

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER EXH. 17

org. App/Misc. Petn/Cont. Petn/Rev. Appl.

12/04.....

In O.A. 200/03

Name of the Applicant(s) In Niranjan Das

Name of the Respondent(s) U.P. 2003

Advocate for the Applicant Mr. S. Sama & Miss U. Das.

Counsel for the Railway/C.G.S.C.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

31.08.2004

List the case on 30.9.2004 along-
with the M.P.76 of 2004.

This revised application
has been filed by
the applicant u/s
22(f) of the Admin.
Tribunal Act, 1985
for reviewing the
judgment and order
dated 5.5.04 passed
in O.A. No. 2003.

Laid before Hon'ble
Court for orders.

N. Sama
11/8/04
Section Officer

K. V. Prahadang
Member (A)

Ms. U. Das, learned Advocate for
the applicant is present.

The present R.A. as well as the
M.P.76/2004 are in respect of the matter
which was disposed of by Hon'ble Single
Member. Hence both the matters be pla-
ced before the Hon'ble Single Member.

List on 5.11.2004.

bb
5.11.2004

R. L.
vice-Chairman

Present : The Hon'ble Mr. K.V. Prah-
ladang Member (A).

None for the parties. List on
10.12.2004.

K. V. Prahadang
Member (A)

mb

23.12.2004

List on 23.1.2005 for orders.

K. D. Bhattacharya
Member (A)

mb

06.01.2005

List on 02.02.2005.

K. D. Bhattacharya
Member (A)

mb

14.02.2005

Present : The Hon'ble Mr. M.K. Gupta, Member (J).

None appears. List on 16.2.2005 before the Division Bench.

M. J. Gupta
Member (J)

mb

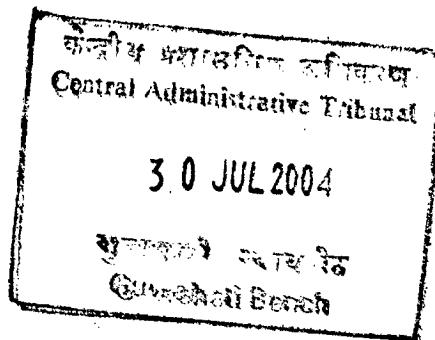
16.2.2005

Heard Ms U. Das, learned counsel for the applicant.

On 23/05
The applicant has not been able to point out any manifest error on the face of the record while passing the order dated 5.5.2004 and hence the R.A. is dismissed. No costs.

K. D. Bhattacharya
Member (A)

nkm



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

R.A. No. 12/04

In. OA No. 200/2003

IN THE MATTER OF

An application under Rule 22(f) of
the Administrative Tribunal Act,
1985. Seeking review of the
clarification of the judgment and
order dated 5.5.2004 passed in OA
No. 200/03.

-AND-

IN THE MATTER OF

Sri Niranjan Das
Sr. Post Master
Silchar, Head Office,
Silchar.

.....Applicant

-VS-

1. Union of India
Ministry of Communication
New Delhi.

2. The Chief Post Master General
Assam Circle, Meghdoot Bhawan,
Guwahati-1.

Filed by
the petitioner through
the
Advocate
Mukherjee
30/8/04

3. The Director

Postal Services, Assam Circle,
Meghdoct Bhawan, Guwahati-1.

4. The Asstt. Post Master General

(staff), Office of the Chief Post
Master General, Meghdoct Bhawan,
Guwahati-1.

5. The Supdt. of Post Offices

Darrang Division, Tezpur.

.....Respondents

The humble application on behalf of the applicant
above named:

MOST RESPECTFULLY SHEWETH

1. That the applicant in the instant Review
Application seeking redressal of his grievances relating to
the order of transfer dated 26.6.2003 preferred the above
noted OA before the Hon'ble Central Administrative Tribunal,
Guwahati. The Hon'ble Tribunal while issuing notice on
29.8.2003 was pleased to pass an interim order suspending
the operation of the impugned order dated 26.6.2003.

A copy of the interim order dated
29.8.2003 is annexed herewith and
marked as Annexure-1.

2. That the Respondents on receipt of the notice from
the Hon'ble Tribunal contested the matter before the Hon'ble

5

Tribunal. The review applicant controverting the statement submitted the Rejoinder. The respondents however did not prefer any application vacating the said interim order and on the other hand the said interim order was never implemented allowing the petitioner to resume his duty. The matter when came up again before the Central Administrative Tribunal, Guwahati bench on 26.9.2003, in absence of any such vacating application by the Respondents the Hon'ble Central Administrative Tribunal, Guwahati Bench was pleased to extend the interim order dated 29.8.2003.

A copy of the said order dated 26.9.2003 is annexed herewith and marked as Annexure-2.

3. That on 5.5.2004 the aforesaid OA came up for hearing and the Hon'ble Tribunal after hearing the parties to the proceeding was pleased to remained back the matter relating to his posting with a direction to provide relief taking into consideration the service rendered by the applicant. However, the Hon'ble Central Administrative Tribunal, Guwahati bench while closing the observation observed that the period of absence may be regulated crediting leave as per the extend rules while entertaining any such leave application.

A copy of the judgment and order dated 5.5.2004 passed in OA No.2003/04 is annexed herewith and marked as Annexure-3.

4. That the applicant in the instant Review Application is aggrieved by the Annexure-3 judgment and

4-

therefore seeking review of the same has prefer this review application on amongst the following.

GROUND

1. For that the Hon'ble Central Administrative Tribunal, Guwahati has committed the manifest error of law as well as fact while in passing the judgment and order dated 5.5.2004 passed in OA No.200/03.

2. For that the Hon'ble Central Administrative Tribunal, Guwahati Bench while passing the judgment and order 5.5.2004 passed in OA No.200/03 has failed to take into consideration the interim order dated 29.8.2003 which was further extended vide order dated 26.9.2003 and as such the said judgment is required to be reviewed so far it relates to regularising the so called absence period during which the Review Applicant was prevented from resuming his duty and drawing his due salary. The Hon'ble Tribunal ought to have excluded the period covered under the interim order.

3. For that the Hon'ble Tribunal also failed to take into consideration the direction contained in the earlier judgment dated 26.2.2001 passed in OA No.135/99 and the interim order passed by the Hon'ble Gauhati High Court in WP(c) No.6796/2001 while passing the judgment and order dated 5.5.2004 passed in OA No.200/2004.

4. For that the Hon'ble Central Administrative Tribunal, Guwahati Bench has committed manifest error in facts as well as law in passing the judgment and order dated 5.5.2004 passed in OA No.200/03 as the earlier interim order

dated 7.2.2003 passed in OA NO.21/03. The Hon'ble Central Administrative Tribunal, Guwahati Bench also did not take into consideration the judgment and order dated 28/2/2003 passed in OA No.21/03 wherein there was a specific direction towards the Respondents for consideration of his case. The fact of non-implementation of the said judgment and order dated 28.2.2003 passed in OA No.21/2003 was also the subject matter of OA No.200/03, however the Hon'ble Central Administrative Tribunal, Guwahati Bench ignored the same and has committed error both in law as well as facts while passing the Annexure-3 judgment and as such same is required to be reviewed.

5. For that the Hon'ble Central Administrative Tribunal, Guwahati Bench took into consideration certain facts within there being any supporting pleading and as such committed error both in law as well as facts while passing the Annexure-3 judgment.

6. For that Hon'ble Central Administrative Tribunal, Guwahati Bench taking into consideration the attending facts as well as the judgments ought to have allowed the OA setting aside the order of transfer dated 26.6.2003 declaring it to be an arbitrary and illegal one. However, the Hon'ble Central Administrative Tribunal, Guwahati Bench failed to take into consideration the relevant facts and has committed manifest error of law as well as facts and as such same is required to be reviewed.

7. For that Hon'ble Central Administrative Tribunal, Guwahati Bench while passing the judgment and order

dated 5.5.2004 directed the respondents authority to treat the absence period as on leave virtually reviewing its own interim orders dated 29.8.2003 and 26.9.2003 which is not permissible in the eye of law and as such same is liable to be reviewed.

8. For that in any view of the matter the judgment passed by the Hon'ble Tribunal is not sustainable and same is required to be reviewed.

PRAYER

In view of the above it is most respectfully prayed that Your Lordships would graciously be pleased to issue notice to the Respondents to show cause as to why the aforesaid judgment and order dated 5.5.2004 passed in OA NO.200/04 shall not be reviewed and upon hearing the parties to the proceeding be further pleased to review the Annexure-3 judgment, setting aside the order dated 26.6.2003 while regularising the service of the petitioner with all consequential service benefit including arrear salary and seniority etc.

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

CERTIFICATE

I Shri S.Sarma, Advocate for the Applicant certified that the above are good grounds for Review Application and I undertake to support them at the time of hearing of the case.

S.Sarma
S. Sarma
Siddhertha
Advocate

AFFIDAVIT

I, Sri Niranjan Das, aged about 58 years, at present working as Sr. Post Master, Silchar, Head Office, Silchar, do hereby solemnly declare and state as follows:

1. That I am the petitioner in the accompanying petition and as such, well conversant with the facts and circumstances of the case. I am therefore competent to swear this affidavit.

3. That the statements made in this affidavit and in paragraph..... of the accompanying application are true to my knowledge, those made in paragraph.....are matters of records which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts. The Annexure are true copies of their original.

And I sign this affidavit on this the 30th day of July, 2004 at Guwahati.

Identified by me:

Usha Das

Advocate

Niranjan Das

Deponent.

Solemnly declare and state by the deponent who is identified by Miss U. Das Advocate.

Bordona Sri

Advocate

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDERSHEET

Original Application : 200/2003

Mise Petition No. :

Contempt Petition No. :

Review Application No. :

Applicants: Sri Nitin Jayam Das

Respondents: Ex-Officer

Advocate for the Applicants: Mr. S. Sankar Mitra, Q.D.B.

Advocate for the Respondents: (GSC)

Notes of the Registry	Date	Order of the Tribunal
1. Application is filed	29.8.03	<p>Present: Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman and Hon'ble Mr. K. V. Pratuladon, Adminis- trative Member.</p> <p>Heard learned counsel for the parties.</p> <p>Issue notice on the respondents to show cause as to why the appli- cation shall not be admitted. Returnable by four weeks.</p> <p>Issue notice on the respondents to show cause as to why the trans- fer and posting order bearing No. Staff/3-4/92 Ch. II, dated 26.6.2003 from Supdt. NESD, Guwahati to Sr. PM, Silchar HQ, shall not be suspended.</p> <p>In the meantime, the impugned order dated 26.6.2003 shall remain suspended till the returnable date.</p> <p>List on 19.9.03 for Admission.</p>

Certified to be true Copy

Guwahati, 31/8/03

Section Officer (I)

C.A.T. GUWAHATI BENCH
Guwahati, 31/8/03

Attested
before
Advocate

Guwahati, 31/8/03

Sd/-
Vice-Chairman

FORM NO.4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALIATI BENCH

ORDERSHEET

Original Application : 200/2003

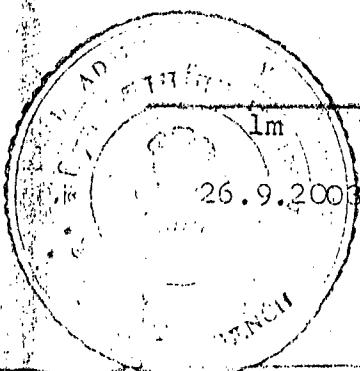
Mise Petition No. :

Contempt Petition No. :

Review Application No. :

Applicants:- Sri Niranjan DasRespondents:- EDL & ORSAdvocate for the Applicants:- Mr. S. Sarma, M.R.C. Das.Advocate for the Respondents:- CASC

Notes of the Registry Date Order of the Tribunal



26.9.2003 List again on 7.11.2003 for admission. In the meantime, interim order dated 29.8.2003 shall continue.

Memo No 210 Dated 26-9-03 sd/ VICE CHAIRMAN

Copy for information and necessary action to:-

1. Mr. S. Sarma, Advocate, CAT, Ghy-5.
2. Mr. B. C. Pathak, Addl. C.O.S.C.

Attended
now
Advocate

26-9-03
Central Administrative Tribunal
Guwahati Bench
Interim Order dated 26.9.2003
allowing the application of Mr. B. C. Pathak
Advocate for Mr. S. Sarma, Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 200 of 2003

Date of decision: This the 5th day of May 2004

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

Shri Niranjan Das
Superintendent of Post Offices,
Nalbari-Barpeta Division,
Nalbari.

.....Applicant

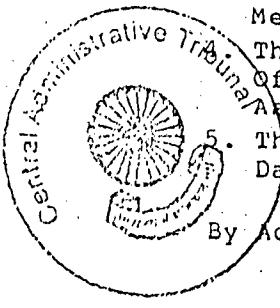
By Advocates Mr S. Sarma and Ms U. Das.

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General Assam Circle, Meghdoot Bhawan, Guwahati.
3. The Director, Postal Services, Assam Circle, Meghdoot Bhawan, Guwahati.
4. The Asstt. Post Master General (Staff), Office of the Chief Post Master General, Assam Circle, Guwahati.
5. The Superintendent of Post Offices, Darrang Division.

.....Respondents

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

O R D E R (ORAL)K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

This application is for quashing of the order of transfer of the respondents dated 26.6.2003, Annexure-4, transferring the applicant from the post of Superintendent NESD, Guwahati to the post of Sr. Post Master, Silchar Head Office. The applicant had been earlier transferred from Nalbari-Barpeta Division to the post of Superintendent NESD, Guwahati vide order dated 22.1.2003. This order was

Dw

Allected
Sarjan
Advocate

confirmed with some modification by the respondents vide order dated 3.2.2003, Annexure-6. Both the transfer orders dated 21.2.2003 and 3.2.2003 were challenged before this Tribunal in O.A.No.21 of 2003. The said O.A. was finally dismissed by the Bench vide order dated 28.2.2003 (as there was no merit in the application). 13

2. The present O.A. is against the order dated 26.6.2003 by which the applicant has been transferred from Guwahati to Silchar Head Office as Post Master. The applicant had earlier by interim order dated 7.2.2003 in O.A.No.21/2003 got a stay against the transfer order dated 22.1.2003. The applicant also claimed that the charge report dated 5.2.2003 was arbitrary, with malafide intentions. The applicant has also not got his salary since the implementation of the order dated 5.2.2003, Annexure-7 to the written statement. The respondents, however, claimed that the applicant was relieved on 5.2.2003 before the receipt of the interim order dated 7.2.2003.

3. Heard Mr S. Sarma, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the respondents.

4. The transfer orders dated 22.1.2003 and 3.2.2003 have been decided by this Bench vide order dated 28.2.2003 in O.A.No.21/2003. The crux of the matter is whether the order of transfer dated 26.6.2003 is legitimate, just and fair. This order was issued since the applicant did not join Guwahati as per the order of transfer dated 22.1.2003. In O.A.No.21/2003 this Bench observed as follows:

".....it is difficult to hold that the transfer order of the applicant emanated from any improper motive....."

This judgment had gone into the entire matter relating to the transfer orders dated 22.1.2003 and 3.2.2003. In O.A.

No.200/2003.....

Attested
.....
Advocate

No.200/2003 the transfer order dated 26.6.2003 was stayed vide interim order dated 29.8.2003. However, since his relief by order dated 5.2.2003 the applicant has not joined as Senior Post Master, Silchar. Therefore, the applicant with effect from 5.2.2003 has not joined duty till date. It appears that the transfer order was passed in exigency of administrative requirements. We cannot attribute any improper motive in the action of the respondents.

5. The applicant is accordingly directed to join the post of Senior Post Master, Silchar Head Office as per the transfer order dated 26.6.2003 and the respondents shall within a period of one month of his joining at Silchar consider his case for transfer to the place of his choice after giving him an oral hearing. Since the applicant has less than one year to retire, the respondents may take a compassionate view. The period of absence may be regulated by giving him leave for which he is eligible as per rules and provided he applies for it.

6. Subject to the observations made above, the application stands dismissed. No order as to costs.

Sd/ MEMBER (A)

Certified to be true Copy

Attestd by

nkm

17.5.04
Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati 781005
15.7.04

Attestd
nkm
Advocate