

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 38/2003.....

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SECTION OFFICER (Judl.)

(RULE - 4),
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
' '

ORDER SHEET

Original Application No. 38/2003

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (s) S. Chandran

- Vs. -

Respondent (s) U.O.I. & Omo

Advocate for the applicant (s) Mr. T.A. Talukdar

Advocate for the respondent (s) (C.G.S.C.)

Notes of the Registry	Date	Order of the Tribunal
<p>The application is in form but not done. Filed/ n C F for Rs. visited vide IPC. Dated... 26.2.03</p> <p>OT/P.842328</p> <p>Steps taken - 26/2/03</p> <p>Notice prepared and sent to D/S for iming the respondent No 1 to 3 by Regd. A/D.</p> <p>3/3/03</p> <p>D/No 380K352 dtd 3/3/03</p>	27.2.2003	<p>Heard Mr. T.A. Talukdar, learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>Also, issue notice to show cause as to why interim order as prayed for shall not be granted. Returnable by three weeks.</p> <p>List on 21.3.2003 for admission.</p> <p>In the meantime, the order of transfer dated 20.2.2003 transferring the applicant Sri S.Chandran, Sr. Auditor, from 19 BRTF (GREF), C/O 99 APO to Aruvancadu (Tamil Nadu) shall remain suspended until further order.</p>

Vice-Chairman

P

10.3.03

W/s submitted
by the Respondent Nos.
1, 2 & 3.

[Signature]

21.3.2003

Heard counsel for the parties.
Judgment delivered in open Court, kept
in separate sheets.

The application is disposed in
terms of the order. No order as to costs.

[Signature]

Vice-Chairman

bb

28.3.2003

Copy of the Judgment
has been sent to the
D/Sec. for issuing
the same to the applicant
as well as to the
Addl. C.G. Sec. for
the Respondent.

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / XXX. No. 38 of 2003. &&

DATE OF DECISION 21.3.2003.....

.... Shri Sujana Chandran APPLICANT(S).

.... Shri I.A.Talukdar. ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

.... Union of India & Others.. . . . RESPONDENT(S).

.... Mr.B.C.Pathak, Addl.C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE

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 Ho'ble Vice-Chairman.

1 yes
No
Shr

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 38 of 2003.

Date of Order: This the 21st Day of March, 2003.

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

Shri Sujana Chandran
S/o Late K. Sudhakaran
AO, 19 BRTE, (GREF)
C/o 99 APO.

. . . Applicant.

By Advocate Mr.I.A.Talukdar.

- Versus -

1. Union of India
Through the Controller General
of Defence Accounts
West Block-V, R.K.Puram
New Delhi - 66.

2. The CDA, (BR)
Seem Sadak Bhavan, Ring Road
Naraina, Delhi, Cant.-10.

3. The Accounts Officer
H.Q. 19 BRTE (GREF)
C/o. 99 APO.

. . . Respondents.

By Mr.B.C.Pathak, Addl.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C.):

The issue relates to transfer and posting. The applicant has been working for gain under the respondents as Sr. Auditor. He was transferred and posted to Bhutan w.e.f.21.2.2001 for a period of two years. The applicant completed his two years tenure on 21.2.2003. The applicant submitted representation on 10.1.2003 with a request for retaining him in the office of AO 19 BRTE Bhutan up to 30.4.2003 on the ground of his son's examination. The applicant also pleaded that he requested the authority to give him choice posting at any of his choice station, namely, (i) Trivandrum, (ii) Quilon and (iii) Port Blair preferred by him by his application dated 29.1.2003 to post him on completion of his tenure. Instead the respondents posted the applicant at Aruvankadu (Tamil Nadu). Hence this application assailing the action of the respondents as illegal and arbitrary.

2. The respondents submitted written statement. In the written statement, it was stated that the request of the applicant to retain him at AO 19 BRTE Bhutan up to 30.4.2003 was examined and by letter dated 7.2.2003 the same was rejected. The applicant was, as a matter of fact, relieved on 27.2.2003 at 11 AM. In the written statement the respondents, however, stated that they could not object to retaining official quarter of the applicant for his family up to 27.4.2003 to enable his son to complete the examination. At the same time the applicant need to proceed to his new place of posting and report there for his duty and also for his salary etc. after 27.2.2003 onwards. The respondents also stated that if there is any personal difficulty of the applicant to join the duty leaving his son and family at his old place of posting, he may apply for grant of leave and the respondents would consider his case for grant of leave as a special case and on that occasion as a special case it would not be difficult for drawing the salary of the applicant and retaining his family in official quarter of 19 BRTE Bhutan so that ^{he} that may easily accommodate his son for completion of his examination.

3. I have heard Mr. I. A. Talukdar, learned counsel for the applicant and also Mr. B. C. Pathak, learned Addl. C. G. S. C. for the respondents. Upon hearing the learned counsel for the parties and considering the facts and circumstances of the case, more particularly, the statements in the written statement, it is thus ordered that the respondents shall allow the applicant and his family to retain the official quarter upto the end of April, 2003. The applicant stated that in the interest of his son, he wants to personally stay with his son till the completion of the examination, in that case the applicant is directed to make a leave application before the authority and the authority interms

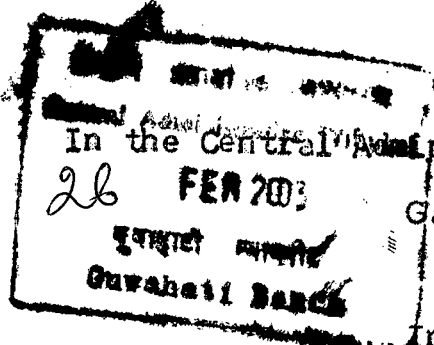
of the statement made in Para 7 of the written statement shall consider his case for granting of leave as a special case. The respondents shall also take necessary steps for providing him salary and retaining his family at the official quarter of 19 BRTE Bhutan by the end of April, 2003 or till the completion of examination of his son. The applicant, however, shall have to vacate the official quarter on or before 30.4.2003.

4. I have also heard Shri S.Chandran, the applicant. Shri Chandran has stated that his posting at Aruvankadu (Tamil Nadu) would not be convenient for him since it is a hill station and it would be inconvenient for his wife to stay there as his wife is a asthmatic patient. Instead the applicant Shri Chandran pleaded that it would be convenient if he is considered for posting at Quilon or Trivandrum or in any other near places. Considering the facts and circumstances of the matter I am of the view that ends of justice will be met, if a direction is issued to the applicant to file a fresh application before the authority for giving him choice posting. Accordingly the applicant is directed to submit a fresh application before the competent authority, namely, the respondent No.2 i.e. The CDA,(BR), New Delhi for giving him choice posting within one week from the receipt of the order. If such application is made, the respondents shall re-consider the same justly and fairly and make every endeavour to take care of the situation and to avoid the hardship to the applicant.

Subject to the observations made above, the application stands disposed of. There shall, however, be no order as to costs.

Interim order dated 27.2.2003 stands modified to the extent indicated above.


(D.N.CHOWDHURY)
VICE CHAIRMAN



9

In the Central Administrative Tribunal : Gauhati Bench,
Gauhati :

In the matter of :

Shri Sujana Chandran

.....Applicant

- Vs -

Union of India & oths .

..... Respondents

SYNOPSIS OF THE CASE

Para

Page no.

4.4.

4

The applicant filed application for deferring his transfer if any due to his son Board of Secondary Examination, Delhi which will be held in the month of March & April 20003 . (Annx-1 page -9)

4.5

4

ADMISSION CARD issued by the Central Board of Secondary Education, and the exam will commence from the 6th of March 2003 .

(Annx-2 page -20)

4.6

4

The applicant preferred three places of posting on being asked by the respondent no.1 &2 but did not transfer the place of preferences rather transfer in other place .

(Annx-3 page-11)

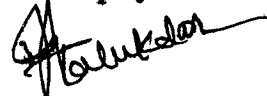
4.7

5

The applicant transferred from AO, 19 BRIF, GREF), C/o.99 APO to Aruvancadu (Tamil Nadu) by respondent no.2 by de speed post no.2 dated 20.2.2003

and the same already been noted and asked to signed by the respondent no.3 to the applicant and accordingly the applicant put his signature on 24-2-03 . But the applicant did not receive the copy of transfer and hence unable to file before this Hon'ble Tribunal at this stage .

Filed by :



(I.A. Talukdar)

Advocate .

10

26 FEB 2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH : GAUHATI

(An application under section 19 of the Administrative
Tribunal Act, 1985)

Title of the Case : O.A. NO. _____ / 2003

Shri Sujana Chandran

..... applicant

- vers us -

Union of India & oth's .

..... Respondents

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Total - 11

Filed by :
I.A. Talukdar
(I.A. Talukdar)
Advocate

Date 26-2-03

Sujana Chandran

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ,
GAUHATI BENCH : GAUHATI

(An application under section-19 of the Central
Administrative Tribunal Act ,1985)

O.A. No. _____ of 2003

Shri Sujana Chandran
s/o late K. Sudhakaran,
AO, 19BRTE, (GREF),
C/o. 99 APO .

..... Applicant

- Versus -

1. Union of India ,
Through the Controller General of
Defence Accounts ,
West Block- V,
R.K.Puram ,
New Delhi-66
2. The CDA , (BR)
Seema Sadak Bhavan , Ring Road,
Naraina, Delhi , Cant.-10
3. The Accounts Officer ,
HQ. 19 BRTE (GREF)
C/o. 99 APO

..... Respondents

Filed by the
applicant through:
Attorney
(Sd/- Sri. Talukdar)
Advocate
26-2-03

Sujana Chandran

12

- 1 . Particulars of Order(s) against which
this application is made :

This application is made against the
Memorandum No.AN/1/JJ dated 20-02-2003 issued by
the Controller of Defence Accounts (BR) , New Delhi
whereby the applicant's representation dt.10-01-2003
and 29-01-2003 addressed to the CDA , West Block-V,
R.K.Puram , New Delhi-66 through Accounts Officer,
19 BRTF(GREF) and CGDA (BR) NEW Delhi with a
request to continue his present posting upto the
period of completion of Board Final Examination .
The applicant's sen Board Examination will commence
from the month of March 2003 and will end in the
month of April . As such the applicant's requested
the respondents that he may kindly be allowed to
continue till the end of April 2003 in his present
posting only . .

Sigarchan

2. Jurisdiction :

The applicant states that the instant
application is within the jurisdiction of this
Honourable Tribunal .

3. Limitation :

The applicant states that the instant
application has been filed within the period of limita-
-ation as prescribed under section-21 of the Administra-
-tive Tribunal Act ,1985 .

4. Facts of the Case :

4 .1 That the applicant is a citizen of India
and as such entitled to the rights and priviledges as



as guaranteed under the Constitution of India .

4.2 That the applicant states that ~~in~~ he joined in service on 11-03-1974 as a clerk in the Defence Accounts Department and subsequently on promotion became auditor and later on further got promotion as senior auditor . The applicant is at present working as Senior Auditor under the immediate control of Accounts officer , 19 BRTF (GREF) , C/o. 99 APO . The service condition of the applicant is governed by the Central Civil Service Rules and the Head of the Department is Controller General of Defence Accounts .

4.3 That the applicant states that he has been transferred from DPDO , Quilon (^K Kerala) to AO , 19 BRTF , C/o. 99 APO in the year of 2001 and he has reported in his duty on 21-02-2001 and since then the applicant has been serving and discharging his duties with satisfaction to the respondents as on to-day .

4.4. That the applicant submitted a representation to the Controller General of Defence Accounts New Delhi on 10-1-2003 with a request to defer his transfer if any comes up in near future on the ground that the applicant's son is studying in Class - XII, in Air Force School , Hasimara and his Board Examination will be held in the month of March and April . The applicant have been residing in his present place of posting within his family and the school of the applicant's son is only 24 Kilometere

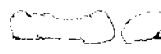
Sujayachandran

distance from his present posting . As such the applicant requested the respondents to allow him to continue till the period completion of his son examination i.e. upto the month of April 2003 .

A photostat copy of representation dt.10-1-2003 is enclosed and marked as Annexure - 1 .

4.5 That the applicant states that his son's Board Examination Admission Card already been issued by the Board and as such it will be very difficult to shift the family along with his son at this stage to any other place . The Board Examination will commence from 6th of March 2003 .

Sujana Chandra

A photostat copy of Admission Card issued by the  Central Board of ~~Education~~ Secondary Education , Delhi is enclosed and marked as Annexure- 2.

4.6 That the applicant further states that he was asked to give preference of place of posting by the respondents and accordingly in his representation dt.29-01-2003 the applicant preferred three place of posting i.e. (i) Trivandrum (ii) Quilon and (iii) Port Blair but the respondents did not transfer him in place of preference of posting as sought by the applicant .

A Photostat copy of representation dt.29-01-2003 is enclosed and marked as Annexure - 3

4.7 That the applicant states that a Transfer Order already been issued by the Respondent no.2 to the Respondent no.3 in respect of transfer of the applicant from the present place of posting to Aruvancadu (Tamil Nadu) which order came through speed post No.AN/1/77 dt.20th February 2003 to relieve the applicant on completion of two years tenure i.e. on 21-2-2003 immediately . The copy of the said Speed post has been noted by the applicant on 24-2-2003 under his signature as per instructions by the respondent no.3 . Therefore, the applicant having no other alter native but to approach this Hon'ble Tribunal for ventilating his grievances by this application . The Hon'ble Tribunal may therefore, be pleased to issue appropriate relief(s) , direction or directions to the respondents as deems fit and proper in the interest of justice .

The applicant crave the leave of the Hon'ble Tribunal to allow him to file Transfer order either at the time of hearing of the case or any convenient as directed by the Hon'ble Tribunal .

5. Grounds for relief with local provision :

5.1 For that the action of the respondent in issuing the transfer order dt.20-2-2003 rejecting the claim of the applicant to continue his present posting upto the month April 2003 is ~~arbitrary, unreasonable and~~ ^{arbitrary, malefic} and illegal and therefore the transfer order is liable to be set aside or stayed .

5.2 For that the respondents have indirectly did did not allow the applicant's son to appear

Singh Chandra

the Board of Examination and put the applicant in great hardship, mentally, financially and physically .

5.3 For that the applicant has been discriminated without any cogent reason in the matter of transfer of posting in as much as his son accademic session will be spoiled if not appear in the Board of Examination and his accademic carrier will be jeopardise .

5.4 For that the action of the respondents is violation of equality clause as enshrined in the Constitution of India and is against the Principles of Natural ~~Maxi~~ justice .

5.5 For that in any view of the matter, the impugned order of transfer is bad in law and liable to be set aside or stayed till the month of April 2003 .

5.6 Matter not previously filed or pending before any other Court / Tribunal :

The applicant declares that he has not previously filed any case involving the matter of transfer application and as such no case involving the present matter in dispute is pending before any ther court / Tribunal -

7. Details of Remedies exhausted :

The applicant states that he has submitted representation dt.10-01-2003 and 29-1-2003 on the matter in dispute but no positive response received from the respondents rather issued the transfer order to some other place where the applicant did not prefer for place os posting .

Shriacharya

8. Reliefs prayed for :

Under the aforesaid facts and circumstances of the case the applicant prays for the following reliefs :

- 8.1 That the order dated 20-2-2003 rejecting the claim of the applicant to continue till the period of April 2003 be set aside or stayed .
- 8.2 That the respondents may be directed to allow the applicant in his present place of posting upto the period of April 2003 .
- 8.3 Cost of the application .
- 8.4. Any other relief(s) to which the applicant is entitled under the law, and equity and natural justice .

9. Interim Relief prayed for :

The applicant only prayer to allow him to continue till the period of April 2003 so that his son examination will be completed .

10.

This application is filed through an advocate .

11. Particulars of DD.

Date and No. : OT/F 842328 dt. 26-2-02

Place of issue : Gauhati

payable at : UCO Bank, Gauhati .

12. List of enclosures :

As per annexure

- 8 -

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

I , Shri Sujana Chandran son of late K.Sudha
 - karan aged about 53 yrs , resident of
 AO , 19 BRTF (GREF) , C/o. 99 APO do hereby verify
~~the~~ and declare that the statements made paragraphs
 no. 1, 4, 6, 7, 9, 10, 11..... and 8.....
 are true to my ~~best~~ knowledge and
 those made in paragraph no. 2, 3, 5, 11. are true to my
 legal advice and received by me and I have not
 suppressed any material facts hereof .

And I sign this verification on this the 26th
 day of February 2003 .



Signature of applicant

Annexure - 1 a

- 9 -

From :

Sujana Chandran,
Sr. Auditor, A/C No. 8313350,
Office of the AO 19 BRTF
C/O 99 APO.

To :

The CGDA
West Block V,
R.K. Puram,
New Delhi-110066.

Sub : Request for deferment of transfer.

Respected Sir,

With due regards I beg to submit the following few lines for your sympathetic consideration and favourable action please.


Sir, I have joined my duties in this office on 21-02-2001 and will be completing my 02 years Tenure in this office on 20-02-2003.

Sir, I am living here with family and my son is studying in Class - XII in Air Force Central School, Hasimara which is 25 Kms away from my duty station. The Board Exam is likely to be held in the month of March - April 2003 and being on crucial class my presence is essential. In view of the above facts, I therefore request Honourable CGDA to kindly consider my case and accord permission for retention in this office till the Accademic year i.e. upto 30-04-2003.

I shall remain ever grateful to you for this act of kindness.

Thanking you in anticipation Sir.

Yours faithfully,


(Sujana Chandran)
S/A, A/C No. 8313350

Station : C/O 99 APO

Dated : 10 Jan 2003

C.T.C.
H. K. Sengupta
Secy.

क्रम संख्या

S.No. 2003/

0111435 केन्द्रीय माध्यमिक शिक्षा बोर्ड, दिल्ली

CENTRAL BOARD OF SECONDARY EDUCATION, DELHI

ALL INDIA SR. SCHOOL CERTIFICATE EXAMINATION 2003

प्रवेश पत्र संस्थागत परीक्षार्थियों के लिये

ADMISSION CARD FOR REGULAR CANDIDATES

(SHOULD BE PRESERVED BY THE CANDIDATE)

अनुक्रमांक (अंकों में)

Roll No. (In figures)

5634551

जन्म तिथि

Date of Birth

X X X X X

स्कूल सं.

School No. 8448

परीक्षा केन्द्र संख्या

Centre No. 5428

अनुक्रमांक (शब्दों में)

Roll No. (In words)

FIFTY SIX LAKH THIRTY FOUR THOUSAND FIVE HUNDRED FIFTY ONE ONLY



AIR FORCE School

परीक्षार्थी का नाम Candidate's Name

RAJEEV S CHANDRAN

माता का नाम Mother's Name

S REMA DEVI

पिता का नाम Father's Name

SUJANA CHANDRAN

जो कि निम्नलिखित विद्यालय का / की छात्र / छात्रा है। of:

AIR FORCE SCHOOL C/O 99 A P O HASIMARA W B

परीक्षा केन्द्र Centre

KENDRIYA VIDYALAYA NO2 HASIMARA JALPAIGURI WB

शारीरिक अक्षमता का वर्ग

Category of Physically challenged candidates

को निम्नलिखित विषयों में बैठने की अनुमति दी जाती है। to appear in the subjects given below:

विषय कोड SUB. CODE	विषय SUBJECT	विवरण DESCRIPTION	माध्यम MEDIUM	पत्र PAPER	दिनांक DATE
054	BUSINESS STUDIES	...	...	1	06.03.2003
301	ENGLISH CORE	...	...	1	08.03.2003
027	GEOGRAPHY	...	...	1	13.03.2003
030	ECONOMICS	...	...	1	29.03.2003
055	ACCOUNTANCY	...	...	1	01.04.2003

परीक्षा आरम्भ होने का समय प्रातः १०.३०
TIME OF COMMENCEMENT OF
EXAMINATION 10:30 A.M.

टिप्पणी:

Note:

- परीक्षार्थी पूरे विवरण को ध्यानपूर्वक जांच लें और यदि कोई त्रुटि हो तो यथाशीघ्र विद्यालय को सूचित करें।
Candidate must check all particulars carefully and corrections if any be brought to the notice of the school immediately.
- यह कार्ड प्रधानाचार्य द्वारा फोटो एवं हस्ताक्षर सांक्ष्यंकित करने के बाद ही परीक्षार्थी को दिया जाए।
This card may be issued to the candidate after the attestation of photo and signature of the candidate by the Principal.
- नेत्रहीन (दृष्टिहीन) / डाइस्लेक्सिक / बहुरा / संरतंभी (स्पैस्टिक) परीक्षार्थियों से अनुरोध है कि वे अपनी विकलांगता का चिकित्सा प्रमाण-पत्र/ऐसा दस्तावेज लायें जोकि उनकी असमर्थता एवं विकार को प्रमाणित करता हो।
Blind/Dyslexic/Deaf/Spastic/Handicapped candidates are requested to bring the medical certificate / document supporting their disability/disorder and its extent.

Rajeev S. Chandran

परीक्षार्थी के हस्ताक्षर
Full Signature of the Candidate
(Not in BLOCK LETTERS)

प्रधानाचार्य

Principal

(विद्यालय की मोहर)

(Stamp of the School)

परीक्षा नियंत्रक

Controller of Examinations

केन्द्रीय माध्यमिक शिक्षा बोर्ड

Central Board of Secondary Education

टिप्पणी: NOTE:

- परीक्षा की तारीखें एवं समय के लिए समय सारिणी भी देखें।
For dates and time of examination, please see DATE SHEET also.
- परीक्षा के दौरान परीक्षार्थियों को यह प्रवेश-पत्र अपने पास रखना चाहिये तथा परीक्षा केन्द्र के अधीक्षक या इस संबंध में प्राधिकृत किसी अन्य व्यक्ति के मांगने पर प्रस्तुत किया जाना चाहिए।
The candidate must keep this admission card at the time of Examination and present on demand to the Superintendent of Examination Centre or any other person authorised on this behalf.
- परीक्षार्थी को आवेदन पत्र में भरे हुए विषयों में ही परीक्षा देनी है। अन्य विषय या कोर्स में परीक्षार्थी को साधारणतः परीक्षा में नहीं बैठने दिया जाएगा। परीक्षार्थी के विषय केन्द्र को दी गई सूची में है।
Candidate will be allowed to appear in the subject/course filled in by them in their application forms and given against each name in the list of candidates supplied to the centre. A candidate shall not be ordinarily allowed to appear in subjects/courses other than those given in the list.

C.T.C.
H. Kulkarni
Date

Annexure - 2

- 11

From: -

Sujana Chandran
Sr. Auditor, A/C No. 8313350
Office of the AO 19 BRTF
C/O 99 APO

To

The CGDA
West Block-V
R.K. Puram
New Delhi - 66

(Through CDA (BR) New Delhi)

Sub : Transfer : DAD Estt.

Respected Sir,

I beg to bring the following few lines for your kind and sympathetic consideration.

Sir, in this connection kindly refer my application dated 10-01-2003 wherein I have requested for extension upto 30-04-2003 ie Academic year of my son who is studying in Class-XII (Board Exam) in Hasimara Air Force School.

However, three choice station asked for by honourable CDA is furnished below :-

01. Trivandrum
02. Quilon
03. Port Blair

In this context I beg to submit that as I have to perform the marriage of my daughter and suitable match can only be searched for which my physical presence is necessary. Therefore I humbly request your highness to kindly consider my posting to TRIVANDRUM for which act of kindness I will be ever grateful to you Sir.

Thanking you in anticipation Sir.

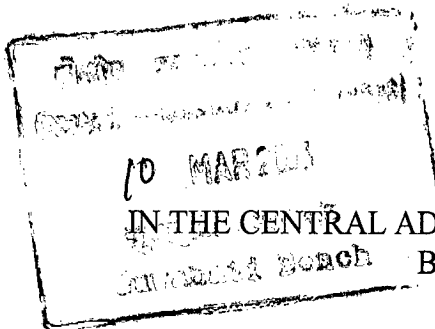
Yours faithfully,


(Sujana Chandran)
Sr. Auditor

Station : C/O 99 APO

Dated: 29-1-2003

C.T.C.
Sujana Chandran
Sr. Auditor



IN OA NO. 38/2003

SH. S. CHANDRAN.....Applicant

Vs

Union of India and OthersRespondents

12
22
Filed by
Deafina
(B. C. Pathak) 10/3/03
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

(The written statements filed by the Respondents No.1,2 and 3)

The written statements of the noted respondents are as follows :

1. That a copy of the OA No. 38/2003 (referred to as the "Application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted are hereby denied by the respondents.
3. That before traversing the various paragraphs made in the application, the respondents beg to give hereunder a brief resume to the facts and back ground of the case as follows :

The applicant/opposite party joined the office of the AO 19 BRTF on 21.2.2001. This is a special case of posting in a foreign country viz Bhutan. The Government of India is having their certain special provisions to transfer and post the officers and officials in a foreign country under certain definite conditions with some special provisions of monetary benefits and other incentives. The tenure of posting in a foreign country like Bhutan, Nepal etc which are the very contiguous Countries to India, is a matter of attractions for

those who are in service and eligible for such transfer and posting. These attractions originates from the fact that one who is posted to such tenure, they are entitled to get a very handsome and lucrative monetary benefit apart from the fact that he is certain to come back on the expiry of the said tenure. A comparative statement regarding the financial benefit have been given below:-

(A) Had the applicant been posted in India his pay and allowance would be :

(1) Basic Pay : Rs 6200/-

(2) DA 52% : Rs 3224/-

(3) CCA and conveyance allowance depending upon the class of city : Rs.500/- (Approximately)

(Gross monthly salary = Rs. 10,000/- (Approximately)

In addition he would be entitled to Govt. Quarter or HRA in lieu thereof.

(B) In Bhutan the applicant is drawing the following pay and allowances:

(1) Basic Pay : Rs. 6200/-

(2) Bhutan Compensatory Allowance : Rs. 17991/-

(Gross monthly Salary : Rs. 24191/-)

(3) In addition the applicant is entitled to Govt. accommodation, which he is presently occupying.

(4) Temporary duty tour – The examination of the son would be over by 1.4.2003 whereas the applicant applied for extension for retention in AO 19 BRTF office upto 4/2003 considering that the temporary duty tour for half year ending 3/2003 falls due in 4/2003 and in case he continuous upto Apr 2003 he would be entitled to an amount of Rs. 16,000/- (approximately) as temporary duty tour as an extra amount whereas he being stuck off on transfer with effect from 27/2/2003 he will not get that amount.

(5) Income Tax exemption – Bhutan compensatory allowance is completely exempted from Income Tax.

In view of the said fact there is always a long queue and rush of such officers and officials who are otherwise eligible for such foreign posting. Therefore, the competent authorities who are regulating the foreign posting and transfer makes such arrangement to give such benefits equally to all such eligible employees on rotation or alternatively. This warrants that the tenure so fixed can not be relaxed or extended thereby resulting in prolonging or depriving of such similarly and equally situated other employees. This is explicit from the order of transfer of the applicant/opposite party and also immediate posting of another in his place.

Normally such postings are made on transfer for a limited tenure. In the instant case the applicant/opposite party was also transferred and posted to Bhutan with effect from 21.2.2001 for a period of two years. This tenure can not be relaxed or extended under any provision of law, having various administrative complications and international ramifications. The applicant/opposite party has already completed the 2 years tenure by 21.2.2003. This specific conditions of service of the applicant/opposite party in a foreign country is well known to the applicant/opposite party and

accordingly he made a representation on 10-1-2003 with a request to retain him in the office of AO 19 BRTF Bhutan up to 30-4-2003 on the ground of his son's examination. The request of the applicant/opposite party was duly examined by the petitioners/respondents and it was rejected vide letter CDA (BR) No. AN/1/77 dated 7.2.2003. On completion of two years tenure as stated hereinabove the applicant/opposite party was transferred from the office of the AO 19 BRTF Bhutan to Aruvankadu (Tamil Nadu) vide letter CDA (BR) No. AN/1/77 dated 20-2-2003 which was duly noted by the applicant/opposite party on 24-2-2003 on the body of the said order. In the afternoon of 24.2.2003, the applicant/opposite party put up a note in the leave register for two days casual leave on 25.2.2003 and 26.2.2003 on account of private affairs/reservation of ticket at New Alipurduar/Siliguri. The authorities accordingly granted him two days casual leave for the said period. But instead of going for ticket the applicant/opposite party came down to Guwahati and filed the above noted case in the Hon'ble Tribunal. The applicant/opposite party reported back for duty in the morning of 27-2-2003 at 8.30 AM and did not inform anything about the instant case. On his reporting for duty, the competent authority relieved him from duty to proceed on transfer to Aruvankadu. This was done vide order No. AO/19TF/1/Estt-LXXI dated 27-2-2003 and order was handed over to the applicant at 11.00 AM. The receipt of which was duly acknowledged by him by putting his signatures on the body of the said order. However, the petitioners/respondents got a fax message through GREF at about 3.30 PM. From the said fax message only the petitioners/respondents came to know for the first time that the applicant/opposite party has challenged the order of transfer from the office of AO 19 BRTF Bhutan to Aruvankadu (Tamil Nadu). From the said fax copy of Court's order, it is seen that notice have been issued to the petitioners/respondents thereby directing to show cause as to why the interim order for stay of the transfer order should not be granted. By the said order itself the Hon'ble Tribunal suspended the transfer order until further orders. Hence this miscellaneous Petition has been filed.

A copy of the transfer order, a copy of the leave register duly signed by the applicant/opposite party and recommended and sanctioned by the competent authorities dated 24.2.2003, the fax copy of the interim order passed by the Hon'ble Tribunal in OA No.38/2003 and copy of relieving order are annexed as Annexures – R1 R2 R3 & R4 respectively.

4. That with regard to the statements made in paragraph-1 of the application, the answering respondents state that as stated hereinabove, there is no cause of action for filing this application. The transfer of the applicant has been made as a routine transfer on administrative reasons and in public interest. There is no malafide nor any violation of statutory rules. Apparently, the application has been made only on the grounds that the applicant requires to stay at Phuentsholing, Bhutan by retaining his quarter for the completion of his son's examination which is scheduled to commence with effect from 6.3.2003 and going to end by 1.4.2003. Moreover, as explained herein above, the applicant has already been relieved and struck off strength with effect from 27.2.2003 (11 AM) on transfer and to proceed to Aruvankadu as stated herein above.

5. That with regard to the statements made in paragraphs 2 and 3, the answering respondents have no comments to offer.

6. That with regard to the statements made in paragraphs 4.1, 4.2 and 4.3 of the application, the respondents states that these are all matter pertaining to records and as such nothing is admitted which are not supported by such records. However, the respondents reiterate and reassert the foregoing


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statements made in this written statements once again and state that the transfer and posting of the applicant in Bhutan is not a general transfer and posting. Rather it is a foreign posting with definite tenure involving financial and administrative implications.

7. That with regard to the statements made in paragraphs 4.4 and 4.5 of the application, the respondents states that the representation submitted by the applicant thereby requesting the respondents to allow him to continue up to the month of Apr 2003 was duly examined by the respondents and the respondents rejected the same vide order CDA (BR) No. AN/1/77 dated 7.2.2003 and vide order CDA (BR) No. AN/1/77 dated 20.2.2003 the respondents directed the competent authority to relieve the applicant from his place of posting and transferred him to Aruvankadu and resume his duty there. Accordingly the applicant was relieved on 27.2.2003 at 11 AM and he was struck off strength from the establishment of AO 19 BRTF Bhutan. The applicant duly acknowledged

the receipt of relieving order and also put his signatures by handing over his charge to another employee thereby enabling to proceed to new place of posting. In the meantime the regular reliever has reported for duty on 28.2.2003 in place of the applicant on his posting at AO 19 BRTF Bhutan.

In this connection it is pertinent to make a mention here that even though the applicant has been transferred and struck off the strength of establishment, he may however retain the official residential accommodation to retain his family and for himself for another period of 2 months from the date of his relieve order. The applicant has been transferred and struck off from the strength with effect from 27-2-2003 and accordingly he may retain the official quarter up to 27-4-2003 without any difficulties. But, the applicant will have to proceed to his new place of posting to report there for his duty and also for his salary etc after 27.2.2003 onwards. In case the applicant has not got any personal difficulty on account of his son's



examination in that case the respondents may however consider his case for grant of leave on that occasion as a special case there will not be any difficulty in getting salary and retaining his family in official quarter of 19 BRTF Bhutan so that he may easily accommodate his son for completion of his examination. It is also to be noted that the applicant requested the respondents to allow him to continue up to the month of Apr 2003, where as the sole ground for such stay/extension of tenure is shown as his son's examination which is going to be over by 1.4.2003 itself. There is no reason at all as to why he wanted to remain in Bhutan up to the month of Apr 2003.

As indicated above, the applicant on the plea of his son's examination wants to get some financial gain in the form of temporary duty tour which may be up to the tune of about Rs. 16000/- and Bhutan Compensatory Allowance to the tune of Rs 36000/- (approximately) which is also exempted from Income Tax at the cost of the State exchequer. It is known to all that the Govt is putting up extreme measures to curtail unnecessary and avoidable expenditure as austerity measures time and again. So, it is against law and the Govt policy to retain two persons against a single post and that too in a foreign country involving huge financial implications.

In view of the above facts and circumstances the application is not tenable in law and is therefore liable to be dismissed with costs.

The Copy of the Section order of handing/taking over charge dated 27.2.2003 is annexed as Annexure R-5.

8. That with regard to the statements made in paragraph, 4.6, the respondents state that the representation of the applicant was duly examined and considered by the respondents. As there is no vacancy available to accommodate the applicant against the choice station chosen by him, his case was considered to post him at Aruvankadu, a station which is comparatively

nearer to his native place where there is a vacancy available. In this connection the respondents make it clear that the station of Aruvankadu is more convenient and a good station in comparison to station in Port Blair. To go to Portblair, it takes about 4 days from Mainland by sea. The applicant is not entitled to Air travel under the rules. Whereas the distance between Aruvankadu and his native place would be approximately overnight journey only. Moreover, the applicant has taken this plea in the application without seeking any relief in this regard. Therefore, the applicant unnecessarily raising this issue to mislead the Hon'ble Tribunal for his ulterior motives.

Trive

9. That with regard to the statements made in paragraph 4.7, the respondents state that on being transferred as stated above, the applicant has already been struck off and relieved from duty from the office of AO 19 BRTF Bhutan and to proceed to his new place of posting Aruvankadu. The application was moved on 27-2-2003 on which itself the applicant was relieved from his duty at 11.00 AM whereas this Hon'ble Tribunal passed an Interim order thereby suspending the order of transfer which was received through fax on 27.2.2003 only at 3.30 PM by which time the applicant stood struck off strength of AO 19 BRTF Bhutan. It is also pertinent to mention here that the substitute posted in place of the applicant has already reported for his duty and joined in place of the applicant with effect from 28.2.2003. Under these circumstances it is not tenable in law to allow two persons to work against a single post at the same place. Hence, the application is liable to be dismissed with costs as devoid of any merit.

10. That with regard to statements made in paragraphs 5.1 to 5.5 the respondents state that from the facts and circumstances of the case as stated herein above and the provisions of law, the grounds as shown by the applicant are not tenable in law. The applicant has alleged malafide action of the respondents whereas none has been implicated by name and no proof has been shown as to how and where the respondents acted malafide. Unless

there is a cogent and irrebuttable evidence are shown, mere allegations are malafide can not sustain in law. The Hon'ble Supreme Court in a Catena of decisions has laid the law to regulate the affairs of transfer of an employee. It is administration which is the best judge to utilize the services of an employee as it wants and who is paying him. Unless there is a clear proof that an employee has been transferred by malafide action of the authority or in violation of statutory rules, no court or Tribunal should interfere in a matter like transfer, which is made in public interest, administrative reasons or in administrative exigencies. In case of any hardships, personal problems, genuine difficulties like ailments etc it is the departmental authority who are the best judge to consider such cases at the administrative level where court has nothing to do in such matter. Moreover, transfer is an incident of service, an employee can not have any right against such transfer.

In this instant case, there is not a single iota of evidence to show that the respondents have done anything illegal or arbitrary in the impugned order of transfer. Hence, it is a fit case in which this Hon'ble Tribunal would be pleased to dismiss the application with costs.

11. That with regards to the statement made in paragraphs 6 & 7, the respondents have no comments to offer.

12. That with regard to statements made in paragraphs 8.1 to 8.4 and 9 of the application, the respondents states that in view of the facts and circumstances of the case and the provisions of law, the applicant is not entitled to any relief whatsoever, as prayed for, and the application is liable to be dismissed with costs being filed devoid of any merit.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to hear the

parties, peruse the records and after hearing the parties and perusing the records, may also be pleased to dismiss the application with costs.

VERIFICATION

I, Shri Dev Raj S/O Shri T. Ram at present working as Accounts Officer, 19 BRTF, Phuentsholing, Bhutan, being competent and duly authorised to sign this verification, do hereby solemnly affirm and state that the statements made in para 1, 2, 4 to 6, 8 to 12 are true to my knowledge and belief, those made in para 3 and 7 being matter of records are true to my information derived there from and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this day of 10th March 2003 at Guwahati.

Dev Raj
Deponent

Sr. Chowdhury

FAX / speed Post
11

Annexure-R1

8
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-22-
32

FROM : CDA (BR)
NEW DELHI-10

TO : AO 19 BRTF
C/O 99 APO

SUJANA CHANDRAN, SA/8313350 PRESENTLY SERVING IN YOUR OFFICE
HAS BEEN POSTED TO ARUVANKADU UNDER THE ORGANISATION OF PCA (FYS)
KOLKATA AT STATE EXPENSE (.) HE MAY PLEASE BE RELIEVED OF HIS
DUTIES IMMEDIATELY ON COMPLETION OF HIS TENURE AND INSTRUCTED
TO REPORT TO THE NEW OFFICE OF POSTING (.) RELIEVING REPORT MAY
PLEASE BE SENT TO JCDA (BR) GUWAHATI UNDER INTIMATION TO THIS
OFFICE (.)

TA/JOINING TIME AS ADMISSIBLE UNDER RULES IS AUTHORISED

No. AN/I/77
Office of the CDA (BR)
Seema Sadak Bhawan
Ring Road, Naraina
Delhi Cantt.-10

Dt. 20/2/2003

Sr. AO(AN)

Copy to:-

1. PCDA (FYS) Kolkata - For information w.r.t. HQrs letter No. AN/X/10098/6/2003/BTN/13 dt. 11.02.03
2. JCDA (BR) Guwahati - w.r.t. above- on relieving the above named individual Pt. II O.O. may be published simultaneously and forwarded to this office for onward transmission to HQrs Office.



Sr. AO(AN)

S. Chandan, SA 8313350

2003

Nature of Leave	From	To	No of days	An % of
CL.	25/03	26/03	2	Private Affairs / Reasoning of Picketing Absence from Siliguri 95 Jm Karam Mohd pl's Gopal Kante Siliguri.

Leave address -

Recommended
by
24/2
AA

SAO
21/2

(RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 88 / 2003

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant (s) S. Chandran

- Vs. -

Respondent (s) U.O. 7 & OMO

Advocate for the applicant (s) Mr. I. A. Talukdar

Advocate for the respondent (s) C.G.S.C.

Notes of the Registry

Date

Order of the Tribunal

27.2.2003

Heard Mr. I.A. Talukdar,
learned counsel for the applicant
and also Mr. B.C. Pattnaik, learned
Addl. C.G.S.C. for the respondents.

Issue notice to show cause
as to why the application shall not
be admitted.

Also, issue notice to show
cause as to why interim order as
prayed for shall not be granted.
Returnable by three weeks.

List on 21.3.2003 for admis-
sion.

In the meantime, the order
of transfer dated 20.2.2003 transfe-
ring the applicant Sri S. Chandran,
Sr. Auditor, from 19 BRTF (OREP),
C/O 99 APO to Aruvamadu (Tamil Nadu)
shall remain suspended until
further order.

Sd/ VICE CHAIRMAN

Section Officer (A)

Central Administrative Tribunal
Guwahati Bench, Guwahati

No. AO/19TF/L/Estt/LXXI
Office of the AO 19 BRIF
C/O 99 APO

Dated : 27/2 Feb 2003.

To,

The ACFA (Fys)
Cardite Factory
Aruvankadu
Tamil Nadu

Sub : TRANSFER/POSTING : DAD ESTT

Ref : CDA (BR) New Delhi No. AN/1/77 dated 20-02-2003.

Shri Sujana Chandran, S/A, A/C No. 8313350 has been relieved of his duties from this office on 27/02/2003 (FN), with directions to report for duty to your office after availing of usual joining time as admissible under rules.

The individual has availed 02 days CL and NIL RH during the current Calender year. TA/Joining time as admissible/rules is authorised.

Sr. Accounts Officer
HQ 19 BRIF

Copy to :-

01. The PCDA (Fys)
10-A Auckland, Kolkata.
02. CDA (BR), New Delhi-110 010.
03. The JCDA (BR) Bhatnagar Guwahati-781171
04. The JCDA (BR) Patna
05. The AN/IB Section/AN/IV
CDA Patna.
06. HQ 19 BRIF, C/O 99 APO
07. Shri Sujana Chandran, S/A - for compliance.
A/C No. 8313350-

- for information
please.

Received on 27/2/03
at 11 AM
27/2/03

Sr. Accounts Officer
HQ 19 BRIF

प्रनुमाग आदेश सं २७४ दिनांक २७-२-२००३

श्री सुजन चन्द्रन वरिष्ठ लेखा परीक्षक स्वाता सं. ८३१३३५०, जिनका स्थानान्तरण वारडाइट मैक्ली अरुवनकाडू (तमिलनाडू) में हुआ है, को आज दिनांक २७-२-२००३, पूर्वाह्न, इस कार्यालय से कार्यमुक्त किया जाता है। उनकी सीट का कार्यभार अस्थायी तौर पर श्री आर आर चौधरी वलेप को दिया जाता है।

Handing/Taking over की कार्यवाही करके निम्नलिखित - वर्तनी को सूचित किया जाय।

सभी सम्बन्धित कर्मचारी ध्यान में रखें।

१. श्री सुजन चन्द्रन वलेप. — ~~मेव~~
२. श्री आर आर चौधरी वलेप. — ~~मेव~~

२७/२
वलेप अधिकारी
मुहील
२७/२