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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

4

O.A/T.A No. OA 93/2004

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet.....OA.....Pg. 1.....to 3.....
2. Judgment/Order dtd. 16.02.2005.....Pg. 1.....to 4.....
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....OA 93/2004.....Pg. 1.....to 26.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S.....Pg.....to.....
8. Rejoinder.....Pg. 1.....to 4.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit on behalf of R no 2 page 1 to 12.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Shahid
09.11.17

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

✓ Crg.App/ Misc.Petr/Cont.Petr/ Rev.Appl. 93/2004

In O.A. _____

Name of the Applicant(S) Sri Narayan Chandu Barman

Name of the Respondent(S) U.O.I. & OPS.

Advocate for the Applicant Mr. M. Chanda,
Mr. G.N. Chakraborty & Mr. S. Choudhury.

Counsel for the Railway/ C.G.S.C. Mr. A.K. Choudhury,
Addl. C.G.S.C.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

This application is in form
is filed/C F . . s 50/-
depos

No. 775 389054

Dated 12.4.04.

[Signature]
Dy. Registrar

15/4

NS
19/4/04

Steps taken.

Notice & order dt. 22/4/04
sent to D/S for
issuing to respondents
nos 1 to 5.

Memo No = 727 to 731

11/5/04. Dt. 12/5/04.

A/D card return from
respondent no = 2.

① Service report are
still awaited.

mb

22.4.2004

Heard Mr. M. Chanda, learned
counsel for the applicant and also Mr.
A.K. Chaudhuri, learned Addl. C.G.S.C.
for the respondents.

The application is admitted.
Issue notice to the parties. Returnable
by four weeks.

List on 25.5.2004 for orders.

In the meanwhile, the transfer
order dated 08.03.2004 (Annexure-1)
in respect of the applicant (Sl. No.
23) shall be kept in abeyance.

[Signature]
Member (A)

25.5.2004

List on 24.6.2004 for
orders. Interim order dated
22.4.2004 shall continue.

[Signature]
Member (A)

2-8-04

Notice duly served on

3.8.2004

On the plea of counsel for the respondents four weeks time is given to the respondents to file written statement. List on 8.9.2004 for orders. Interim order dated 22.4.04 shall continue.

[Signature]
Member (A)

order dt. 3/8/04
issuing to learned
counsel for the both
parties.

mb

7-9-04

No W/S has been filed

8.9.04

On the prayer of Mr A.K.Choudhury, learned Addl.C.G.S.C four weeks time is allowed to file written statement.

List on 2.11.04 for order.

Interim order dated 22.4.04 shall continue.

[Signature]
Member (A)

order dt. 8/9/04
issuing to learned
counsel for both parties.

pg

24-11-04

25.11.04

On the prayer of Mr A.K.Choudhury, learned Addl.C.G.S.C six weeks time is granted to file written statement.

List on 17.1.05 for order.

Interim order dated 22.4.04 shall continue.

[Signature]
Member

order dt. 25/11/04
issuing to learned
advocate for both the
parties.

pg

09.02.2005 Present : The Hon'ble Mr. M.K. Gupta, Member (J).

None appears for the parties.

On perusal of the pleadings, I find that the transfer order dated 8.3.2004 was stayed in respect of the applicant vide order dated 22.4.04 specifically in view of the fact that the applicant's sons are studying in class X and XII standard at the time of passing of the transfer order. Now another academic year is going to end. Hence list on 16.2.2005.

[Signature]
Member (J)

23-12-04

An affidavit in opposition on behalf of Respondent No.2 has been submitted.

[Signature]
9/3/05

8-2-05

W/S has been filed

mb

Notes of the Registry	Date	Order of the Tribunal
15.2.05	16.2.2005	Present: The Hon'ble Mr.M.K.Gupta, Member (J).
Rejoinder submitted by the Applicant.		The Hon'ble Mr.K.V. Prahlanan, Member (A).
<i>Q.A.</i>		Heard learned counsel for the the applicant Mr.M.Chanda.
		Order is passed, kept in separate sheets.
		The O.A.
	16.2.2005	Present: The Hon'ble Mr.M.K.Gupta, Member (J).
17.3.05		Heard Mr.M.Chanda, learned counsel for the applicant. Order passed, kept in separate sheets.
Copy of the budget submitted to the Advocates for the parties.		The O.A. is disposed of in terms of the order. No costs.
Recd per 16/5/05	bb	<i>[Signature]</i> Member (J)
Received copy 14/3/05		

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~ No. 93 of 2004.

DATE OF DECISION 16.2.2005.

Sri Naryayan Chandra BarmanAPPLICANT(S)

Mr.M.ChandaADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

U.O.I.&Ors.RESPONDENT(S)

None present.ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. M.K.GUPTA, JUDICIAL MEMBER.

THE HON'BLE MR.

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 Judicial Member.

[Handwritten signature]

CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH.

Original Application No. 93 of 2004.

Date of Order: This, the 16th day of February, 2005.

THE HON'BLE MR. M. K. GUPTA, JUDICIAL MEMBER.

Sri Narayan Chandra Barman
S/o Late R.C.Barman
Divisional Accounts Officer, Gr.I
O/O Executive Engineer
Tawang Electrical Division
Department of Power, P.O: Tawang
Arunachal Pradesh.

..... Applicant.

By Advocates S/Shri M.Chanda, G.N.Chakraborty & S.Choudhury.

- Versus -

1. Union of India
Represented by the Secretary to the
Government of India
Ministry of Finance
New Delhi.
2. The Comptroller and Auditor General of India
New Delhi.
3. Accountant General (A & E)
Meghalaya Etc.
Shillong.
4. Sr.Dy. Accountant General (Admn)
O/o the Accountant General (A&E)
Shillong.
5. Shri K. Bathow
Sr.Dy. Accountant General (A&E)
O/o The Accountant General (A&E)
Shillong.

..... Respondents.

By Advocate Mr.A.K.Chaudhuri. - Not present.

ORDER (ORAL)

M.K.GUPTA, MEMBER(J):

The relieves prayed for in the present O.A. are as follows:-

- "8.1 That the Hon'ble Tribunal be please to direct the respondents to
defer the implementation of the impugned transfer and posting order

issued under letter no.E.O.No.D.A.Cell/120 dated 08.03.2004 till the current academic session is over in respect of the applicant.

- 8.2 That the Hon'ble Tribunal be please to direct the respondents to reconsider the case of the transfer and posting of the applicant and pass necessary order for modification/cancellation of the impugned transfer and posting order dated 08.03.2004 so far applicant is concern.

- or -

- 8.3 That the Hon'ble be pleased to direct the respondents to review the transfer and posting order dated 08.03.2004 and pass necessary posting order in any other station where C.B.S.E. Course in English medium school upto XIIth are available.

- 8.4 Costs of the application.

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

2. The facts, which are required to be noticed, are that the applicant, who is Divisional Accounts Officer, Gr.I, is transferred vide order dated 8.3.2004 from the Office of the Ex. Engineer, Tawang Electrical Division, Arunachal Pradesh to Office of the Ex. Engineer, Kailasahar PWD Division, Tripura. It is admitted fact that the applicant is posted at the said station since 1998. It is contended that the aforesaid transfer order is violative of the guidelines issued by the Comptroller and Auditor General of India, New Delhi dated 19.4.2000 (Annexure - II) inasmuch as the said order was passed during the mid-academic session and no option of choice posting was called for.

3. I have heard learned counsel for the applicant Mr. M. Chanda and since no one appeared for the respondents, I perused the written statement filed by them carefully. In



the said written statement it has been averred that normally no Divisional Accounts Officer/Divisional Account is retained more than three years in a same division and the said transfer order dated 8.3.2004 was made in public interest. Transfer being an incidence of service and the scope of judicial review in transfer is very limited unless the same is malafide, arbitrary and violative of statutory rules. Individual personal problems have no relevance and have to be considered by the departments not by the Court. For this purpose reliance was placed on the judgments of the Hon'ble Supreme Court in Shilpa Bose vs. State of Bihar AIR 1991 SC 532, NHPC vs. Shri Bhagwan 2001 (8) SCC 574, SBI vs. Anjan Sanyal 2001 (5) SCC 508 and Public Services Tribunal Bar Association vs. State of U.P. 2003 (4) SCC 104. It was contended that the applicant was overdue for transfer long back, but keeping in view his children education, he was retained in the same division as a special case. It is not possible to keep the applicant in the same division, which otherwise, would be in violative of the policy on the subject. The applicant had submitted a request for retention in the same station or for posting/transfer to choice station, which was placed before the Transfer Committee, but the said Committee could not accept the same and he was transferred to Kailasahar PWD Division, Tripura in public interest.

4. . On bestowing my careful consideration to the entire matter and upon hearing Mr. M. Chanda, learned counsel for the applicant, I am of the considered view that operation of the interim order of this Tribunal dated 22.4.2004, whereby impugned transfer order dated 8.3.2004 was stayed, needs to be continued till the current academic session is over i.e. 15.4.2005. Accordingly, the operation of the interim order of this Tribunal dated 22.4.2004 shall be continued till the current academic session is over i.e. 15.4.2005. However, I do not find any justification to quash the said transfer order dated 8.3.2004 inasmuch as the applicant was kept in the said station for about seven years as on date, though the normal tenure as indicated in the transfer policy dated 19.4.2000 is three years in a division and six years in a particular station. It is not disputed that the

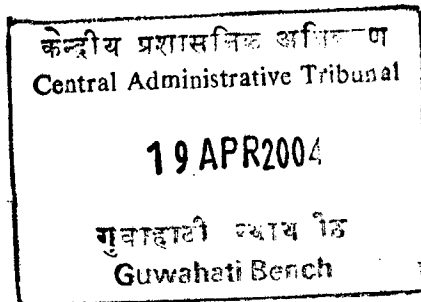


applicant continued in the same division for more than three years. Since the applicant himself has sought suspension/deference of the said transfer order till the completion of the current academic session, as noticed from the relieves extracted hereinabove, I do not find any justification to drag the matter any further i.e. beyond the current academic session. It will be open to the respondents to consider the applicant's request for his posting to such station where C.B.S.E. course is available, as far as possible, keeping in mind the transfer guidelines notified by them on 19.4.2000.

5. Accordingly, the present O.A. is disposed of. No costs.


(M.K.GUPTA)
JUDICIAL MEMBER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 93 /2004

Sri Narayan Chandra Barman.

VS-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 1976 That the applicant was initially appointed as L.D.C in the Public Works Department under the state of Arunachal Pradesh.
- 1986 The applicant was appointed as regular junior grade D.A under A.G (A&E), Shillong, Meghalaya.
- 9.3.2004 The impugned and transfer order was issued by the Sr. D.A.G (Admn) Shillong, without calling any option when the two children of the applicant are are studying in the final year of class Xth and XIIth standard under C.B.S.E. Course in English medium school at Tawang but there is no English

17
medium school under C.B.S.E. Course at kailasahar, Tripura i.e in the proposed place of posting.

19.4.2000 Transfer policy was issued by the Respondent Department. Where provision was made for declaration of vacancies prior to issuance of annual transfer and posting order and specific provision is made for calling option before processing the transfer and posting order and instruction are also contained for accommodating in their choice station but the impugned order of transfer and posting has been passed in violation of the norms laid down in the transfer policy. There was an instructions for strict compliance of the transfer policy.

20.03.04, 3.4.04, 22.3.04 Applicant submitted representations praying interalia for reconsideration of his transfer and posting order dated 8.3.2004 on the sole ground that his childrens are studying in the crucial final year in class Xth and XIIth standard in English medium schools under C.B.S.E. Course and specically pointed out that there is no English medium schools available in the proposed place of posting at kailasahar and accordingly prayed for modification/cancellation or review of the impugned transfer and posting order. Representation of applicant has been duly forwarded by the Executive Engineer with strong

recommendation. However the applicant is apprehending release at any moment even before consideration of his aforesaid representation hence the present application.

31.1.94 In the similar facts and circumstances Hon'ble Supreme Court decided the civil appeal no. 546 of 1994 directing the appellant not to effect the transfer order till the end of the current academic year. The case of the present applicant is squarely covered following the decision of the Hon'ble Supreme Court.

P R A Y E R S

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):

1. That the Hon'ble Tribunal be please to direct the respondents to defer the implementation of the impugned

transfer and posting order issued under letter no. E.O.No.D.A.Cell/120 dated 08.03.2004 till the current academic session is over in respect of the applicant.

2. That the Hon'ble Tribunal be please to direct the respondents to reconsider the case of the transfer and posting of the applicant and pass necessary order for modification/cancellation of the impugned transfer and posting order dated 08.03.2004 so far applicant is concern.
3. That the Hon'ble tribunal be pleased to direct the respondents to review the transfer and posting order dated 08.03.2004 and pass necessary posting order in any other station where C.B.S.E. Course in English medium school upto XIIth are available.
4. Costs of the application.
5. 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: -

1. That the Hon'ble Tribunal be pleased to stay the operation of the impugned transfer and posting order dated 08.03.2004 in respect of the applicant till disposal of the Original Application.

19 APR 2004

गुवाहाटी बेंच
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Title of the case : O. A. No. 93 /2004

Sri Narayan Chandra Barman . : Applicant

- Versus -

Union of India & Others: Respondents.

INDEX

SL. No.	Annexure	Particulars	Page No.
01.	----	Application	1-14
02.	----	Verification	-14-15-
03.	I	Copy of the transfer order dated 08.03.2004	16-19
04.	II	Copy of the transfer policy dated 19.04.2000.	20-21.
05.	III(Series)	Copy of the Representation dated 3.4.04, 22.3.04 and forwarding letter dated 3.4.04 and 20.3.04 respectively.	22-25.
06.	IV	Copy of the Judgment of the Hon'ble Supreme Court.	-26-

Date: 19.4.2004.

Filed by

Surgjit Choudhary

Advocate

14
Filed by the Applicant
Through Surgjit Choudhary.
Advocate
on 19.4.04.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**GUWAHATI BENCH: GUWAHATI**

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

O. A. No. 93 /2004

BETWEEN

Sri Narayan Chandra Barman.
S/o- Late R.C. Barman.
Divisional Accounts Officer, Gr. I
c/o Executive Engineer,
Tawang Electrical Division
Department of Power, p.o-Tawang,
Arunachal Pradesh.

... Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance,
New Delhi.
2. The Comptroller and Auditor General of India,
New Delhi.
3. Accountant General (A & E)
Meghalaya Etc.
Shillong.
4. Sr. Dy. Accountant General (Admn)
O/o- The Accountant General (A&E),
Shillong.
5. Shri K. Bathow.
Sr. Dy. Accountant General (Admn)
O/o- The Accountant General (A&E)
Shillong.

... Respondents.

Narayan Ch. Barman

DETAILS OF THE APPLICATION

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

This application is made against the impugned transfer order No. E.O. No. D.A Cell/120 dated 08.03.2004 issued in violation of professed norm by the Respondent No.4, whereby the applicant has been sought to be transferred from the Office of the Executive Engineer, Tawang Electrical Division to the Office of the Executive Engineer, Kailasahar P.W.D Division, Tripura in violation of the professed policy of the Respondent Department.

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

Narayan Ch. Barman

privileges as guaranteed under the Constitution of India.

4.2 That your applicant initially appointed as L.D.C in the public works Department in the state of Arunachal Pradesh in the year 1976. While working as U.D.C in the said office he was selected for regular appointment as Junior grade Divisional Accountant, under the administrative control of Accountant General (Meghalaya, Manipur, Tripura, Arunachal Pradesh, etc.). Accordingly he was appointed as regular junior grade D.A in the year 1986 under A.G (A&E), Shillong, Meghalaya.

4.3 That the applicant since his joining in the respondent department has been transferred very frequently within and outside of the state and he had worked at different places in different capacities as desired and ordered by the respondent departments. A chronological details of his postings along with his tenure of services have been furnished hereunder:-

<u>Place of Posting</u>	<u>Period</u>
1) Dumporijo, Arunachal Pradesh	- 1986- Aug'88
2) Udaipur, PHED, Tripura	-Aug'88- Jun'91
3) Kulaktang, P.W.D, Arunachal Pradesh	-Jul'91- Nov'95
4) Tawang, P.W.D Arunachal Pradesh	-Nov'95- Aug'98
5) Tawang electrical Division	- 21.08.1998 to till date.

Narayan Ch. Barman

4.4 That your applicant now serving as D.A.O Grade I in the office of the Executive Engineer, Tawang electrical division, Department of power, P.o, Tawang, Arunachal Pradesh. The impugned order of transfer and posting issued under letter no. E.O.No.D.A Cell/120 dated 08.03.2004, whereby the applicant is now sought to be transferred and posted from the office of the Executive Engineer, Tawang electrical division to the office of the Executive Engineer, Kailasahar, P.W.D in the state of Tripura.

It is submitted that applicant has no grievance to carry out the said order of transfer and posting order dated 08.03.2004 passed by the Sr.D.A.G (Admn) Shillong, but praying for deferment of the said transfer order for the academic session as the children of the applicants are studying in C.B.S.C course in the present place of posting at Tawang. The details particulars of the children's are furnished hereunder.

<u>Particulars of the children</u>	<u>Name of the school</u>
1) Joydeb Barman (elder son of the applicant)	Reading in class XII in Sr. Higher secondary school, Tawang under the Administrative Control of Education department, Government of Arunachal Pradesh.(C.B.S.E.Course)

Narayan Ch. Barman

2) Bijoy Kr. Barman. Reading in class x at
 Kendriya Vidyalaya,
 Tawang. (C.B.S.E. Course)

Both the children's of the applicant are appearing in the said examination during the current academic session as such dislocation of the family at this critical juncture will cause irreparable loss and injury to smooth continuation of the education of the children's of the applicant who are appearing in the crucial final examination during current academic session.

It is categorically submitted that the proposed place of posting at Kailasahar there is no English medium school under C.B.S.E Course. However, the Bengali Medium school under the state Board, of Tripura are available at Kailasahar. Therefore there is no scope on the part of the applicant to shift his children at Kailasahar at this stage. In this circumstances finding no other alternative, applicant approaching this Hon'ble Tribunal for protection of his right and interest by passing an appropriate order/ direction upon the respondents to allow the applicant to stay in the present place of posting till the current academic session is over and further be pleased to pass a direction upon the respondents to defer the transfer and posting of the applicant in terms of the above prayer.

Narayan Ch Barman

A copy of the transfer and posting order is enclosed herewith as Annexure-I

4.5 That is stated that the applicant is quite aware regarding his right and limitation to stay in a particular station and being a sincere Govt. employee also inclined to carry out any transfer and posting order passed by the competent but at present he is facing immense difficulties to shift his family at Kailasahar due to non-availability of any higher secondary and high school under C.B.S.C Course at kailasahar, in the circumstances and more particularly in the view of the fact that both the children's are reading in the final year at class XII as well as X at Tawang under the C.B.S.C. Course.

4.6 That it is stated that the impugned transfer and posting order dated 8.3.2004 has been passed in total violation of professed norms laid down in the transfer policy of the respondent department as evident from the letter no. 394-NGE(app)/11-98 dated 19.04.2000 of the respondent no 2 the following parameters are to be followed for transfer and posting of Divisional Accountants Officer/ Divisional Accountants:-

(a) Transfer and posting should normally be made once in a year and annual transfers should be timed properly so that these may not disturb the academic session.

Narayan Ch. Badman

(b) List of divisions likely to fall vacant during the year should be publicized well in advance.

(d) Option for posting in particular station(s) should be called for from the individuals and efforts should be made to accommodate the officers at the place of their choice. Subject to availability of vacancy and on basis of seniority. The adverse comments given by the inspecting officer auditing the accounts of the divisions, adverse remarks made by the Executive Engineers on the performance of Divisional Accounts Officers/ Divisional Accountants which are finally substantiated and the performance in proper and timely submission of accounts may also be kept in view;

(h) A general order indicating transfers and postings of all officers should be notified in addition to individual posting orders that may be issued.

Dispensation of the set norms could be made only in every exceptional circumstances, to be recorded in writing, on account of extreme personal circumstances which are quite distinguishable.

But, surprisingly all those professed norms have been violated by the respondents while issuing the transfer and posting order dated 08.03.2004. It is stated that no option was invited before issuing the impugned transfer order, no effort is made to accommodate the employees to their choice station and no notification was issued declaring the vacancy position before processing the transfer and posting order of the

Narayan Ch. Barman

Divisional Accounts officer. No is recorded for departure of the said norms as a result there was no scope on the part of the applicant to submit his representation for consideration of his transfer and posting earlier, in a place where English medium schools upto higher secondary schools under C.B.S.E. Course are available. Denial of opportunity of submitting option before issuance of transfer policy and on that score alone the impugned order is liable to be set aside and quashed.

Copy of the letter dated 19.04.2000 is annexed hereto as **Annexure-II**

- 4.7 That your applicant submitted representation on 20.03.2004 and also on 03.04.2004 addressed to the A.G (A&E) Meghalaya etc. In the said representation the applicant requested for cancellation/modification of his transfer order in an around Arunachal Pradesh and also indicated name of certain places like Bomdila, Seppa and Naharlagon where C.B.S.E. Course schools are available to enable his childrens to continue their studies under C.B.S.E. Course during the current academic session. However those representation which were submitted by the applicant on receipt of the impugned transfer order were duly forwarded and recommended by the executive Engineer for favorable consideration of the case of the applicant. But, the applicant is approaching even before consideration of his representation there is a likelihood of his

Narayan Ch. Barman

release from the present place of posting, as such finding no other alternative the applicant approaching this Hon'ble Tribunal for protection of his valuable legal right by passing an appropriate order/direction upon the respondents for re-consideration of his case for posting in the facts and circumstances stated above and till such consideration the Hon'ble Court be pleased to protect the right and interest of the applicant by passing an appropriate interim order to the extent not to release him in the mean while. It is categorically submitted that the applicant has not yet been released but apprehending release at any moment.

Copy of the representation dated 20.03.2004 and 03.04.2004 and forwarding letter dated 22.03.2004 and 03.04.2004 are annexed hereto as **Annexure-III (Series)**.

- 4.7 That it is stated that the impugned transfer and posting order has been issued as a routine measure and as such there is no urgency exists for carrying out impugned transfer and posting order with immediate effect, therefore Hon'ble Court be pleased to direct the respondents to defer the said impugned transfer and posting order till the current academic session of his children's are over. In this connection the applicant beg to refer the decision of the Hon'ble Supreme Court in the case of "Director of school education, madras and others versus. O.karuppa Thevan and others", wherein the Hon'ble Supreme Court on consideration of similar facts and situations directed the respondents

Narayan Ch. Barman

to defer the implementation of the transfer and posting order till the academic session is over. The case of the present applicant is also squarely covered following the decision of the Apex Court referred above.

A Copy of the judgment of the Supreme Court is enclosed as Annexure-IV

4.13 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 applicant has been transferred under the impugned order dated 08.03.2004 while the children of the applicant are going to appear in the final examination in class XII as well as X under the C.B.S.E. Course at Tawang during the current academic session. Which will cause irreparable loss and injury for smooth continuation of the education of the children's of the applicant.

5.2 For that, in the proposed place of posting at kailasahar, Tripura there is no English medium school under the C.B.S.E. Course for the XIIth and Xth standard. So that the children of the applicant could be admitted to complete the final year academic session.

Narayan Ch. Barman

- 5.3 For that, shifting of the family more particularly shifting of the children's at this crucial stage is difficult and the same will cause irreparable loss and injury to the education of the children.
- 5.4 For that, children's are studying in the final year in XIIth standard and Xth standard respectively during current academic session under C.B.S.E. Course.
- 5.5 For that, the applicant has no hesitation to carry out the transfer and posting order dated 08.03.2004 but praying for deferment of the said posting order till the academic session is over.
- 5.6 For that, no option is invited, no opportunity is provided notifying the vacancy position and no effort is made to consider the choice station posting by calling options as required under the rule/transfer policy.
- 5.7 For that, the impugned transfer and posting order has been issued in total violation of the professed norms without recording any reasons for departure from the set norms as required under the rule.
- 5.8 For that, it is obligatory on the part of the respondent Department to consider the welfare of the children's of the Government employee and for smooth continuation of the education of the children's of the applicant.

Narayan Ch. Badman

5.9 For that, the impugned transfer and posting orders have been issued as a routine measure and as such no exigency is involved for carrying out the said order with immediate effect.

5.10 For that, applicant is ready to carry out any transfer and posting order in any station where English medium C.B.S.E. Course are available upto XIIth standard.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file 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

Narayan Ch. Badman

27

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):

A 8.1 That the Hon'ble Tribunal be please to direct the respondents to defer the implementation of the impugned transfer and posting order issued under letter no. E.O.No.D.A.Cell/120 dated 08.03.2004 till the current academic session is over in respect of the applicant.

-or-

8.2 That the Hon'ble Tribunal be please to direct the respondents to reconsider the case of the transfer and posting of the applicant and pass necessary order for modification/cancellation of the impugned transfer and posting order dated 08.03.2004 so far applicant is concern.

-or-

8.3 That the Hon'ble tribunal be pleased to direct the respondents to review the transfer and posting order dated 08.03.2004 and pass necessary posting order in any other station where C.B,S.E. Course in english medium school upto XIIth are available.

8.4 Costs of the application.

8.5 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.

Narayan Ch. Barman

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 transfer and posting order dated 08.03.2004 in respect of the applicant till disposal of the Original Application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	: JJG3890.54.
ii) Date of Issue	: 12.4.04.
iii) Issued from	: G.P.O. Guwahati.
iv) Payable at	: G.P.O. Guwahati.

12. List of enclosures.

As given in the index.

Narayan Ch. Barman

VERIFICATION

I, Shri Narayan Chandra Barman S/o Late R.C.Barman, aged about 56 years, working as Divisional Accounts Officer Grade-I, Electrical Division, Department of Power, Tawang, Arunachal Pradesh, 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 19th day of April, 2004.

Narayan Ch. Barman

OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA ETC., SHILLONG.

E.O. No. D.A. Cell/120

Dated:- 8-3-2004

The following Sr. Divisional Accounts Officers and Divisional Accounts Officer Grade-I & II are transferred and posted to the Divisions noted against each as shown below.

They are requested to submit their handing over memorandum to their Divisional Officers under intimation to this office.

The Divisional Officers/Controlling Officers are requested to release the Officials concerned working under them latest by 9th April 2004 under intimation to this office and to forward a formal handing and taking over charge report of the officials concerned to this office at an early date

The transfer is in public interest.

SL. No	Name & Designation	Present Division	Division Transfer to	REMARKS
1.	Shri P.C.Borah, Sr.DAO	O/o the Ex.Engineer, Gumti Electrical Division Jatanbari, Tripura, Addl.charge of Gumit Civil Division (Power) Jatanbari	O/o The Executive Engineer, Pasighat Drilling Division, I& FC, with addl. Charge of Pasighat I&FC Division, Pasighat vice Shri U.N.Sarkar, Sr.DAO	Shri P.C.Borah will move first to release Shri Sarkar.
2.	U.N.Sarkar, Sr.DAO,	O/o the Ex. Engineer Pasighat Drilling Division, I&FC, with addl. charge of Pasighat I&FC, Division, Pasighat	O/o the Ex. Engineer Gumti Electrical Division, Jatanbari, Tripura, with additional Charge of Gumti Civil Division, (Power), Jatanbari, vice Shri P.C.Borah	
3.	A.Pharami, DAO-I,	O/o the Ex.Engineer Gas Thermal Civil Division (Power), Rokla, Tripura, addl. charge of Gas Thermal (Elect.) Division, Rokla.	O/o the Ex. Engineer Building Project Division No.IV PWD, Imphal, vice L.Shanti Kumar Singh, DAO-I	Shri Pharami will move first to release Shri L.Shanti Kr. Singh.
4.	L.Shanti Kumar Singh, DAO-I	O/o the Ex.Engineer Building Project Division No.IV PWD, Imphal	O/o the Ex. Engineer Gas Thermal Division, (Power) Rokla, Tripura, Addl.Charge of Gas Thermal (Electrical) Division Rokla. Vice A.Pharami.	

Attested
 @
 Advocate
 on 9.4.04.

5.	L.Tholba Singh, DAO-I	O/o The Ex.Engineer Agartala Division No.V, PWD, Agartala.	O/o The Ex. Engineer Imphal Electrical Division No.III Manipur vice Shri N.Kumarjit Singh, DAO-I	Shri L.Tholba Singh will move first to release Shri N.Kumarjit Singh.
6.	N.Kumarjit Singh, DAO-I	O/o The Ex. Engineer Imphal Elect. Division No.III, Imphal	O/o The Ex. Engineer Agartala Division No.V, PWD, Agartala vice Shri L.Thoiba Singh.	
7.	Bhabesh Chakraborty, DAO-I	O/o The Ex.Engineer Ziro Elect Division A.P.	O/o The Ex.Engineer Electrical Divn No.IV Udaipur vice M. Sanajoaba Singh already transferred	
8.	Anindya Kr. Das, DAO-II	O/o The Ex.Engineer RWD Seppa, A.P.	O/o The Ex.Engineer Ziro Electrical A.P. vice Bhabesh Chakraborty, DAO-I transferred	Shri Anindya Kr.Das will move first to release Shri B.Chakraborty.
9.	D.Roy Choudhury, Sr.DAO	O/o The Ex.Engineer Capital 'A' Division, PWD, Itanagar	O/o Chief Engineer, PWD Imphal, with additional charge of Building Division No.I PWD Imphal, vice Shri M.Heramani Singh, DAO-II	
10.	M.Heramani Singh, DAO-II	O/o the Chief Engineer, PWD Imphal and additional charge Building Divn No.I PWD Imphal	Capital 'A' PWD, A.P. vice D.Roy Choudhury transferred	Shri M.H.Singh, will move first to release Shri D.Roy Choudhury
11.	A.Kanungoe, DAO-I	O/o The Ex.Engineer Pasighat Electrical Division, Pasighat, AP	O/o The Ex.Engineer Highway South PWD, Imphal, Vice Shri A.Binode Kr. Sharma, DAO-I	
12.	A.Binode Kr. Sharma, DAO-I	O/o The Ex.Engineer Highway South PWD, Imphal	O/o The Ex.Engineer Pasighat Elect Divn A.P. Vice A.Kanungoe,DAO-I	Shri A.Binode Kr.Sharma, will move first to relese Shri A.Kanungoe.
13.	D.Khamzachin, DAO-II	O/o The Ex.Engineer N.H. No.II PWD Imphal additional charge N.II Divn No.I PWD,Imphal	O/o The Ex.Engineer Rig Divn PHE, Agartala vice P.C.Das. Sr.DAO	Shri D.Khamzachin will move first to release Shri P.C.Das
14.	P.C.Das, Sr.DAO	O/o The Ex.Engineer Rig Divn PHE Agartala	O/o The Ex.Engineer N.II. No.II PWD Imphal additional charge N.II. Divn No.I PWD,Imphal	

- 18 -

15.	A.Halol, Sr.DAO	O/o The Ex. Engineer Banderdewa PWD, A.P.	O/o The Ex. Engineer Jairampur PWD A.P. vice K.C. Das, DAO-I relieved of additional Charge.	
16.	D.B.Choudhury Sr.DAO	O/o The Ex.Engineer I&FM Divn No.II Agartala	O/o The Ex. Engineer Imphal Elect Divn No.I vice L.Shamjal Singh, DAO-I	
17.	L.Shyamjal Singh, DAO-I	O/o The Ex.Engineer Imphal Elect Divn No.I	I&FM Divn No.II Agartala vice D.B. Choudhury, Sr.DAO	Shri L.Shyamjal Singh will move first to release Shri D.B.Choudhury.
18.	D.N.Mohan, DAO-I	O/o The Ex. Engineer Seppa PHE, A.P.	O/o The Ex. Engineer Changlang PWD vice K.C.Das, DAO-I	Shri D.N. Mohan will move first to release Shri K.C.Das
19.	K.C.Das, DAO-I	O/o The Ex. Engineer PWD Changlang, AP	O/o The Ex.Engineer PHE Division No.IV, Agartala.	
20.	S.C.Ghosh, DAO-I	O/o The Ex.Engineer Tawang PWD, AP	O/o The Ex.Engineer Electrical Division No.III, Agartala.	
21.	J.P.Sinha, Sr.DAO	O/o The Ex.Engineer Roling RWD, A.P.	O/o The Ex.Engineer Tawang PWD, A.P. Vice S.C.Ghosh,DAO-I	Shri J.P.Sinha will move first to release Shri S.C.Ghosh.
22.	J.K.Lahiri, Sr.DAO	O/o The Ex.Engineer Pasighat PWD	O/o The Ex.Engineer Tawang Elect Divn vice N.C.Burman DAO-I	J.K.Lahiri will move first to release Shri N.C. Barman.
23.	N.C.Barman, DAO-I	O/o The Ex.Engineer Tawang, Elect. AP	O/o The Ex.Engineer Kallashahar PWD, vice Shri B. Chakraborty, Sr.DAO	
24.	Bitajendu Chakraborty, Sr.DAO	O/o The Ex.Engineer Kallashahar PWD, Tripura	O/o The Ex.Engineer Northern Divn PWD Dharmanagar vice S.Nag, Sr.DAO	Shri B.Chakraborty will move first to release Shri S.Nag.
25.	Shyamalendu Nag, Sr.DAO	O/o The Ex.Engineer Northern Divn PWDDharmanagar	O/o The Ex.Engineer Thoubal PHE, with additional charge of PWD Thoubal Manipur vice P.Manglem Singh, Sr.DAO	
26.	P.Manglem Singh, Sr.DAO	O/o The Ex.Engineer Thoubal PHE Manipur with additional charge PWD Thoubal Divn. Manipur	O/o The Ex.Engineer Hayullang Electrical A.P. Vice Swapan Kr. Chakraborty	P.Manglem Singh will release Shri S.Kr.Chakraborty

27.	Swapn Kr. Chakraborty, DAO-I	O/o The Ex.Engineer Hayuliang Electrical Divn A.P.	O/o The Ex.Engineer Electrical Divn No.I PWD Imphal	
28.	Sajal Kanti Choudhury, DAO-I	O/o The Ex.Engineer Along RWD, A.P.	O/o The Ex.Engineer Building Divn No.II Imphal	
29.	Ashim Kr. Bhattacharjee, DAO-I	O/o The Ex.Engineer Khonsa PWD A.P.	O/o The Ex.Engineer Road Task Force Divn No.I PWD Imphal	
30.	Ch. Naba Kr. Singh, DAO-I	O/o The Ex.Engineer Task Force Divn IFC, Manipur	O/o The Ex. Engineer Khonsa PWD A.P, Vice A.K.Bhattacharjee	Shri Ch.Naba-Kr. Singh will move first to release Shri A.K.Bhattacharjee
31.	O.Manihar Singh, DAO-I	O/o the Ex.Engineer, Roing PHE,AP	Churachandpur, Electrical, Division, Manipur	
32.	M.H.Angami, DAO-I	O/o The Ex.Engineer Bishnupur PWD, Manipur.	O/o The Ex.Engineer M.L Division No.I (valley) Lamphelpat, Imphal	
33.	Abhijit Kr. Das, DAO-I	O/o The Ex.Engineer Elect Divn No.I, Agartala	O/o The Ex. Engineer Bomdila, P.H.E., Arunachal Pradesh	
34.	A.Roy Choudhury, DAO-I	O/o The Ex. Engineer Naharlagun PWD, A.P.	O/o The Ex. Engineer Imphal West PHE vice H.Yaishkul Singh	
35.	H.Yaishkul Singh, DAO-I	O/o The Ex.Engineer Imphal West PHE, Manipur	O/o The Ex.Engineer Naharlagun PWD, A.P. Vice A.Roy Choudhury	Shri H.Yaishkul Singh will move first to release Shri A.Roy Choudhury.
36.	Hamendra Ch. Das, DAO-I	O/o The Ex. Engineer Basar PWD A.P. addl. Charge of Basar I&FC	O/o The Ex.Engineer Building Divn No.III, PWD, Imphal.	

(Authority:- AG's order dated 4.3.2004. at p/101^N of file No.DA Cell/2-36/99-2002/Vol.17)

Sd/-
Sr.Dy.Accountant General (Admin).

Attended
@ 10.00
Advocate
on 19.4.04

Annexure - I

OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA
NEW DELHI - 110002

No. 394-NGE(App)/11-28

Dated 19.4.2000

To

All Pr. Accountants General/Accountant General
Dealing with the cadre of Divisional Accountants.

Sir/Madam,

The need to evolve some clearly defined norms and a uniform and transparent policy of transfer and posting of Divisional Accounts Officers/Divisional Accountant was being felt for some time. Though transfer is an incidence of service of Divisional Accountant, it should be effected in such a way that it causes minimum inconvenience to the individuals and at the same time it fulfils the administrative requirements. It has, therefore, been decided to prescribe the following broad parameters for transfer and posting of Divisional Accounts Officers/Divisional Accountants which should be followed scrupulously and uniformly.

- (a) transfer and posting should normally be made once in a year and annual transfers should be timed properly so that these may not disturb the academic session.
- (b) list of Divisions likely to fall vacant during the year should be publicised well in advance.
- (c) Divisions should be properly graded by following the instructions issued in this regard from time to time and posting of officers should be made in the appropriately graded Divisions.
- (d) Option for posting in particular station(s) should be called for from the individuals and efforts should be made to accommodate the officers at the place of their choice, subject too availability of vacancy and on basis of seniority. The adverse comments given by the Inspecting Officer auditing the accounts of the Divisions, adverse remarks made by the Executive Engineers on the performance of the Divisional Accounts Officers/Divisional Accountants which are finally substantiated and the performance in proper and timely submission of accounts may also be kept in view.

certified to be true copy
Suyilshosh
Advocate

Attested
@huli
Advocate
on 19.4.04

- (e) a transfer Committee comprising the Group Officer in charge of works Accounts and two other Indian Audit & Accounts Department officers of the rank of Sr. Dy. Accountant General/Dy. Accountant General, to be nominated by the Pr. Accountant General/Accountant General should be formed to consider the case of transfer.
- (f) tenure of posting should normally be three years in a particular Division and six years at a particular station;
- (g) an officer should normally be allowed to serve the last three years of his service life at a place of his choice even if it results in his stay in the same place etc. beyond the normal tenure.
- (h) a general order indicating transfers and postings of all officers should be notified in addition to individual posting orders that may be issued.
- Dispensation of the set norms could be made only in every exceptional circumstances, to be recorded in writing, on account of extreme personal circumstances which are quite distinguishable

Yours faithfully,

Sd/-

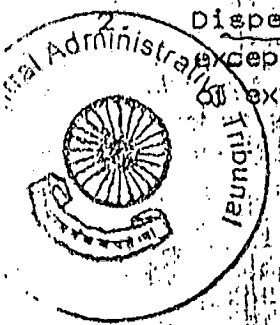
Asstt. Comptroller and Auditor General (N)

Certified to be true
प्रमाणित प्रतिलिपि

Section Officer (J)

A. T. GUIYAHATI BANCH
Guwahati-781003

7/4/04



GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE EXECUTIVE ENGINEER(E):TAWANG ELECTRICAL DIVISION
DEPARTMENT OF POWER: AP:TAWANG

NO. TED/PF-62/2004-05/

Dated Tawang, the ___/04

To

The Accountant General(A&E),
Meghalaya and Arunachal Pradesh etc.,
Shillong-793001(Meghalaya),
(D.A.Cell Section).

Sub:- Appeal for reconsideration of posting place on the
ground of Children Education.

Sir,

A representation received from Shri N.C.Burman,
Divisional Accounts Officer, Grade-I, Tawang Electrical Division,
Department of Power(A.P.), Tawang regarding reconsideration of
posting place on the ground of Children Education. In view of
the difficulties explained in his representation, it is highly
recommended for your kind consideration of his case as genuine,
please.

Encls:-One representation.

Yours faithfully,

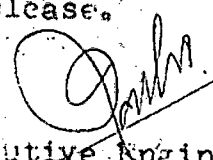
Executive Engineer(E)
Tawang Elect. Division
Tawang

Dtd. 3/4/04

No. TED/PF-62/2004-05/ 35-36

Copy to:-

✓ Shri N.C.Burman, DAO, Cd-I, Tawang Elect. Division, Deptt.
of Power, Tawang for information please.


Executive Engineer(E)
Tawang Elect. Division
Tawang

Attasted
Phil
Advocate
on 4.4.04

To,

The Accountant General(A&E),
Meghalaya and Arunachal Pradesh etc,
Shillong-793001 (Meghalaya)
(D.A.Cell Section).

(Through Proper Channel).

Sub:- Appeal for reconsideration of my Posting Place
on the ground of Children Education).

Sir,

I have the honour to state that at present I am Under Order of Transfer from Tawang Electrical Division(Arunachal Pradesh) and posted to the Executive Engineer, Kailashahar, P.W.D. Tripura although I submitted my option for serving in the state of Arunachal Pradesh under the Administrative control of the Accountant General(A&E), Meghalaya etc. Shillong. Due to aforesaid Transfer/Posting Place, Education of my Children will be hampered badly as my elder Son is reading in Class-XII(Final Year) and my younger Son is reading in Class-X(Final Year) Under the C.B.S.E. Course in the state of Arunachal Pradesh.

In view of the above difficulties, I pray that your honour would be kind enough to consider my appeal and retain me in the same Division/Station at least 1 Year. So that my Son can complete their School Education and also they can appear their final Examination from Tawang. In this connection, it is also to mention here that there is no rented House/Boarding facilities etc. As such I am requesting my retention at Tawang for a period of 1 Year only. So that my problem may be mitigated.

If your honour find it difficult to retention at Tawang, then may be posted to such a Division/Place like Jang, (Newly created Division), Bomdila, Seppa, Itanagar and Naharlagun, where there is C.B.S.E. Course School as at present both of my Son are studying in C.B.S.E. Course in Class-X and XII.

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

Dated, Tawang the 24/04

Your's faithfully,


(N.C. Barman)

Divisional Accounts Officer, Sd-I
Tawang Electrical Division
Department of Power
Tawang A.P.

GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE EXECUTIVE ENGINEER(E) TAWANG ELECT. DIVISION
DEPARTMENT OF POWER :: :: :: TAWANG.

NO. TED/PF-62/2003-2004/2015-16

Dated 22/3/04

To

The Accountant General(A&E),
Meghalaya and Arunachal Pradesh etc,
Shillong-793001 (Meghalaya)
(D.A. Cell Section).

Sub:- Appeal for reconsideration of posting place
on the ground of children education.

Sir,

An representation received from Shri
N.C. Barman, Divisional Accounts Officer grade-1, Tawang
Electrical Division, Department of Power(A.P.), Tawang
regarding reconsideration of posting place on the ground
of children education. After considering the difficulties
as explain by his representation, it is strongly recommended
for consideration his case as genuine please.

Enclo:- One representation.

Your's faithfully,

Executive Engineer(E)
Tawang Elect. Division
Department of Power

NO. TED/PF-62/2003-2004/2015-16
Copy to:-

Dated 22/3/04

1. Shri N.C. Barman, Divisional Accounts Officer
grade-1, Tawang Electrical Division, Department
of Power, for information please.

Executive Engineer(E)
Tawang Elect. Division
Department of Power
Tawang.

To,

The Accountant General(A&E),
Meghalaya and Arunachal Pradesh etc,
Shillong-793001 (Meghalaya)
(D.A.Cell Section).

(Through Proper Channel).

Sub:-

Appeal for reconsideration of my Posting Place
on the ground of Children Education).

Sir,

I have the honour to state that at present I am Under Order of Transfer from Tawang Electrical Division(Arunachal Pradesh) and posted to the Executive Engineer, Kailashahar, P.W.D. Tripura although I submitted my option for serving in the state of Arunachal Pradesh under the Administrative control of the Accountant General(A&E), Meghalaya etc. Shillong. Due to aforesaid Transfer/Posting Place, Education of my Children will be hampered badly as my elder Son is reading in Class-XII(Final Year) and my younger Son is reading in Class-X(Final Year) Under the C.B.S.E. Course in the state of Arunachal Pradesh.

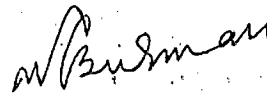
In view of the above difficulties, I pray that your honour would be kind enough to consider my appeal and retain me in the same Division/Station at least 1 Year. So that my Son can complete their School Education and also they can appear their final Examination from Tawang. In this connection, it is also to mention here that there is no rented House/Boarding facilities etc. As such I am requesting my retention at Tawang for a period of 1 Year only. So that my problem may be mitigated.

If your honour find it difficult to retention at Tawang, then may be posted to such a Division/Place like Jang, (Newly created Division), Bomdila, Seppa, Itanagar and Naharlagun, where there is C.B.S.E. Course School as at present both of my Son are studying in C.B.S.E. Course in Class-X and XII.

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

Dated, Tawang the 20/3/04

Your's faithfully,



(N.C. Barman)
Divisional Accounts Officer, Cd-I
Tawang Electrical Division
Department of Power
Tawang A.P.

Attended
@ Wili
Advocate
on 19.4.04.

transfer were being paid special pay in addition to their pay but the direct recruits were denied this privilege. This Court held that the denial of special pay to Class I direct recruits amounted to violation of Articles 14 and 16 of the Constitution and that they were entitled to special pay at the same rates at which it is paid to the transferred officers working in the Centre.

4. The learned counsel for the appellants has sought to distinguish this case on the ground that in that case this Court found that the special pay was not being paid to the transferred officials for compensating their displacements or for their qualifications but was being paid for the arduous and special nature of the functions to be discharged in the Telecommunication Research Centre. It has been urged that in the present case special pay was being paid to the officials appointed by way of transfer to enable them to encounter the problems due to the disturbance involved. The said explanation that has been put forward for grant of special pay to transferee officers cannot, however, be accepted. In Rule 1307 [FR 9 (25)] of the Indian Railway Establishment Code, Volume II, the expression "special pay" has been defined as under:

"Special pay.— Means an addition, of the nature of pay, to the emoluments of a post or of a railway servant, granted in consideration of—

(a) the specially arduous nature of duties; or

(b) a specific addition to the work or responsibility and includes non-practising allowance granted to doctors in lieu of private practice."

Moreover, the High Court has found that the averment in the writ petition with regard to the posts having arduous nature of duties was not controverted in the affidavit that was filed on behalf of the appellants in the writ petition in the High Court. In these circumstances, we find no basis for distinguishing the instant case from the case of *Telecommunication Research Centre Scientific Officers' (Class I) Assn.*¹

5. We, therefore, find no merit in this appeal and it is accordingly dismissed. No order as to costs.

1994 Supp (2) Supreme Court Cases 666

(BEFORE P.B. SAWANT AND N.P. SINGH, JJ.)

DIRECTOR OF SCHOOL EDUCATION,
MADRAS AND OTHERS

Versus

O. KARUPPA THEVAN AND ANOTHER

Civil Appeal No. 546 of 1994¹, decided on January 31, 1994

A. Service Law — Transfer of employee — Transfer for exigencies of administration — Affording prior hearing in case of — Held, not necessary — Administrative Law — Natural justice — Hearing — Inapplicability of the principle of (Para 2)

B. Service Law — Transfer of employee — Employee's children studying in school — Transfer of such employee during mid-academic term — Propriety — In

Attended
@ Advocate
on 19.4.04

absence of urgency such transfer restrained from being effected till the end of that academic year

a Appeal allowed

H-R/13371/SLA

ORDER

1. Leave granted. Heard both counsel.

2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs.

1994 Supp (2) Supreme Court Cases 667

(BEFORE S.C. AGRAWAL AND M.K. MUKHERJEE, JJ.)

A.M. VADI

Appellant;

Versus

INDIA TRADE PROMOTION ORGANISATION
AND ANOTHER

Respondents.

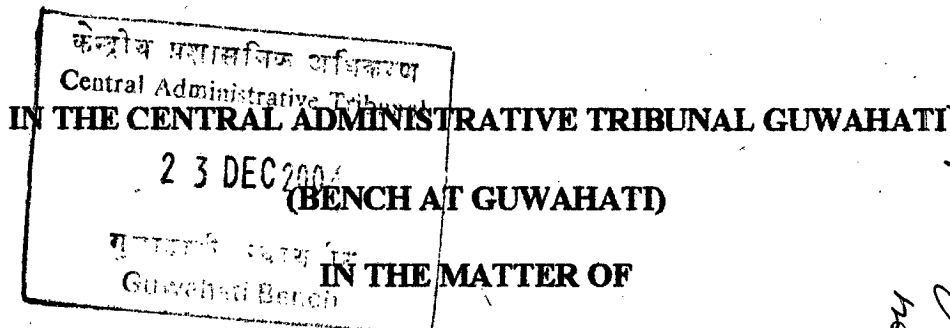
Civil Appeal No. 713 of 1994 in SLP (Civil) No. 20597
of 1993, decided on February 4, 1994

A. Service Law — Appointment — Selection — Non-selection to a post abroad for want of adequate balance service to fulfil the condition to serve the employer for the requisite minimum period (two years in this case) after completing the normal tenure of such posting (three years in this case) abroad — High Court's interference in exercise of its writ jurisdiction, with such a decision of the Selection Committee — Held, the High Court could not find fault with the Selection Committee's decision for not curtailing the period of foreign service for a few months to accommodate the writ petitioner (herein Respondent 2) — Further, in a writ petition against non-selection on the said ground, the High Court could not examine the eligibility of the selected candidate — Constitution of India, Art. 226

B. Service Law — Appointment — Selection — Non-selection — Selection Committee's decision regarding — Scope of judicial review — Constitution of India, Art. 226

Held:

The High Court in exercise of its jurisdiction under Article 226 of the Constitution was not justified in finding fault with the decision of the Selection Committee because in selecting or re-selecting Respondent 2 the Selection



O.A. NO. 93/ 2004

Shri Narayan Chandra Barman

Applicant

Versus

The Union of India & Ors.

Respondent

IN THE MATTER OF

An affidavit in opposition on behalf of Respondent No. 2 i.e. the Accountant

General (A&E) Meghalaya etc Shillong.

WRITTEN STATEMENT

The humble Respondent No.2 submits the Written Statement as follows :-

1. That with reference to the Statements made in Paragraphs 1,2,3 of the application the Respondent No.2 has no comments to offer.
2. That with reference to the Statement made in the Paragraph 4.1 and 4.2 of the application the Respondent has no comments to offer.
3. That with reference to the Statement made in the Paragraphs 4.3 of the application the Respondent has no comments to offer. It is a matter of records.
4. That with reference to the Statement made in the Paragraphs 4.4 and 4.5 of the application the Respondent has no comments to offer.

Union of India & Ors.
- Respondent
through:-
Anup Kumar Choudhary
23/12/04
Addl. Control Genl. Enrolling Officer

5. That with reference to the Statement made in the Paragraph 4.6 of the application the Respondent humbly submits that the petitioner who had completed more than six years of service in the office of the Executive Engineer, Tawang Electrical Division, Govt. of Arunachal Pradesh was transferred to the office of the Executive Engineer, Kailasahar PWD Tripura as per existing transfer policy. However, the petitioner submitted a representation to the respondent on 20.03.04 which was put up considered but was not agreed to.

As per existing transfer policy, the applicant cannot be retained in the same division/station as he has already completed more than 3 (three) years in that division. The transfer of the applicant was in the interest of public service and per transfer norms the applicant should have carried out this office transfer order issued vide E.O. No.DA Cell/120 dated 8.03.04 instead of moving to the Hon'ble Central Administrative Tribunal. Normally no Divisional Accounts Officer/Divisional Accountant is retained more than 3 (three) years in a same division. It is respectfully submitted that the transfer is in public interest. It is well settled in law that transfer is an incidence of service and the scope of judicial review in transfer is limited to the extent that transfer order is liable to be challenged only if it is malafied, made for extraneous consideration and/or is arbitrary. Individual personal problems have no relevance and have to be considered by Departments and not by courts (Shilpa Bose Vs State of Bihar AIR 1991 SC 532) Reliance is also placed on the judgements of the Supreme Court in NHPC Vs Shri Bhagwan (2001) 8 SCC 574, SBI Vs Anjan Sanyal (2001) 5 SCC 508 and Public Services Tribunal Bar Association Vs State of U.P. (2003) 4 SCC 104. Thus the applicant should immediately be directly to join in the division where he has been transferred and posted to.

(Transfer order No.E.O.DA Cell/120 dated 08.03.04 annexed as Annexure

- 3-
6. That with reference to the Statement made in the Paragraph 4.7 of the application the Respondent humbly submits that the applicant submitted a representation on 20.03.04 and 03.04.04, for his retention in the same division for further period of 1 (one) year. In this connection, I beg to state that as per existing transfer policy normally a Divisional Accountant/Divisional Accounts Officer are allowed to serve in a division for maximum period of 3 (three) years due to administrative reasons. So after completion of 2 ½ years of service in particular division, names of Divisional Accountant and Divisional Accounts Officer are included in the list for transfer and placed before the Committee for consideration for transfer.

The Applicant who had joined in the office of the Executive Engineer, Kulaktang PWD, Govt. of Arunachal Pradesh w.e.f. July 1991 to November 1995. And under Tawang PWD, w.e.f. November 1995 to August 1998 and Tawang Electrical Division w.e.f. 21.08.1998 till date and he was overdue for transfer long back. But as per his request for his children education, as a special case, he was retained in the same division. But at this stage his retention in the same division/same station will be against the transfer policy.

Accordingly, his name was enlisted in the list of transfer and placed before the Transfer Committee and the applicant submitted a representation to the respondent to retained him at Tawang Division due to his children's academic session. That too this transfer order was issued before, but the petitioner instead of carrying out the transfer order moved to the Hon'ble Tribunal and obtained interim order by misleading Tribunal.

7. That with reference to the Statement made in the Paragraphs 4.8 and 4.9 of the application, the Respondent humbly submits that as per existing transfer policy the petitioner cannot be retained in the same division as he has already completed more than 3 (three) years in that division. The Petitioner should have carried out this office transfer order issued vide E.O. No.DA Cell/120 dated 8.03.04 instead

24

of moving to the Hon'ble Administrative Tribunal. The Petitioner is aware of the fact that as per his appointment order No.Estt Order No. WMI/4 dated 4.4.86 at para 4, "He will be liable for transfer in any of the PWD Offices/Offices of the Chief Engineer in the state of Tripura/Manipur/Nagaland and Arunachal Pradesh etc., as well as in the office of the Accountant General Assam/Meghalaya/Nagaland/Manipur/ Tripura." The Petitioner cannot claim for his further retention.

(Copy of appointment order No. Estt Order WMI/4 dated 4.04.1986 annexed as Annexure -II)

8. That with reference to the Statement made in the Paragraphs 5, 5.1; 5.2, 5.3 and 5.4 of the application the Respondent has no comments to offer.
9. That with reference to the Statement made in the Paragraphs 5.5 of the application, the Respondent humbly submits that the Petitioner has no hesitation to carry out the transfer and posting order dated 8.03.04 and praying for deferment till the academic session is over, which is unacceptable to this department to avoid any complicity as it will put the whole administration in dead lock. Thus it is humbly prayed to Hon'ble Tribunal may kindly pass necessary order directing the petitioner to join in his new place of posting i.e. in Kailasahar PWD.
10. That with reference to the Statement made in the Paragraphs 5.6, 5.7, 5.8, 5.9 and 5.10 of the application the Respondent humbly submits that a transfer Committee is generally forms during the month of January/February every year and those Divisional Accountant/Divisional Accounts Officer who have completed or due to complete 3 (three) years of service in a same division their names are placed before the transfer Committee. Representations received from the Divisional Accountant/Divisional Accounts Officer for posting/transfer in their choiceable division or retention in the same division are also put up to Transfer Committee for consideration of their cases. Representations of the applicant were also put up

5

together with other representations to the Transfer Committee. The Transfer Committee did not agree to his request and he was transfer to Kailasahar PWD in the interest of public service.

11. That with reference to the Statement made in the Paragraphs 6 and 7 of the application the Respondent has no comments to offer.
12. That with reference to the Statement made in the Paragraph 8 Relief (S) sought for of the application the Respondent humbly submits that none of the relief prayed by the applicant in Para 8, 8.1, 8.2, 8.3, 8.4 and 8.5 should be granted.
13. That with reference to the Statement made in the Paragraphs 9, 9.1, 10, 11, 12 of the application the Respondent has no comments to offer.

That this Affidavit-in opposition is filed bonofide and in the interest of justice.

That with regard to the Statement made by the applicant, the Respondent humbly submits that in view of the facts and circumstances stated above the Respondent most respectfully and humbly prays that the present application as filed be dismissed, cost impose in favour of the answering respondent be allowed to be implemented without any further undue delay.

VERIFICATION.

I, Shri S.A. Bathew, Sr.Dy. Accountant General (Admn) of the Office of the Accountant General (A&E) Meghalaya, Arunachal Pradesh, and Mizoram, Shillong, do hereby solemnly declare that the statements made above in the Written Statements are true to my knowledge, belief and information and I sign the verification on the 20th Dec '04 at Shillong.



DEPONENT.

OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA ETC., SHILLONG.

E.O. No. D.A. Cell/120

Dated:- 8-3-2004

The following Sr. Divisional Accounts Officers and Divisional Accounts Officer Grade-I & II are transferred and posted to the Divisions noted against each as shown below.

They are requested to submit their handing over memorandum to their Divisional Officers under intimation to this office.

The Divisional Officers/Controlling Officers are requested to release the Officials concerned working under them latest by 9th April 2004 under intimation to this office and to forward a formal handing and taking over charge report of the officials concerned to this office at an early date

The transfer is in public interest.

Sl No	Name & Designation	Present Division	Division Transfer to	REMARKS
1.	Shri P.C.Borah, Sr.DAO	O/o the Ex.Engineer, Gumti Electrical Division Jatanbari, Tripura, Addl.charge of Gumit Civil Division (Power) Jatanbari	O/o The Executive Engineer, Pasighat Drilling Division, I& FC, with addl. Charge of Pasighat I&FC Division, Pasighat vice Shri U.N.Sarkar, Sr.DAO	Shri P.C.Borah will move first to release Shri Sarkar.
2.	U.N.Sarkar, Sr.DAO,	O/o the Ex. Engineer Pasighat Drilling Division, I&FC, with addl. charge of Pasighat I&FC, Division, Pasigaht	O/o the Ex. Engineer Gumti Electrical Division, Jatanbari, Tripura, with additional Charge of Gumti Civil Division, (Power), Jatanbari, vice Shri P.C.Borah	
3.	A.Pharami, DAO-I,	O/o the Ex.Engineer Gas Thermal Civil Division (Power), Rokia, Tripura, addl. charge of Gas Thermal (Elect.) Division, Rokia.	O/o the Ex. Engineer Building Project Division No.IV PWD, Imphal, vice L.Shanti Kumar Singh, DAO-I	Shri Pharami will move first to release Shri L.Shanti Kr. Singh.
	L.Shanti Kumar Singh, DAO-I	O/o the Ex.Engineer Building Project Division No.IV PWD, Imphal	O/o the Ex. Engineer Gas Thermal Division, (Power) Rokia, Tripura, Addl.Charge of Gas Thermal (Electrical) Division Rokia. Vice A.Pharami.	

E-18

- 16 -

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47

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5.	L.Thoiba Singh, DAO-I	O/o The Ex.Engineer Agartala Division No.V, PWD, Agartala.	O/o The Ex. Engineer Imphal Electrical Division No.III Manipur vice Shri N.Kumarjit Singh, DAO-I	Shri L.Thoiba Singh will move first to release Shri N.Kumarjit Singh.
6.	N.Kumarjit Singh, DAO-I	O/o The Ex. Engineer Imphal Elect. Division No.III, Imphal	O/o The Ex. Engineer Agartala Division No.V, PWD, Agartala vice Shri L.Thoiba Singh.	
7.	Bhabesh Chakraborty, DAO-I	O/o The Ex.Engineer Ziro Elect Division A.P.	O/o The Ex.Engineer Electrical Divn No.IV Udaipur vice M. Sanajoaba Singh already transferred	
8.	Anindya Kr. Das, DAO-II	O/o The Ex.Engineer RWD Seppa, A.P.	O/o The Ex.Engineer Ziro Electrical A.P. vice Bhabesh Chakraborty, DAO-I transferred	Shri Anindya Kr.Das will move first to release Shri B.Chakraborty.
9.	D.Roy Choudhury, Sr.DAO	O/o The Ex.Engineer Capital 'A' Division, PWD, Itanagar	O/o Chief Engineer, PWD Imphal, with additional charge of Building Division No.I PWD Imphal, vice Shri M.Heramani Singh, DAO-II	
10	M.Heramani Singh, DAO-II	O/o the Chief Engineer, PWD Imphal and additional charge Building Divn No.I PWD Imphal	Capital 'A' PWD, A.P. vice D.Roy Choudhury transferred	Shri M.H.Singh, will move first to release Shri D.Roy Choudhury
11.	A.Kanungoe, DAO-I	O/o The Ex.Engineer Paisghat Electrical Division, Pasighat, AP	O/o The Ex.Engineer Highway South PWD, Imphal, Vice Shri A.Binode Kr. Sharma, DAO-I	
12.	A.Binode Kr. Sharma, DAO-I	O/o The Ex.Engineer Highway South PWD, Imphal	O/o The Ex.Engineer Pasighat Elect Divn A.P. Vice A.Kanungoe,DAO-I	Shri A.Binode Kr.Sharma, will move first to relese Shri A.Kanungoe.
13.	D.Khamzachin, DAO-II	O/o The Ex.Engineer N.H. No.II PWD Imphal additional charge N.H. Divn No.I PWD,Imphal	O/o The Ex.Engineer Rig Divn PHE, Agartala vice P.C.Das, Sr.DAO	Shri D.Khamzachin will move first to release Shri P.C.Das
14.	P.C.Das, Sr.DAO	O/o The Ex.Engineer Rig Divn PHE Agartala	O/o The Ex.Engineer N.H. No.II PWD Imphal additional charge N.H. Divn No.I PWD,Imphal	

	A.Haloi, Sr.DAO	O/o The Ex. Engineer Banderdewa PWD, A.P.	O/o The Ex. Engineer Jairampur PWD A.P. vice K.C. Das, DAO-I relieved of additional Charge.	48
16.	D.B.Choudhury Sr.DAO	O/o The Ex.Engineer I&FM Divn No.II Agartala	O/o The Ex. Engineer Imphal Elect Divn No.I vice L.Shamjai Singa, DAO-I	
17	L.Shyamjai Singh, DAO-I	O/o The Ex.Engineer Imphal Elect Divn No.I	I&FM Divn No.II Agartala vice D.B. Choudhury, Sr.DAO	Shri L.Shyamjai Singh will move first to release Shri D.B.Choudhury.
18.	D.N.Mohan, DAO-I	O/o The Ex. Engineer Seppa PHE, A.P.	O/o The Ex. Engineer Changlang PWD vice K.C.Das, DAO-I	Shri D.N. Mohan will move first to release Shri K.C.Das
19.	K.C.Das, DAO-I	O/o The Ex. Engineer PWD Changlang, AP	O/o The Ex.Engineer PHE Division No.IV, Agartala.	
20.	S.C.Ghosh, DAO-I	O/o The Ex.Engineer Tawang PWD,AP	O/o The Ex.Engineer Electrical Division No.III, Agartala.	
21.	J.P.Sinha, Sr.DAO	O/o The Ex.Engineer Roing RWD, A.P.	O/o The Ex.Engineer Tawang PWD, A.P. Vice S.C.Ghosh,DAO-I	Shri J.P.Sinha will move first to release Shri S.C.Ghosh.
22	J.K.Lahiri, Sr.DAO	O/o The Ex.Engineer Pasighat PWD	O/o The Ex.Engineer Tawang Elect Divn vice N.C.Barman DAO-I	J.K.Lahiri will move first to release Shri N.C. Barman.
23.	N.C.Barman, DAO-I	O/o The Ex.Engineer Tawang, Elect. AP	O/o The Ex.Engineer Kailashahar PWD, vice Shri B. Chakraborty, Sr.DAO	
24	Birajendu Chakraborty, Sr.DAO	O/o The Ex.Engineer Kailashahar PWD, Tripura	O/o The Ex.Engineer Northern Divn PWD Dharmanagar vice S.Nag, Sr.DAO	Shri B.Chakraborty will move first to release Shri S.Nag.
25.	Shyamalendu Nag, Sr.DAO	O/oTheEx.Engineer Northern Divn PWDDharmanagar	O/o The Ex.Engineer Thoubal PHE, with additional charge of PWD Thoubal Manipur vice P.Manglem Singh, Sr.DAO	
26.	R.Manglem Singh, Sr.DAO	O/o The Ex.Engineer Thoubal PHE Manipur with additional charge PWD Thoubal Divn. Manipur	O/o The Ex.Engineer Hayuliang Electrical A.P. Vice Swapan Kr. Chakraborty	P.Manglem Singh will release Shri S.Kr.Chakraborty

27.	Swapan Kr. Makraborty, DAO-I	O/o The Ex.Engineer Hayuliang Electrical Divn A.P.	O/o The Ex.Engineer Electrical Divn PWD Imphal	49
28.	Sajal Kanti Choudhury, DAO-I	O/o The Ex.Engineer Along RWD, A.P.	O/o The Ex.Engineer Building Divn Imphal	
29.	Ashim Kr. Bhattacharjee, DAO-I	O/o The Ex.Engineer Khonsa PWD A.P.	O/o The Ex.Engineer Road Task Force Divn No.I PWD Imphal	
30.	Ch. Naba Kr. Singh, DAO-I	O/o The Ex.Engineer Task Force Divn IFC, Manipur	O/o The Ex.Engineer Khonsa PWD A.P., Vice A.K. Bhattacharjee	Shri Ch.Naba Kr. Singh will move first to release Shri A.K.Bhattacharjee
31.	O.Manihar Singh, DAO-I	O/o the Ex.Engineer, Roing PHE, AP	Chura and PHE, Electrical, Division, Manipur	
32.	M.L. Angami, DAO-I	O/o The Ex.Engineer Bishnupur PWD, Manipur.	O/o The Ex.Engineer M.L. Division No.I (valley) Lamphelpet, Imphal	
33.	Abhijit Kr. Das, DAO-I	O/o The Ex.Engineer Elect Divn No.I, Agartala	O/o The Ex.Engineer Bomdila, P. L.E., Arunachal Pradesh	
34.	A.Roy Choudhury, DAO-I	O/o The Ex. Engineer Naharlagun PWD, A.P.	O/o The Ex. Engineer Imphal West PHE vice H.Yaishkul Singh	
35.	H.Yaishkul Singh, DAO-I	O/o The Ex.Engineer Imphal West PHE, Manipur	O/o The Ex.Engineer Naharlagun PWD, A.P. Vice A.Roy Choudhury	Shri H.Yaishkul Singh will move first to release Shri A.Roy Choudhury.
36.	Hamendra Ch. Das, DAO-I	O/o The Ex. Engineer Basar PWD A.P. addl. Charge of Basar I&FC	O/o The Ex. Engineer Building Divn PWD, Imphal	✓

(Authority:- AG's order dated 4.3.2004. at p/101^N of J.O. No.DA Cell/2-36/99-2002/Vol.V)

MAIL

Sd/-

Sr. Deputy General (Admn).

Attested
Addl. G. O. S. O.

OFFICE OF THE ACCOUNTANT GENERAL (ACCOUNTS)
MEGHALAYA::SHILLONG.

Estt. Order No. WM. I/4-

Dt. Shillong, the 4. 4. 8

Shri/Smt. Mareyan Ch. Barman

Office of the Suptg. Eng. Rupa Goh PhD- via Boudh

is appointed temporarily to officiate as Emergency (Unqualified)

Junior Grade Divisional Accountant under the Administrative control of this office subject to the following terms and conditions:-

1. (a) While officiating as Junior Grade Divisional Accountant, he/she will draw pay in the scale of pay of Jr. Grade Divisional Accountants of Rs. 425-15-500-EB-15-560-20-640-EB-20-700-25-750/- to be fixed under normal rules applicable to them read with the G.I. decisions No. (5) & (14) below F.R. 22C of Chaudri's Compilation of F.Rs. and S.Rs., Vol. I, 8th Edition and other allowances as admissible to the Central Government employees from time to time.

(b) That in case of any change made subsequently in the mode of fixation of pay by the Govt. of India, his pay will be re-fixed on that basis.

(c) ~~There~~ No claim will be entertained for fall in emoluments if any, consequent upon fixation of pay under the aforesaid rules.

(d) No claim for protection of substantive/officiating pay of the parent department will be entertained.

2. After passing the Divisional Accountants' Grade Examination, to which he/she is eligible to appear after successful officiation for two years in the capacity of Emergency (Unqualified) Junior Grade Divisional Accountant, within the prescribed chances, he/she may be absorbed in the cadre of Divisional Accountants subject to fulfilment of other conditions and availability of posts.

Contd.....2...

3. In case the salary of pay of his/her parent department(s) is revised retrospectively, no claim for re-fixation of pay in the scale of pay of 51% Grade Divisional Accountant will be entertained.
4. He/she will be eligible for transfer in any of the P.W. Offices/offices of the Chief Engineer in the State of Tripura/Manipur/Nagaland/Arunachal Pradesh/Assam as well as in the offices of the Accountant General, Assam/Meghalaya/Nagaland/Manipur/Tripura.
5. He/she will be eligible for appointment to officiate as Emergency (Unqualified) Divisional Accountant from the date(s) he/she takes over charge as such in the Division to which he/she is posted.

E. S. Damporji Chief Engineer Damporji

6. Before Shri/Smt. Narajan Ch. Barna who is released from his/her parent deptt. he/she is to give an Undertaking to his/her Divisional officer to the effect that he/she accepts the above terms and conditions with a copy endorsed to this office. Unless Shri/Smt. Narajan Ch. Barna gives the said Undertaking, his/her joining report as a Emergency (Unqualified) Divisional Accountant will not be accepted.

Deputy Accountant General (AcE).

REGISTERED/
Memo. No. WM. I. / (D.A. Cell) / 3-6/67-68 / Vol. V /

33- 44

Dt. Shillong.
the _____

- Copy to:-
- 1) The Accountant General, (Accounts) Meghalaya etc. Shillong
 - 2) The Chief Engineer, P.W.D. Damporji
 - 3) THE Superintending Engineer Rupa Circle P.W.D. 49
- B. Omidi - DP

Suptg. Engr. Rupa Circle PWD- 44

4) The Executive Engineer, Bondla - AP. He is requested to obtain the Undertaking mentioned at para 6 above from Shri/Smt. Narayan Ch. Barman and forward the same to this office immediately.

5) The Executive Engineer, Damparigo and Dain - Damparigo A.P. He is requested to forward the joining report along with the Service Book and copy of the last Pay Certificate of Shri/Smt. Narayan Ch. Barman to this office immediately, for fixation of his/her pay.

6) Shri Narayan Ch. Barman use. As the Suptg. Engr. Rupa Circle PWD- via Bondla AP

7) P.A. to D.A.G. (Accounts).

8) P.C. File.

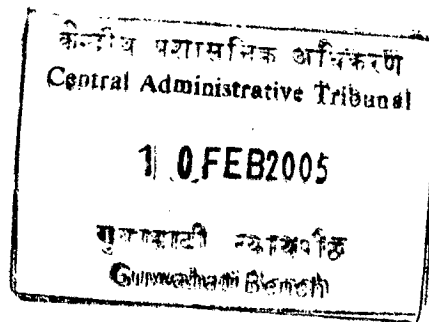
9) E.O. File.

10) S.C. File.

11) File No. FM.I/2-1/79-SO/Vol.III.

Deputy Accountant General (AcE).

Attested
[Signature]
Asst. C. C. S. O.



Filed by me applicant
through: Subrata Nath
Advocate
08/02/05.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

In the matter of:

O.A. No.93/2004

Shri Narayan Chandra Barman

-Vs-

Union of India and Ors.

-And-

In the matter of:

Rejoinder submitted by the Applicant against
the written statement submitted by the
Respondents.

The applicant above named most respectfully begs to submit as follows: -

1. That the applicant categorically denies the statements made in para 5, 7 and 9 of the written statement and begs to state that the impugned transfer and posting of the applicant has been made in gross violation of the norms for transfer laid down by the Respondent No. 2 himself under para (a) to (h) of his letter bearing No. 394-NGE (App)/11-98 dated 19.04.2000 (Annexure-II to the Original Application). The contention of the respondents that a Divisional Accountant cannot be retained for more than three years in a Division is not factual. In para (f) of the letter dated 19.04.2000 aforesaid it is clearly laid down that tenure of posting should normally be three years in a particular division and six years at a particular station which clearly implies that it is directory only and not mandatory.

Further, in para (g) of the said letter it has been laid down that an officer should be allowed to serve the last three years of his service life at a place of his choice even if it results in his stay in the same place beyond normal tenure. It is relevant to mention here that the applicant is in the last lag of his service tenure and left with only about 3 years of service now before his retirement and as such his transfer at this stage is contrary to the professed policy of the respondents, more so when there are vacant posts in his existing division also. The impugned transfer order being in total violation of the transfer policy laid down in the letter dated 19.04.2000 aforesaid, is malafide and arbitrary and as such is subject to judicial review and cannot be clothed merely as an incidence of service or public interest as stated by the respondents. The cases referred to and relied on by the respondents are not applicable in this case which is distinguished from those cases in as much as that there are well-set specific norms for the transfer of the Divisional Accountants in the respondent department as stated above which govern the transfer in the instant case.

2. That with regard to the statements made in para 6 and 9 of the written statement the applicant begs to state that retention of a Divisional Accountant in the same division beyond 3 (three) years under genuine reasons is not barred anywhere under the transfer policy. In the proposed place of posting of the applicant at Kailasahar there is no English medium School under CBSE course for the Xth and XIIth standard where the children of the applicant could be admitted. Further, in his representations the applicant clearly mentioned that he is not opposed to his transfer and he did not insist on his stay in the same station but only prayed for his posting in and around Arunachal Pradesh and even indicated

the names of some stations like Bomdila, Seppa and Naharlagun where his children could complete their studies in CBSE course. This apart he is now only 3 years away from his retirement and as such his prayer merits consideration at least for the sake of natural justice.

3. That the applicant categorically denies the statements made in para 10 of the written statement and begs to state that neither any option was invited from the applicant nor the names of choice stations prayed by the applicant were placed before the so called transfer committee for consideration as required under the transfer guidelines. The respondents have also not mentioned in the written statements whether the transfer committee has recorded the reasons for rejection of the representation of the applicant as stated and recorded the reasons for deviating from the norms and guidelines laid down in the letter dated 19.04.2000 as warranted therein.
4. That the applicant categorically denies the statements made in para 12 of the written statement and begs to submit that the applicant is entitled to get all the reliefs prayed for in the Original Application and the Original Application is filed bonafide and for the cause of justice.
5. That under the facts and circumstances stated hereinabove, the applicant is entitled to all the reliefs prayed for and the application deserves to be allowed with cost.

VERIFICATION

I, Shri Narayan Chandra Barman S/o Late R.C.Barman, aged about 57 years, working as Divisional Accounts Officer Grade-I, Electrical Division, Department of Power, Tawang, Arunachal Pradesh, do hereby verify that the statements made in Paragraph 1 to 5 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the day of February, 2005.

Narayan Ch. Barman