

(3)
FORM NO. @
(See Rule-42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. _____
Misc. Petition No. _____
Contempt Petition No. 1 of 2006
Review Application No. _____

Applicant(s) Dr. Suman Bhowan

Respondent(s) Mr. J. Kumar, under Sec. 49A India Health and Welfare and. DCS,

Advocate for the Applicants Mr. A. Das Gupta, D.K. Biswas, S. Bhuyan and A. Chandling

Advocate for the Respondent(s) Mr. G. Baishya, Sr. ✓ CGSC
Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
This Contempt petition has been filed by the counsel for the petitioner and praying for willful disobedience of the order passed by this Honble Tribunal in O.A 340/04. on 15.3.2005.	2.2.06	Issue simple notices to the respondents. post on 27.2.2006.
Laid before the Honble Court for further orders.	27.2.06.	Mr. G. Baishya, learned Sr. C.S.C. for the Respondents has submitted that he would like to have some more time to file reply affidavit. Post on 15.3.06.
<u>Sumit</u> 5-1-06 <u>Section Officer</u>	15.3.2006	Post on 30.3.2006.

Notice & order sent to D/section for issuing to resp. nos. 1, 2. by regd. A/D post.

6/2/06 D/No. 196, 197
Dt. 10/2/06.

Contd.....

24-2-06

① service report
awaited.

② No Reply has been
billed.

Notice duly served
on resp. no-2.

7/3

13.3.06

no reply filed -
M

29-3-06

No Reply has been
billed.

30.3.06

Vakalatnama filed
by the Responds.

by

24-4-06

No Reply has been
billed.

No Reply has
been billed.

2.5.06

16.5.06 copy of the order
has been sent to the
Sd/- for filing the same to the
applicant by post. etc.

Aming
G. Baishya
Sd/-
16.5.06

30.03.2006

Mr. G. Baishya, learned
Sr. C.G.S.C. for the respondents
submits that some progress has
made in this case and he would
like to file reply statement.
Post on 25.04.2006.

Vice-Chairman

mb

25.4.06.

When the matter came up for
hearing the learned counsel for the
Respondents has submitted that the
orders of the Tribunal has already
been fully complied with by the
respondents, but he could not
serve the copy of the statement to
the counsel. He will undertake to
serve the same within the time.

Post the matter on 3.5.06.

lm

Vice-Chairman

3.5.2006

Counsel for the applicant wanted
to verify the position as to the com-
pliance of the order. post on 4.4.2006.
Compliance report to be ~~xxx~~ brought
on record.

Vice-Chairman

bb

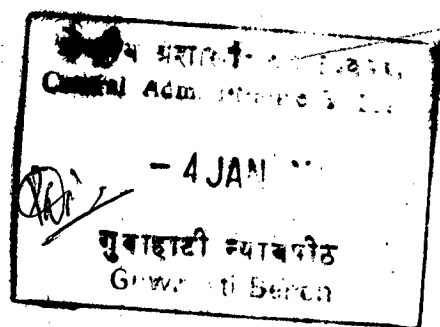
4.5.2006

Mr. G. Baishya, learned Sr. C.G.S.C.
submits that since the order of this
Tribunal has already been complied
with the C.P. may be closed. Coun-
sel for the applicant has no objection.
Therefore, considering the facts
the C.P. is closed and dismissed
recording the above submissions.

Vice-Chairman

bb

9.1/2006



Filed by the applicant
Suman Biswas

Through

Subrat Phukan
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Contempt Application No.....¹...../200~~4~~⁶

In the matter of: -

An application under section 17 of the Administrative Tribunal Act, 1985 read with Rule 24 of the Central Administrative Tribunal Procedure Rules, 1987 for execution of the order dated 15.03.2005 passed by this Hon'ble Tribunal in O.A No. 340 / 2004.

- AND -

In the matter of: -

Willful disobedience of the order passed by the Hon'ble Tribunal in O.A. No. 340 of 2004 on 15th March 2005 with a direction to the concerned respondents to consider the case of the applicant strictly in accordance with the seniority list prepared and circulated and to give transfer to his place of choice as provided in the rule.

- AND -

In the matter of: -

Non consideration of the Applicant's case of choice posting at Kolkata despite the positive direction passed by this Hon'ble Tribunal to consider the applicant's case of Choice Posting.

- AND -

In the matter of: -

An order passed by the Under Secretary to the Government of India on 10th August 2005 whereby the Doctors including the applicant posted in Assam Rifles at North East Region were transferred in different places disregarding the choice posting of the applicant at Kolkata though five vacancies were available at Kolkata.

- AND -

In the matter of: -

Dr. Suman Biswas,
Son of Late Sunil Ranjan Biswas,
Resident of 17, KK Majumdar Road,
Kolkata - 700 075.

.....Applicant

- Versus -

1. Sri Jagdish Kumar, Under Secretary to the Government of India, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. ^{UNION OF INDIA, represented by} The Secretary to the Government of India, Ministry of Health and Family Welfare (Department of Health) Nirman Bhawan, New Delhi - 110011.

.....Respondents

The humble petition of the petitioner above named,

MOST RESPECTFULLY SHEWETH: -

1. That the applicant is a permanent resident of Kolkata having his residence at 17, KK Mazumder Road, Kolkata – 700075. He is a Doctor and a member of Central Health Service.
2. That the applicant was posted at Sikkim as a Doctor of Assam Rifle on 10.06.1999.
3. That the applicant begs to state that a Central Government Employee who served for a period of 3 years or more in North East Region acquires a right of Choice Posting in any place of his own choice. As the applicant is a permanent resident of Kolkata, he opted for his choice posting at Kolkata on completion of his tenure posting in North East Region ~~at Sikkim~~. He intimated his choice posting to the concerned authorities by submitting application through proper channel. Thus on 19.09.2002, 31.12.2002, 05.03.2003 and on 29.07.2004 he submitted applications to the authority concerned for his posting at Kolkata as he had completed more than 3 years service in North East Region. But unfortunately his case was not considered. Thereafter he filed an application under section 21 of the Administrative Tribunal Act, 1985 for a direction to have his choice posting at Kolkata in accordance with the rules framed in this behalf. This application was registered as O.A No. 340 of 2004. His application was heard along with another application of one Dr. Ram Sankar Rawat O.A No. 325 of 2004. This matter was disposed of on 15.03.2005.
4. That in the aforesaid cases the respondents had filed their written statements where it is stated that in pursuance of the direction issued by the Guwahati Bench of Tribunal in OA No. 315 of 2001,

a schedule of transfer of Central Health Service Doctors from Assam Rifle was prepared in order of seniority in accordance with the rules and circulars issued by the Ministry of Health and Family Welfare. It was further stated that this seniority list was prepared under roster system and the Applicant's case for transfer to the place of their choice would be considered only in the year 2005. The respondents in course of their argument had placed a seniority list prepared by them and submitted that transfer under the rules and circulars would be made strictly in accordance with the seniority list and the Doctors were entitled for transfer to a place of their own choice as per seniority list.

5. That based on the material on records and the submission made by the respondents of the Original Application No. 340 / 2004 and O.A. No. 325 of 2004, both these applications were disposed of with a direction to the concerned respondents to consider the case of the applicants strictly in accordance with the seniority list prepared and circulated and give them transfer to their place of choice as provided in the Rules which can be done in the year 2005.

A copy of the order passed on 15.03.05 in O.A. No. 325 / 2004 and in O.A. No. 340 / 2004 is annexed hereto and marked as **Annexure: - A** to this application.

6. That in terms of the aforesaid order, a seniority list has to be prepared for the purpose of grant of choice posting for those persons having completed tenure posting. Accordingly, a seniority list has been prepared for the doctors posted in North East Region in the Assam Rifle. The applicant's position in the said seniority list is at 19.

7. That the applicant, after the aforesaid judgment and order, submitted an application (through proper channel) to the Secretary to the Government of India, Ministry of Health and Family Welfare on 09.08.2005 by stating interalia that for the purpose of choice posting he submitted application on 19.09.2002, 03.12.2002, 05.03.2003 and 29.07.2004 and the Central Administrative Tribunal delivered its judgment on 15.03.2005 and requested that in compliance with the verdict of Central Administrative Tribunal he may be transferred in any one of his choice place of posting either at CGHS Kolkata or any CHS posting in Kolkata. A photocopy of the judgment passed by this Hon'ble Tribunal was also enclosed with this letter. Despite this letter, Under Secretary to the Government of India, vide his letter dated 10.08.05 published the order of transfer of GMDO Sub-Cadre of Central Health Service indicating transfer of Doctors posted in Assam Rifles to different places. By this order the applicant, figured at serial no. 19, has been posted at GNCT, Delhi despite the order passed by this Hon'ble Tribunal to consider the case of choice posting of Doctors posted in North East Region, Assam Rifle.

A copy of the application submitted by the petitioner on 09.08.05 and copy of the order passed by the Under Secretary to the Government of India, Ministry of Health and Family Welfare on 10.08.05 is annexed hereto and marked as Annexure: - B & C respectively.

8. That the aforesaid order is apparently in total disregard of the order passed by this Hon'ble Tribunal. The Hon'ble Tribunal by its order

dated 15.03.05 specifically stated that the case of choice posting should be considered. It is also apparent that the petitioner opted for choice transfer. There is nothing in the order of transfer that the petitioner's case was considered. The respondent authority gave an under taking that choice posting would be considered in the year 2005 in terms of seniority. Thereafter the seniority list of doctors posted in North East Zone was prepared and subsequently order of transfer was issued. This order does not indicate that the case of the choice posting was considered.

9. That at the time of issuance of the aforesaid order of transfer based on seniority as indicated above, five vacancies were available in CGHS, Kolkata as indicated in the letter of the Additional Director, CGHS, Kolkata vide their letter No. 17-4/77 -Admn/Pt. II/1483 dated 7th September 2005 address to Director Admn, CGHS - I, Section, Directorate General of Health Services, Nirman Bhawan, New Delhi - 110011 on the subject "Statement of sanctioned / filled / vacant position in respect of CHS Officer Group 'A' and 'B' on Quarterly basis of the year 2005 Quarter ending as on 30.06.2005 - rag". This fact itself indicates that the authority concerned did not apply their mind to the judgment and order passed by the Hon'ble Tribunal. They also did not consider the case of the applicant who opted for choice posting at Kolkata. Had it been so, the applicant would have been posted at Kolkata in terms of his choice posting. Based on this situation, the applicant submitted a representation before respondent No. 2 by stating interalia that there were 5 vacancies at Kolkata. Out of those five vacancies only two have been filled up by Dr. D.K. Choudhury and Dr. Tamal Kanti Roy on transfer after June 2005 and three vacancies are still lying in CGHS Kolkata. So, the applicant again

requested ^{to} ~~the~~ consider his case for transfer to his place of choice in the light of the order passed by this Hon'ble Administrative Tribunal on 15.03.2005 in O.A No. 340 of 2004. But no order has yet been issued for choice posting of the applicant and the applicant had to submit his joining report on 19th October 2005 at GNCT Delhi in terms of the order of transfer passed on 10th August 2005.

A copy of the said letter dated 27.09.2005 is annexed hereto and marked as Annexure: -

D.

10. That the applicant submits that the respondents have willfully disobeyed the direction given by this Hon'ble Tribunal. Their intentional disregard to order passed by this Hon'ble Tribunal is nothing but a contemptuous action liable for punishment and a proceeding may be drawn in exercise of the power conferred under section 17 of the Administrative Tribunal Act, 1985.
11. That the applicant submits that this is a fit case for this Hon'ble Tribunal to exercise the powers conferred under section 17 of the Administrative Tribunal Act, 1985 and punish the respondents / contemnors for willful disobedience of the directions given vide order dated 15.03.2005 in O.A. No. 340 of 2004. And also initiate a proceeding under Rule 24 of the Central Administrative Tribunal Procedure Rules, 1987 for execution of the order dated 15.03.2005 passed in O.A. No. 340 of 2004.
12. That the applicant has no other alternative efficacious remedy for implementation of the order dated 15.03.2005 and this application is made bonafide and for the interest of justice.

It is, therefore, prayed that this Hon'ble Tribunal may be pleased to initiate a contempt proceeding against the respondents

/ contemnors and punish them for willful disobedience of the order dated 15.03.2005 passed in O.A. No. 340 of 2004 by this Hon'ble Tribunal. And also initiate a proceeding in exercise of powers conferred under Rule 24 of the Central Administrative Tribunal Procedure Rules, 1987 for execution of the order dated 15.03.2005 and / or pass any such further or other order / orders as this Hon'ble Tribunal may deem fit and proper for the ends of justice.

And for this your applicant, as in duty bound shall ever pray.

DRAFT CHARGE

Laid down before this Hon'ble Tribunal for willful non-compliance of the order dated 15.03.2005 passed in O.A. No. 340 of 2004. Therefore this Hon'ble Tribunal would be pleased to impose penalty upon the alleged contemnors for non-compliance of the order dated 15.03.05 passed in O.A. No. 340 of 2004 and further be pleased to pass any other order / orders as deem fit and proper.



AFFIDAVIT

I, Dr. Suman Biswas, son of Late Sunil Ranjan Biswas, aged ^{about} 35 years, working as Senior Medical Officer in the Department of Family and Welfare, Government of NCT of Delhi, resident of 17, KK Majumder Road, Kolkata - 700075, do hereby solemnly affirm and declare as follows: -

1. That I am the applicant of this case and as such well acquainted with the facts and circumstances of this case.
2. That the statements made in this affidavit and paragraphs 1, 2 & 3 (Partly) are true to my knowledge and that made in paragraph 3 (Partly), 4, 5, 6, 7 & 9 are true to my information derived from records which I believe to be true and rest are my humble submissions before this Hon'ble Tribunal.

I sign this affidavit on this the ... 6th day of December 2005 at New Delhi.

Identified by: -

Suman Biswas
DEPONENT



DIPANKAR DAS
ADVOCATE, SOLICITOR
& NOTARY PUBLIC
SUPREME COURT
NEW DELHI-110001(INDIA)

IDENTIFIED BY

Bank
Ms. Babila Sant
Adv.

SIGNATURE ATTESTED

Solemnly affirmed and declared before me by the deponent who is identified by SA. MS. Babila Sant

....., Advocate on this 6th

Day of December 2005 at New Delhi.

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

Original Application No. 325 of 2004 and
340 of 2004.

Date of Order : This the 15th Day of March, 2005.

THE HON'BLE MR JUSTICE G.SIVARAJAN, VICE CHAIRMAN

O.A No. 325/2004

Dr. Ram Shankar Rawat
S/o S. Rawat
Senior Medical Officer (CHS)
40 Assam Rifles
C/o - 99 A.P.O.

... Applicant

By Advocates Mr. K.D. Chetri, Mr. B. Das.

- Versus -

1. Union of India,
represented by the Secretary
to the Govt. of India,
Ministry of Health & Family
Welfare Department
New Delhi.

The Secretary to the Govt. of India
Ministry of Home Affairs,
Govt. of India, New Delhi.

3. The Director General of Assam Rifles
Shillong.

4. The Commandant
40 Assam Rifles
C/o - 99 A.P.O.

5. The Commandant
24 Assam Rifles,
C/o - 99 A.P.O.

... Respondents

Mr. A.K. Chaudhuri, Addl. C.G.S.C.

O.A. No. 340/2004

Dr. Suman Biswas
S/o Late C Biswas
Senior Medical Officer (CHS)

Attested
By

11th Assam Rifles
Co-99 A.P.O.

... Applicant

By Advocates Mr. K.D. Chetri, Mr. B. Das.

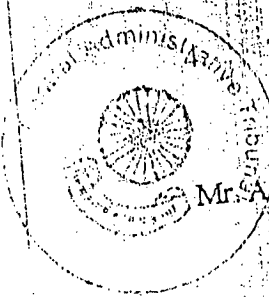
- Versus -

1. The Union of India,
Represented by the Secretary
To the Govt. of India,
Ministry of Health & Family
Welfare Department,
New Delhi.
2. The Secretary to the Govt. of India,
Ministry of Home Affairs
Government of India, New Delhi.
3. The Director General of Assam Rifles,
Ministry of Home Affairs
Assam Rifles,
Shillong.

The Deputy director (Admn.)
Assam rifles,
Shillong.

Mr. A.K. Chaudhuri, Addl. C.G.S.C.

... Respondents.



ORDER (ORAL)

SIVARAJAN J. (V.C)

Both the applicants are Doctors in the Assam Rifles. According to them since they have worked in the North East Region for a requisite period they are entitled to choice station posting in terms of Memorandum issued by Government of India, Ministry of Finance, Department of Expenditure. Their grievance is that though they have made applications for transfer in 2002 itself and instead of a direction issued by the Director General in this regard, they have not been given transfer to their choice station as yet.

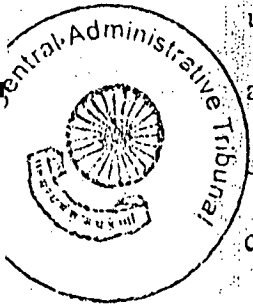
2. The respondents have filed their written statements where it is stated that in pursuance of the direction issued by the Guwahati Bench of the Tribunal in

[Signature]

*Attested
[Signature]*

O.A.315/2001, a schedule of transfer of CHS doctors from Assam Rifles in order of their seniority in Assam Rifles has been prepared in the light of the extant rules and circulars issued by the Ministry of Health and Family Welfare. This seniority list was prepared under roster system and the applicants' case for transfer to the place of their choice can be considered only in the year 2005.

3. I have heard Sri K. D. Chetri, learned counsel for the applicants and Sri A. K. Choudhuri, learned Addl. C.G.S.C for the respondents. The learned standing counsel has placed before me a seniority list and submits that transfers under the extant rules and circulars can be made strictly in accordance with the seniority list and that the applicants' case will be considered during this year. In view of the fact that as per seniority list of doctors they are entitled for transfer to a place of their choice as per circular issued by the Ministry of Health and Family Welfare, there cannot be any doubt that the transfer can be made only as per seniority list. The learned counsel for the applicants has no case to the contra. However, the learned counsel for the applicants submits that the applicant in O.A.325/2004 is undergoing treatment for renal failure in the Christian Medical College at Vellore and the Medical Board which examined the applicant has also certified to that effect. The learned counsel submits that a special consideration is required in the case of this applicant for a choice station posting to enable him to pursue his treatment at Medical College, Vellore for the serious ailment. Learned Addl. C.G.S.C did not raise any serious objection for giving consideration to the concerned applicant. In the circumstances both these applications are disposed of with a direction to the concerned respondents to consider the case of the applicants strictly in accordance with the seniority list prepared and circulated and give them transfer to their place of choice as provided in the Rules which even according to the respondents can be done in the year 2005. However, as already noted in the

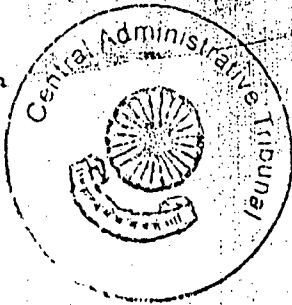


Attested
By

case of applicant in O.A. 325/2004, in view of his serious ailment and treatment undergone, the respondents shall consider as to whether a special treatment can be meted out to the said applicant for transfer out of turn from N. E. Region. A decision on this aspect will be taken within a period of one month from the date of receipt copy of this order.

Both the applications are accordingly disposed of. No costs.

Sd/VICE CHAIRMAN



TRUE COPY
प्रतिलिपि

Section Officer (I)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

28/7/05

Attested
[Signature]

From : Dr Suman Biswas
Senior Medical Officer
Central Health Service
11 Assam Rifles
C/O 99 APO

To : The Secretary to Govt of India
Ministry of Health & Family Welfare
(Dept of Health)
Nirman Bhawan,
New Delhi - 110011

(Through Proper Channel)

Sub : APPLICATION FOR CHOICE POSTING REGARDING

Sir,

1. Please refer to the applications on the said subject dated 19 September 2002, 31 December 2002, 05 March 2003 and 29 July 2004 by the undersigned.

2. In this context, your attention is hereby drawn to the judgement delivered by the Hon'ble Central Administrative Tribunal, Guwahati Bench on 15 March 2005 in O.A No. 340/2004 filed by the undersigned (copy enclosed).

3. It is requested that the undersigned be transferred to the place of his choice in compliance with the verdict of the Hon'ble CAT, Guwahati Bench at the earliest.

4. The places of choice for transfer are once again submitted herewith in order of preference :-

- (i) CGHS, Kolkata
- (ii) Any CHS posting in Kolkata

Thanking You,



Yours faithfully,

Suman Biswas

(DR SUMAN BISWAS)

Dated : 9/8/05

Place : 11 Assam Rifles
C/O 99 APO

Encl : Photocopy of judgement
passed by the Hon'ble
CAT, Guwahati Bench
On 15 March 2005 in O.A
No. 340/2004

Handwritten notes and stamps:
24/8/05
11 Assam Rifles
C/O 99 APO

Copy in Advance - Advance copy submitted for early action please.

Attested
8/8/05

No.A.22012/6/2004 -CHS.II
Government of India
Ministry of Health & Family Welfare

Nirman Bhavan, New Delhi
Dated the 11.04. Aug., 05

ORDER

The President is pleased to order the transfer of the following officer of GDMO sub-cadre of Central Health Service with immediate effect in public interest:

S.No.	Name/Designation	From	To
1.	Dr. Tamal Kanti Roy CMO	Assam Rifles	CGHS, Kolkata
2.	Dr. PL Gangte SMO	Assam Rifles	GNCT, Delhi
3.	Dr. William Layam SMO	Assam Rifles	CGHS, Delhi
4.	Dr. D. Sunder Rao SMO	Assam Rifles	GNCT, Delhi
5.	Dr. R. Samadar CMO	Assam Rifles	CGHS, Delhi
6.	Dr. Bansidhar Hembram SMO	Assam Rifles	CGHS, Hyderabad
7.	Dr. B. Haricharan (H.C. Birua) SMO	Assam Rifles	GNCT, Delhi
8.	Dr. Haren Dole CMO(NFSG)	Assam Rifles	CGHS, Delhi

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Signature

9.	Dr. Rajeev Ranjan SMO	Assam Rifles	GNCT, Delhi
10.	Dr. Lanu Wapang SMO	Assam Rifles	CGHS, Delhi
11.	Dr. Rajneesh Gupta SMO	Assam Rifles	GNCT, Delhi
12.	Dr. Mohd Munstaquam SMO	Assam Rifles	CGHS, Delhi
13.	Dr. RN Madhukar SMO	Assam Rifles	CGHS, Delhi
14.	Dr. Sawinder Singh SMO	Assam Rifles	GNCT, Delhi
15.	Dr. CP Choudhary SMO	Assam Rifles	CGHS, Pune
16.	Dr. Sanjiv Kumar SMO	Assam Rifles	CGHS, Delhi
17.	Dr. SC Bhattacharya CMO	Assam Rifles	GNCT, Delhi
18.	Dr. MS Panging CMO(NFSG)	Assam Rifles	CGHS, Delhi
19	Dr. Suman Biswas SMO	Assam Rifles	GNCT, Delhi
20	Dr. Sanjay Kumar MO	Assam Rifles	CGHS, Delhi
21	Dr. BR Deori CMO(NFSG)	Assam Rifles	CGHS, Kanpur

Attested
Signature

7/11/11

- 3 -

22	Dr. GP Sinha CMO	Assam Rifles	GNCT, Delhi
23	Dr. PK Deori CMO(NFSG)	Assam Rifles	CGHS, Delhi
24	Dr. (Mrs)SC Deori CMO(NFSG)	Assam Rifles	CGHS, Delhi
25	Dr. Rupendra Kumar CMO	Assam Rifles	GNCT, Delhi
26	Dr. K Ramchiary MO	Assam Rifles	GNCT, Delhi
27	Dr. AK Sudhanshu MO	Assam Rifles	CGHS, Allahabad

Jagdish

(JAGDISH KUMAR)

UNDER SECRETARY TO THE GOVT. OF INDIA

Copy to:-

1. Director General, Assam Rifles, Shillong - 793 011.
2. Secretary (M), Govt. of National Capital Territory of Delhi, 9th Floor, A-Wing, IP Estate, New Delhi.
3. Additional Director, CGHS, 8-Esplanade East, 4th Floor, Kolkata - 69.
4. Additional Director, CGHS, Nirman Bhawan, New Delhi.
5. Additional Director, CGHS, Kendriya Swasthya Bhawan, Prakash Nagar, Begumpet, Hyderabad - 16.
6. Additional Director, CGHS, 2nd Floor, Swasthya Sadan, Mukund Nagar, Pune - 37.
7. Additional Director, Kendranchal Colony, Gulmohar Vihar, Kanpur - 1.
8. Additional Director, CGHS, Sangam Place, 7-Liddle Road, Civil Line, Allahabad.
9. Persons concerned c/o Director General, Assam Rifles, Shillong - 793011
10. Dte. GHS (CGHS.I)
11. CHS.I/V/ACR Cell
12. Order Register.
13. All dealing hands of CHS.II Sec.

Amm

✓ ✓

Attested
By