family it would be extremely difficult on his part to maintain double establishment with this meagre income. In the circumstances stated above the impugned order of transfer and posting dated 14.5.2002 is liable to be set aside and quashed so far as the applicant is concerned.

4.9 That it is stated that Sri K.P.Das, at serial No. 5 of the said impugned order of transfer and posting is sought to be posted in place of the applicant i.e. at Guwahati now having five to six years service left into his credit. Moreover, Sri Das now serving at his home town at Tezpur, therefore there was no difficulty on the part of the respondents to accommodate Sri Das at Shillong where the applicant has been ordered for posting on transfer at this crucial stage.

4.10 That your applicant further begs to state that one Sri T.K.Dasgupta, SDO-I although ordered for posting at DEO, Siliguri from DEO, Guwahati, but Sri Dasgupta has been accommodated at his choice station in Kolkata on compassionate ground even though officially Sri Dasgupta is posted at Siliguri. Therefore, it appears that the respondents could easily accommodate the applicant in his present place of posting on compassionate ground.

4.11 That it is stated that the impugned order of transfer and posting dated 14.5.2002 is likely to be effected shortly therefore the applicant could not represent his case before the respondents for consideration of continuation in the present place of posting at Guwahati and finding no other alternative the applicant is approaching this Hon'ble Tribunal for a direction to the respondents to allow him to continue in his present place of posting considering for continuation of the smooth education of the children and also following the recommendation of the 5th Central Pay Commission that Government employees should not be

Chander Prasad Das

disturbed before retirement who are left with three years of service in their credit.

4.12 That it is stated that the applicant has not yet been released from his duty till filing of this application and it is expected that the respondents may issue the order of release in respect of the applicant very shortly. Therefore, the applicant prays before the Hon'ble Tribunal for a direction to the respondents to allow him to continue in his present place of posting at Guwahati on the verge of his retirement following the recommendation of the 5th Central Pay Commission.

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

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

5.1 For that, the impugned order of transfer and posting dated 14.5.2002 has been issued on the verge of retirement on superannuation of the applicant in violation of the recommendation made by the 5th Central Pay Commission.

5.2 For that, impugned order of transfer and posting dated 14.5.2002 has been issued in fact is routine nature of transfer and posting and does not involve any administrative exigency which is passed during the middle of the academic session of the children of the applicant.

5.3 For that, the impugned order of transfer and posting dated 14.5.2002 has been issued during the middle of the academic session of his children and if the said impugned order of transfer is effected it will cause irreparable loss of the education of his children.

5.4 For that, Sri K.P.Das, Office Superintendent, at serial no. 5 of the said impugned order of transfer and posting is sought to be posted on transfer from DEO Tezpur to Guwahati.

Chandra Kumar Das

i.e. in place of the applicant could easily be accommodated to the place where the applicant has been ordered for posting on the eve the retirement on superannuation of the applicant and also in the middle of the academic session of his children.

6. Details of remedies exhausted.

That the applicant states that he could not represent his case before the authority as the order of transfer has been issued on 14.5.2002 and it is expected that the said order will be given effect to very shortly and the applicant finding no other alternative and efficacious remedy approaching this Hon'ble Tribunal by way of this application.

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

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

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order of transfer and posting dated 14.5.2002 issued under letter No. 360009/LC-1/XXXIII/6 (Annexure-1) so far the applicant is concerned.

Chander Chaudhary

3.2 That the Hon'ble Tribunal be pleased to direct respondents to allow the applicant to continue in his present place of posting at Guwahati in the same capacity in terms of the recommendation made by the 5th Central Pay Commission.

3.3 Costs of the application, till the date of retirement or Superannuation.

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

9. Interim order prayed for

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

9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned order of transfer and posting dated 14.5.2002 issued under letter No. 360009/LE1/XXXIII/6 (Annexure-1) so far the applicant is concerned till disposal of the application.

10.

This application is filed through Advocate.

11. Particulars of the I.P.O.

i) I. P. O. No. : 76574598 dated 13-5-2002
 ii) Issued from and payable at: G.P.O., Guwahati.

12. List of enclosures

As given in the index.

Chanderlal Dey

VERIFICATION

I, Sri Chandra Kamal Das, S/o Sri K.K. Das, aged about 58 years, working as Office Superintendent in the office of the Defence Estate Officer, Guwahati Circle, P.O. Silpukhuri, Guwahti, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 17th day of May, 2002.

Chandra Kamal Das

Speed Post

NO.360009/LC-1/XXXIII/6

Dte. of Defence Estates

Min. of Defence, Eastern Command

13, Camac Street (7th floor)

Kolkata - 700017.

Dated May, 2002.

14

To

The Joint Director
Defence Estates, Shillong

The Defence Estates Officer
Guwahati/Kolkata/Siliguri/Tezpur/Jorhat
The Asstt. Defence Estates Officer,
Agartala

SUBJECT: TRANSFER/POSTING OF GROUP "C" TECHNICAL AND
CLERICAL STAFF OF DE ORGANISATION.

It has been decided to effect the following transfer/ posting on the administrative ground with immediate effect :-

| <u>Sl. No.</u> | <u>Name & Designation</u> | <u>From</u> | <u>To</u> | <u>Remarks</u> |
|----------------|---|------------------|----------------------|---|
| (1) | Sri T.K. Dasgupta, SDO-I | DEO Guwahati | DEO Siliguri | Sri Dasgupta will tempo rarily work in DEO Kolkata till the vacancy in Kolkata is filled in or until further orders whichever is earlier. |
| (2) | Sri T Nath, SDO-II | DEO, Jorhat | Sub-DEO, Silchar | Sri Nath will also work in DEO, Guwahati as and when exigencies require. |
| (3) | Sri N. Dasgupta, SDO-II ADEO, Agartala | ADEO, Agartala | D.D.E. EC Kolkata | By transferring a post of SDO-II from DEO Siliguri to D.D.E. EC, Kolkata. |
| (4) | Miss. Niru Basumatari OS | JD.D.E. Shillong | DEO, Tezpur | Vice Sri K.P. Das transferred. |
| (5) | Sri K.P. Das, OS | DEO, Tezpur | DEO, Guwahati | Vice Sri C.K. Das transferred. |

Contd.....Page-2.

*Attended
With
Adv.*

| | | | | |
|-----|----------------------------|----------------|------------------|--|
| (6) | Sri C.K. Das, OS | DEO, Guwahati | JD, DE, Shillong | Vice Miss Basumatari transferred. |
| (7) | Sri J.R. Pethek, LDC | DEO, Jorhat | DEO, Guwahati | By transferring a post of LDC from DEO, Jorhat to DEO, Guwahati. |
| (8) | Sri Victor Kharakongar LDC | ADEO, Agartala | JD, DE, Shillong | By transferring one vacant post of LDC from D, DE, EC to JD DE Shillong. |

2. The above individuals may be relieved of their duties immediately after payment of TA/DA advances and directed to report for duty to their stations of posting.

3. The dates (F/N/AN) of relinquishment / assumption of duty by the officials shall be intimated to this Dte/DG DE after the events.

Director
Defence Estates
Eastern Command

Copy to :-

1. The Director General (Admin. Sec.)
Defence Estates, Eastern Command
BK Puram, New Delhi - 110066 for information please with reference to our letter No. 360009/LC-1/XXXII/116 dated 01.02.02, No. 360009/LC-1/XXXIII/1 dated 26.03.02 and their letter No. 102/195/ADM/DE dated 02.05.2002.
2. The CDA, Patna / Guwahati
3. The AAO, Kolkata / Siliguri / Shillong

Float copy