

50/100

N

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 185/05
R.A/C.P No.
E.P/M.A No.

- ✓ 1. Orders Sheet..... 12-7-05 Pg. 01 to.....
- ✓ 2. Judgment/Order dtd..... 12-7-05 Pg. 01 to 03
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... Pg. 01 to 29
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... Pg..... to.....
7. W.S..... Pg..... to.....
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....
17. Misc - 01 to 10

2/11/17
SECTION OFFICER (Judl.)

FORM NO. 4.
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 185/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(S): L. N. Sonowal

Respondant(S): U. O. I. Gans

Advocate for the Applicant(S): J. L. Saikau, S. Nath

Advocate for the Respondant(S): Case

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

This application is in form No. 12.7.2005
is filed/C. F. for Rs. 50/-
deposited vide IPO/PO
No. 206/124/05
Dated 24.6.05

Heeth
Dy. Registrar

JS
11/7/05

Slips taken

HT.

13.7.05

Copy of the judgment
has been sent to the
Office for issuing the
same to the applicant
as well as to the Dr. GSC
for the Respondent

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

The O.A. is disposed of at the
admission stage itself in terms of the
order.

K. Duse
Member

V. S. Sanyal
Vice-Chairman

bb



OA 185705 3

**OFFICE OF THE CHIEF COMMISSIONER
CENTRAL EXCISE & CUSTOMS
SHILLONG ZONE
NORTH EASTERN REGION**

3rd Floor, Crescens Building, MG Road, Shillong – 793001,
Phone: 0364-2500131. Fax: 0364-2224747.

E-mail:- ccshillo@excise.nic.in EDECS :- (zone18)

ORDER No. 22/2005

Dated Shillong the 29th July, 2005

The Shillong Zone (also known as the North Eastern Region Zone) of the Customs and Central Excise Department issued orders relating to the Annual General Transfer (AGT) for the year 2005 in respect of (Gr.B) Superintendents of Customs/Central Excise and (Gr.C) Inspectors of Customs/Central Excise in the month of June 2005. Against the said AGT Orders, a number of Superintendents, and also Inspectors, represented requesting for mainly : (a) cancellation of their transfers orders ;(b) time to comply with the orders, and (c) change of place of posting. The grounds/reasons for making such requests were also furnished. Some of their colleagues, though, filed applications before the Hon'ble Central Administrative Tribunal (CAT), Guwahati Bench, against their transfers. The Hon'ble CAT Guwahati Bench considered their applications by staying their transfers (if not relieved by when the CAT order was issued) and directing the applicants to submit individual representations to the Chief Commissioner of Customs and Central Excise, NER, Shillong or to the Commissioner of Central Excise, Shillong (as the case may be), who were to decide such representation thereafter within a time schedule.

Accordingly and in compliance to the Hon'ble CAT Guwahati Bench orders, the concerned cases in respect of Group 'B' Superintendents are now examined in the light of the individual representations read with the Hon'ble CAT Guwahati Bench, Findings and Orders. It is observed that in practically all the applications filed before the Hon'ble CAT Guwahati Bench, certain common grounds find mention specifically. These are :

- i) The propriety of the transfer orders have been challenged as it is claimed that the orders were passed in patent violation of the accepted norms concerning transfer of Gr. 'B'.
- ii) The orders were issued with the sole purpose of obliging certain Superintendents by soliciting representations from them.
- iii) The applicants were not afforded an opportunity to make representations before the concerned authority in regard to their peculiar circumstances.
- iv) The applicants were never informed of the intention of the administration to effect transfers/postings during June'2005. This was contrary to the well-accepted norms for transfers only in December or at the latest by 31st January of each year.
- v) The norms prescribed for tenure posting in a particular station has been given a go-by, as the applicants who have not completed more than 2 to 3 years in a station have been transferred to distance places.

To reiterate and emphasize the above grounds, it was argued and submitted by and on behalf of the applicants that the impugned transfer orders cannot be sustained for the sole reason that these orders are passed in the month of June 2005 when the children of the applicants are in the mid-academic session of their studies ;these orders have been issued at this late hour only to oblige certain Superintendents in the Department by getting representations from them; the transfer orders are passed in a patent violation of the well-accepted norms and malafide intention; it is seen from the order dated 03.06.2005 that pursuant to representations made by more than 20 Superintendents they have been transferred to places of their choice and it is stated that they are not entitled to TA/DA since the transfers were made as per their requests; accordingly no further proof is required to establish malafides in the matter.

In view of the above grounds, the Hon'ble CAT Guwahati Bench has taken cognizance of the said submissions, pronounced their findings and directed that the individual representations be considered before passing appropriate orders keeping in mind the guidelines as also the observations of the Hon'ble CAT Guwahati Bench, in accordance with law.

Before taking up the individual representations, it is deemed fit and proper to place certain facts on record as against the averments made by and on behalf of the applicants before an august forum in the Hon'ble CAT Guwahati Bench.

It is noticed that each and every applicant has accused the Administration of issuing the orders with the sole purpose of obliging certain Superintendents by soliciting representations from them. Nothing can be further from the truth. The charge levelled by the applicants is a very serious one and not to be taken lightly. As the overall Head of the Customs and Central Excise Administration from the North Eastern Region, I am not aware of any representation being solicited from any Superintendent nor did I order any such action. The accusation, however, being quite damning (being one of the main grounds in the sworn applications submitted before a statutory body in the Hon'ble CAT Guwahati Bench), it will be only apt to refer the matter to another professional agency to probe the charge. Results thereof would entail consequential and appropriate action.

In fact, on 04th Oct 2004 a letter bearing C.No.II(26)20/ET-II/95/29643-75 was issued by the Additional Commissioner(P & V),Shillong Central Excise to all Divisional Heads of Customs and Central Excise in the zone concerning "Options for Annual General Transfer of Superintendent/Inspector – regarding" Though the said letter was to consider AGT for December 2004, it shows that the administration had sought for options/representations in an open manner. It is evident that there was transparency in the functioning of the administration, and no pick and choose option was resorted to, as alleged by the applicants. Moreover, representations for transfers being submitted at odd times or any time of the year is a fairly normal occurrence in any Department/Ministry/Service. Such routine representations are filed and normally considered only during the period of AGTs and if acceded the

condition of non-eligibility of TTA/DA is imposed. At the same time it is accepted that representations requiring emergency compliance are taken up on immediate basis and acted upon as per existing norms relevant to the issue. The recent transfer orders were issued after due deliberations of the senior-most level officers from both Customs Wing and the Central Excise Wing. There was therefore no question of obliging any one in these transfers, least of all from 'solicited' representations.

In so far as the timing of the transfer is concerned, it is a fact that for the past few years the AGTs in this region were ordered during December/January. In other parts of the country such AGTs are, by and large if not always, normally effected during April. It is to be realized that this Department/Service is primarily concerned with revenue collection for the Govt. of India as per the provisions of the Customs Act, 1962 and the Central Excise Act 1944 read with their respective allied Acts. Also, the country follows the financial year calculation from April to March. In such a situation it need hardly be emphasized that the closing months of the financial year or the last quarter of the financial year play a pivotal and vital role in revenue collection for the Department. The thrust during this last quarter is on revenue mobilization/mop-up to meet the targets through determined and sustained drives to realize the Govt. dues – regular Customs/Central Excise duties, Service Tax, interests, fines, penalties, arrears of revenue, etc. In such circumstances, it was only correct, logical and proper that AGTs in this region be made around April in conformity with the rest of the country. Transfers/postings during December/January is not deemed conducive to good financial administration in revenue related

organizations like the Customs and Central Excise Departments. Such transfers invariably involve change of guards at many points/formations/locations. The officers joining their new posts take time to adjust. The whole process, if everything goes smoothly, would take about a month. Then, too, a number of officers would certainly represent and even challenge their transfers/postings. As a consequence the last quarter of the of the financial year would record negative functioning of the Commissionerates which would be hard pressed to perform. The continuity and momentum of revenue collection achieved in the preceding months would go into into a tailspin in these slog-over three months.

In view of the above, it was decided to shift the AGT period to around April. When the usual AGT was not forthcoming in December/January, some representative of the Service Associations approached the administration to ascertain the position. They were informed of the change and reasons thereto.

Lastly, it is known to each and every officer of the Department in the grade of Superintendents and Inspectors working in this Zone that they are and would be required to work in both Customs and Central Excise assignments. Such postings are interchangeable and can be at any established location in the Zone for a certain period of time and not for an indefinite period. It is a fact that there are guidelines available regarding the total number of years that an officer can remain in a Commissionerate after which he /she is liable to transfer. All the applicants had submitted before the Hon'ble CAT Guwahati Bench that they had been working in

their present posts for a relatively short time. Most of them have conveniently not informed the Hon'ble CAT that they have been working in their respective Divisions/Commissionerates for well over 10 years. The administration had taken a conscious decision to transfer Superintendents/Inspectors who had completed a continuous posting of 10/11 years respectively in Central Excise or Customs and interchanging them from one wing to the other wing. For Central Excise transfers between Shillong Commissionerate and Dibrugarh Commissionerate, seniority of longest stay in respect of Shillong Commissionerate was considered. At the same time certain transfers were effected or not effected on administrative grounds on the recommendations of the competent authority of the concerned Commissionerate.

The above issues are brought on record as the applicants as also their representatives have, in their submissions before the Hon'ble CAT Guwahati Bench, painted a very dark and gloomy picture of the present administration through the issuance of the recent transfer orders. However, all actions taken were above board and very transparent. The weakness of the applications can be gauged therefrom.

Coming to the individual representations of the applicants, I now take up the case of Shri L.N. Sonowal, Superintendent, Numaligarh CPF, Dimapur Division.

In his representation dated 13-7-2005 he has requested for stay at Numaligarh CPF on the following grounds that :-

- i) He was transferred from Kohima CPF on 29.3.2004 and joined Numaligarh CPF on 2.4.2004.
- ii) He has not completed tenure of posting at Numaligarh CPF as Superintendent as per Government Policy dated 7.11.1996.
- iii) As per policy circulated dated 4.10.2001, a Superintendent can continue in a same station for continuous period of 4 – 6 years.
- iv) No representation was submitted for transfer during the period from 2.4.04 to 5.7.05
- v) Under the Government Policy dated 4.11.1996 transfer shall be made in December/January and this sudden transfer in July, 2005 will adversely affect him.
- vi) His only son reading in Class – X is going to appear HSLC shortly under SEBA. Assamese, a subject of his son, who is in mid-academic session, is not recognized in Board of Education, Imphal.
- vii) His wife is working at Barbaruah Development Block under Panchyat & Rural Development, Assam. Husband and wife may be posted under same station vide Govt. letter No.28034/2/97-Estt(A) dated 12.6.97.
- viii) Fifth Pay Commission's recommendation regarding posting of husband and wife together has been accepted by the Govt. of India.

His representation has been examined with reference to the guidelines and observations made by the Hon'ble CAT, Guwahati while disposing off the OA No. 185/05 on 12-07-2005. On scrutiny of his representation the following points emerge :-

- i) He seems to be unaware of the transfer norms applicable as also the authority for formation of such norms. Executive orders issued by a Commissioner of Central Excise / Customs of this Zone can not by any stretch of imagination be considered as Government policy.
- ii) He has completed continuous period of six years in Dimapur Customs Division (CPF Numaligarh – May '99 to January 2002, Dimapur Division January '02 to December '02. Kohima CPF January '03 to April '04, Numaligarh CPF April '04 till date). In other words, he has competed over six years continuous posting in Customs and therefore due for rotation to Central Excise.
- iii) His family has been living in / around Dibrugarh all these years while he was posted / working in Dimapur Customs Division. In such a situation, his request for retention at Numaligarh and at the same time citing instructions of husband and wife being posted to same station, is certainly contradictory.

However, taking into account all the facts and circumstances of the case I am inclined to modify his transfer order. In view of the fact that he has been completed six years in Customs away from his family, it will be most appropriate and proper for him to be transferred and posted under jurisdiction of Dibrugarh Central Excise Commissionerate.

His representation is disposed off accordingly.

Sd/-

(J.S.R. KHATHING)
CHIEF COMMISSIONER

C.No. I(10)14/CCO/SH/2005

Dated :

To

Shri L.N. Sonowal, Superintendent, Numaligarh CPF, Dimapur Division, for information.

Sd/-

(J.S.R. KHATHING)
CHIEF COMMISSIONER

C.No. I(10)14/CCO/SH/2005/270-72

Dated : 29 JUL 2005

Copy to

1. The Hon'ble Vice Chairman, Central Administrative Tribunal, Rajgarh Road, Guwahati.- 5 for kind information.
2. The Commissioner of Customs (Prev), N.E.R., Shillong for information and necessary action.
3. The Commissioner of Central Excise, Dibrugarh for information and necessary action.

(J.S.R. KHATHING)
CHIEF COMMISSIONER

13

CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH.

O.A. No. 185 of 2005

DATE OF DECISION: 12.07.2005

Sri Lakhendra Nath Sonowal

APPLICANT(S)

Mr. J.L.Sarkar

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U. O. I. & Ors.

RESPONDENT(S)

Mr. G. Baishya, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

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 Vice-Chairman.

G. Sivarajan

14

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.185 of 2005

Date of Order: This, the 12th Day of July, 2005.

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

THE HON'BLE MR.K.V.PRAHLADAN, ADMINISTRATIVE MEMBER

Sri Lakhendra Nath Sonowal
Working as Superintendent
Customs, Numaligarh, CPF.

... Applicant.

By Advocates S/Shri J.L.Sarkar, S.Nath.

- Versus -

1. Union of India
Represented by the Secretary
Ministry of Finance
Department of Customs & Central Excise
New Delhi.

2. The Commissioner of Customs (Preventive)
North Eastern Region
Shillong.

3. The Chief Commissioner
Customs & Central Excise
North Eastern Region
Shillong.

... Respondents.

By Mr. G. Baishya, Sr. C.G.S.C.

ORDER (ORAL)

SIVARAJAN, J.(V.C.) :

The applicant is working as Superintendent, Customs, Numaligarh CPF w.e.f. 2.4.2004. He has been transferred from the said place and posted to Imphal Customs Division as per order dated 5.7.2005 (Annexure-E). The applicant challenges the said order in this O.A. Ordinarily this Tribunal will not interfere with orders of transfer made in public interest. However, Mr.J.L.Sarkar, learned counsel for the applicant submits that so far as the Superintendents in the Customs and Central Excise Department are concerned, the

[Signature]

Commissionerate has published norms for transfer as per which the transfers will be effected only by the end of December of every year or at any rate before 31st January. Counsel submits that without a request from the applicant he has been transferred in the month of July when his children are in the mid-session of studies causing inconvenience to them. Counsel submits that the applicant has completed only one year in the present station and that as the norms he is entitled to continue in the same station for 4 years at a station. Counsel also submits that the wife of the applicant is a State Government employee posted at Barbaruah Development Block near Numaligarh and therefore the guidelines in the matter of posting of husband and wife at the same station will also apply in this case. Counsel also pointed out that in similar matters the Hon'ble Tribunal had interfered with the transfers made by the respondents.


2. We have also heard Mr. G. Baishya, learned Sr. C.G.S.C. for the respondents. He submits that the appropriate course for the applicant is to make representation against the transfer before the respondents and that since the applicant had already made a representation (Annexure-F) it is for the applicant to pursue the same. He also submitted that if interim order of stay is granted it will affect the administration.

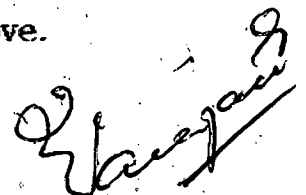
3. We have considered the rival submissions. We are of the view that this application can be disposed of at the admission stage itself with directions. The applicant has already filed a representation dated 6.7.2005 (Annexure-F) before the second respondent. As per the procedure prescribed the representation has to be submitted before the higher authority, namely, the third respondent. In the

[Signature]

circumstances, the applicant is directed to file a detailed representation against the transfer as per Annexure-E order to the third respondent within a period of ten days from today. If any such representation is filed, the third respondent will consider the same and pass appropriate orders considering the prescribed norms and other regulations within a period of six weeks thereafter. In the meantime, if the applicant has not been relieved from the present place, the same will be deferred till a decision is taken by the third respondent as directed hereinabove.

The original application is disposed of as above.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(G.SIVARAJAN)
VICE CHAIRMAN

BB

17

Central Administrative Tribunal
17 JUL 2005
Gauhati Bench

In the Central Administrative Tribunal, Gauhati Bench

O.A. No. 185 /2005

Shri L.N. Sonowal

-Vs-

Union of India & Ors.

SYNOPSIS OF THE APPLICATION

The applicant is working as Superintendent, Customs, Numaligarh CPF w.e.f. 2.4.2004. By orders dated 5.7.2005 the applicant has been transferred and posted to Imphal Customs Division. It is stated that the applicant has not been released from his present post as yet.

The aforesaid transfer order has been issued violating the mandated policy for transfer of the respondent department. He has not completed prescribed tenure of 4 years as Superintendent at Numaligarh. Moreover, the order has been issued violating the mandated policy to effect the transfer in December / January..

The Son of the applicant is in mid academic session, reading in class X, under Secondary Education Board of Assam, with Assamese as a subject. Wife of the applicant is a state Government employee, posted at Barbaruah Development Block, Assam, near Numaligarh.

In facts and circumstances of the case the order of transfer is arbitrary and discriminatory. In similar circumstances the Hon'ble Tribunal disposed of number of OAs, e.g. OA Nos. 127, 129, 130, 131, 136 and 144 of 2005, amongst others.

Advocate

18

In the Central Administrative Tribunal :: Guwahati Bench

O.A. No. 185 /2005

Shri L.N. Sonowal

-Vs-

Union of India & Ors.

INDEX

	Page
1. Application	1-7
2. Verification	7
3. Annexure-A	8
4. Annexure-B	9-10
5. Annexure-C	11-12
6. Annexure-D	13
7. Annexure-E	14
8. Annexure-F	15
9. Annexure-G	16-17
10. Annexure-H	18-19 20-24 18-21
11. Annexure-I	19-26 22-26
12. Annexure-J	27-29 27-29

Advocate

In the Central Administrative Tribunal
Guwahati Bench :: Guwahati
(An Application Under Section 19 of the Administrative
Tribunal Act, 1985)

O.A. No. 185/2005

Between

Sri Lakhendra Nath Sonowal

working as Superintendent, Customs, Numaligarh, CPF

----- Applicant

-- And --

1. Union of India represented by the Secretary Ministry of Finance, Department of Customs & Central Excise, New Delhi.
2. The Commissioner of Customs (Preventive), North Eastern Region, Shillong.
3. The Chief Commissioner, Customs & Central Excise, North Eastern Region Shillong.

----- Respondents

Details of the Application

1. **Particulars of the against which the application is made :**

This application is made against the impugned transfer order No. 11/2005 dated 5.7.2005 issued in disregard of the mandated policy to issue orders of Transfer in December/January. The son of the applicant is reading in class X under Secondary Education Board of Assam, with Assamese as a subject and is in mid session, and wife is an employee in state Government of Assam at Barbaruah.

2. **Jurisdiction**

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

3. **Limitation**

The applicant declares that the subject matter of this application is within the time limit prescribed under section 21 of the Administrative Tribunal Act, 1985.

Contd.....P/2

Filed by the applicant
Through Subrata Nath
Advocate
11-07-05

4. **Facts of the Case**

- 4.1 That the applicant is a citizen of India and hence is entitled to the rights and privileges guaranteed under the Constitution of India. He is a member of Schedule Tribe community and his home town is Moran.
- 4.2 That the applicant is a Group-B Officer, working as Superintendent, Customs and Numaligarh CPF w.e.f. 2.4.2004. The applicant was transferred from Kohima to Numaligarh where is working now.

Copy of the order dated 29.3.04
is enclosed as Annexure -A.

- 4.3 That for the purpose of transfer and posting of Group-B Officers in Noth East the Respondent Department has made out a transfer policy vide C. No. II (7) 5/ET.III/88/1674 dated 07.11.1996. The adopted policy is that transfer will be completed before 31st December on any year and as far as possible effected by 31st January of the following years.

Copy of the transfer policy
dated 07.11.1996 is enclosed as
Annexure-B.


- 4.4. That the aforesaid transfer policy has explicitly made tenure and posting of Group-B Officer as under :
- “3. The general tenure is one station will be 4 to 6 years.
4. Period of stay in any one station / section/ office will not be more than 2 years.
5. Since the officer belong to a common cadre of Central Excise mainly, no officer will remain posted in Customs for more than 4 years.”
- 4.5. That by a letter dated 04/10/2004 option for annual general transfer of Superintendent for the year 2004 were called from the concerned officers who are due for options were directed to submit in the prescribed proforma enclosed with this letter on or before 31/10/2004. By this letter dated 04/10/2004 option was called for as per para 2 of the aforesaid transfer policy. He submitted option for posting at Dibrugarh, Tezpur and Tinsukia. This option posting would

Contd.....P/3

be effective after completion of his Tenure in the present station i.e. Numaligarh.

Copy of the letter dated 04/10/2004
is enclosed as Annexure-C.

Copy of the Transfer Proforma forwarded
with letter dated 04/10/2004 is enclosed as
Annexure-D



- 4.6. That it is stated that the Commissioner of Customs (Preventive), NE Region, Shillong has issued an order No. 11/2005 of transfer by which he has been purported to be transferred from Numaligarh CPF to Imphal Customs Division. This transfer order shown that the same has been issued without application of mind and the administrative action has no element of public interest. This order acts contrary to the policy, ^{at}tenure posting and interest of the applicant, without, scope of principles of natural justice.

Copy of the order dated 5.7.05 is
enclosed as Annexure -E.

- 4.7. That the applicant begs to state that his normal tenure period at Numaligarh as per the accepted policy/guidelines of transfer has not been expired. He completed 1 year 3 months only.
- 4.8. That the said order of transfer dated 5.7.2005 has been issued without regard to the prescribed and accepted norms of transfer. The circulated/published policy stipulated that the general transfer shall be made in December of any year to be given effect by January next. But most surprisingly the said order has been issued in July in total negligence of the Department's own formulated policy. This has been done purportedly to accommodate some officer. It is stated that no order of posting of officer at Numaligarh has yet been made.
- 4.9. That the order of transfer dated 5.7.2005 manifests that the same has been issued hastily without waiting for December which is the schedule time for issue of the order. Such transfer violating the prescribed time schedule of transfer, shall cause immense hardship to the applicant is not just and fair

Contd.....P/4

administrative action. Such actions are discriminatory and arbitrary and the applicant has become victim of such arbitrary action.

4.10. That the son of the applicant, Shri Ritesh Sonowal is student of class -X in Moran, near Numaligarh, under Secondary Education Board of Assam with Assamese as a subject and is in mid session. The Transfer shall disrupt his education with different Board at Imphal. Class -X is the final year for High School leaving certificate examination.

4.11. That the applicant has not received the order of transfer dated 5.7.05. at Numaligarh. He heard of the same and in his anxiety rushed to Shillong and collected a copy and submitted a representation dt. 6-7-2005 to the Respondent No. 2 with a request to retain him in the present station. No reply has yet been received.

Copy of the representation
dated 6.7.2005 is enclosed
as Annexure-F.

4.12. That the wife of the applicant is a State Government employee of Assam, under Barbaruah Development Block near to Numaligarh and Moran. Applicant prays for benefit of posting of husband and wife under the Welfare policy of Government of India.

copy of the circular dated 12.6.1997
is enclosed as Annexure -G.

4.13 That the applicant submits that if his transfer and posting as per the aforesaid transfer orders dated 5.7.2005 is not cancelled he and the members of his family including the son shall suffer irreparable loss and injury. It is stated that he has not been released from the present posting.

4.14. That this Hon'ble Tribunal has been pleased to pass orders in similar questions of fact and law in OA No. 127/2005 (Smt. K. Das --- vs - U.O.I. & Ors.) and

Contd.....P/5

O.A. 129, 130 and 136/2005 (Shri G. Das & Ors. --vs-- U.O.I. Ors) and OA. No. 144/05 (Shri C. Songate --vs-- U.O.I. Ors.).

Copy of the orders dated 13.06.2005
14.06.2005 and 15.6.05 are enclosed
as Annxure -H, I and J respectively.

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

5. Ground for reliefs with legal provisions

5.1. For that the impugned order~~s~~ of transfer and posting are illegal in as much as the same ha~~s~~~~s~~ been issued violating the prescribed and accepted norms, policy and guidelines of transfer order has been issued in July ignoring the mandated policy to make transfers in December/January.

5.2. For that the respondents have transferred the applicant before completion of his prescribed tenure at Numaligarh.

5.3. For that the transfer shall very adverse affect on the education of his son who is in mid session in Assam Board.

5.4. For that wife of the applicant is a state Government of Assam employee at Barbaruah Development Block and deserve consideration on Government of India Policy of a posting of husband and wife posting.

5.5. For that malice in law and malice in fact is explicit in the impugned transfer orders.

5.6. For that in any view of the matter the applicant is entitled to the reliefs sought for.

6. Details of the remedies exhausted

The applicant declares that there is no other efficacious remedies under any

Contd.....P/6

Rule and this Hon'ble Tribunal is the only forum to adjudicate the subject matter. However he has filed representation. No reply has yet been received.

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

The applicant declares that he has not filed any case on the subject matter before any court, forum or any other institution.

8. Relief sought for

Under the above facts and circumstances the applicant prays for the following reliefs :

- 8.1. The name of the applicant be deleted from the impugned transfer order dated 5.7.2005.
- 8.2. The applicant be allowed to continue at his present station.
- 8.3. Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

The above reliefs are prayed for on the grounds stated in para 5 above.

9. Interim Relief

During the pendency of this application the applicant prays for the following interim reliefs :

- 9.1. This orders dated 5.7.05 of transfer of the applicant be suspended and he may be allowed to continue at his present station.
- 9.2. Any relief or eliefs as the Hon'ble Tribunal deem fit and proper.

The above relief is prayed for on the grounds stated in para 5 above.

10. This application is filed through the Advocate.

11. Particulars of Postal Order :

Contd.....P/7

- i) IPONo. :
- ii) Date of Issue :
- iii) Issued from :
- iv) Payable at :

12. List of Enclosures
As per Index.

VERIFICATION

I, Lakhendra Nath Sonowal, son of Late B. Sonowal, aged about 47 years, a resident of Numaligarh do hereby verify that the statement made in the paragraphs 1, 4, 6 to 12 are true to my knowledge and statements in para 2, 3 and 5 are true to my legal advice and that I have not suppressed any material fact.

And I, sign this verification on this 8th day of July, 2005 at Guwahati.



Signature

- 8 - Annexure - A 26

**OFFICE OF THE ASSISTANT COMMISSIONER
CUSTOMS DIVISION DIMAPUR**

ORDER NO. 10

Dated DMR the 29th March '04

In pursuance of the Estt. Order No.3/2004 dated Shillong the 20th Jan.2004 and Estt. Order No.6/2004 dated Shillong the 30th Jan'04 also the letter C.No.II (3) 23/Hqrs.Estt/SH/2003 (A) Dtd 23/03/04, the following Superintendents are hereby rotated/adjusted in the respective units/branches as mentioned below with immediate effect and until further order.

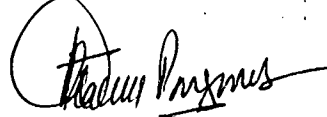
Sl.No.	Name of Officer	From	To
1.	Shri. S.D Pegu	Tech. Branch	Dibrugarh C.P.F
2.	Shri. L.N. Sonowal	Kohima C.P.F	Numaligarh C.P.F
3.	Shri. L. Krelo	Stats. Branch	Kohima C.P.F
4.	Shri. B.B. Sakia	U.O.T. from Guwahati Customs	Law Branch Divisional Office
5.	Shri. J.K. Pathak	U.O.T. from Tezpur Cen.Excise	Tech. Branch Divisional Office
6.	Shri. A.K. Das	U.O.T. from Nagaon Cen. Excise	Stats. Branch Divisional Office

sd/-
(P.T. PONGENER)
Asst. Commissioner
Dimapur Customs Division,

C.No. II (3) 1/ET/ACD/2003/- Dated

Copy forwarded for information and necessary action to :-

1. The Commissioner of Customs, N.E.R, Shillong.
2. The Addl. Commissioner of Customs, N.E.R, Shillong.
3. The Joint Commissioner of Customs, Guwahati.
- ✓ 4. Shri. L.N. Sonowal, Supdt. for compliance.
5. The Supdt. C.P.F.....
6. The Bill branch, Customs division, Dimapur.


(P.T. PONGENER)
Asst. Commissioner
Dimapur Customs Division,

*Admitted
for
Advocate*

After a detailed discussion between the CCP, CCE and AC(Hqrs) alongwith various instructions of the Ministry and the last of which is F.No.A-35017/2B/92-Ad.III.B dated 30th June, 1994, minutes of various conferences and other discussions, it has been agreed to follow the following transfer policy among the Group 'B' officers in the North East.

1. Since the Commissionerate covers 7 (seven) North Eastern States with different ethnic background, Administration will follow as far as possible convenient Zone and areas so that officers are not unduly put to difficulties. However, there will not include transfers on Administrative grounds.

2. Before any general transfer, Group 'B' officers will submit a representation for -

- (a) Place of posting with reasons;
- (b) Option for Customs/Central Excise;
- (c) For any other deputation.

These representations will be received positively by 1st October of any year.

3. The general tenure in one station will be 4 to 6 years.

4. Period of stay in any one station/section/office will not be more than 2 years.

5. Since the officers belong to a common cadre of Central Excise mainly, no officer will remain posted in Customs for more than 4 years.

6. The rotation in every 3 years will be from difficult to soft area and from sensitive to hard area.

7. Compassionate postings will be considered mutually between the CCP and CCE and after satisfying the genuineness of the compassionate cases, transfer will be made if needs be. Such transfers on compassionate grounds must be addressed to DC/AC(PAY) and endorsed to both the Commissioners.

Contd. 2/-

A. H. S. S.
for
Advocate

8. Though Deptt. of Personnel & Training vide their letter dated 3rd April '86 have recommended posting of husband and wife together in one station, the area of jurisdiction being vast and the nature of work being different from general Administration only where there is absolutely any problem or difficulty, transfer will be considered as per Ministry of Personnel guidelines.

9. Since the Commissionerates are highly short staffed, cooling off period from any deputation as recommended by the Ministry will in future be enforced.

10. General transfers will be completed before 31st December of any year and as far as possible effected by 31st January.

11. Officers who are due to retire within 2 years will be retained/posted within and around their Home Town or places/stations requested by them.

Lallungunema
(LALLUNGUNEMA) 7/11
COMMISSIONER
CUSTOMS (PREV) : NER : SHILLONG

L.R. Mishra
(L.R. MISHRA)
COMMISSIONER
CENTRAL EXCISE : SHILLONG

C.No. II(7)5/ET. III/88/1674

Dated : 7/11/96

Copy to :-

1. The Member(P&V)/(C.Ex.)/(A.S.), Central Board of Excise and Customs North Block, New Delhi for kind information.
2. The Chief Commissioner(EZ), Customs and Central Excise, 15/1 Strand Road, Calcutta for kind information.
3. The Commissioner(Cus.Prev.), NER, Shillong for kind information.
4. The Deputy Commissioner(Cus.Prev.), NER, Shillong for kind information.
5. The Secretary, General, All India Federation of Central Excise Gazetted Executive Officers, 40A/1, J.K. Mitra Road, Calcutta for kind information.
6. The General Secretary, Group 'B' Executive Officers' Assn., Customs and Central Excise, Shillong for kind information.
7. The Assistant Commissioner of C.Ex./Cus.(P), _____ for information.

D. Bhattacharyya
(D. BHATTACHARYYA)
ASSISTANT COMMISSIONER (HODS)
CUSTOMS AND CENTRAL EXCISE : SHILLONG.

Copy to Zonal Secretaries (all) for
information.
B. Dhar (Sd/-) for
Gen. Secy.

COMMISSIONER OF CENTRAL EXCISE
MORELLO COMPOUND
M.G. ROAD, SHILLONG

Tel. 91-0364-2224751 / 2223030.

Fax. 91-0364-2223428 / 2226215.

E-Mail: cexshill@excise.nic.in

C.No. II(23)20/ET.III/95/

Dated:

04 OCT 2004

To

The Deputy/Assistant Commissioner
Central Excise Division

GUWAHATI

The Superintendent (
Central Excise Hqrs. Office
Shillong.

Subject: Option for Annual General Transfer of Superintendent/Inspector - regarding.

The Annual General Transfer for 2004 of Superintendents and Inspectors posted in different formations and Headquarter Office of Central Excise Commissionerate, Shillong is proposed to be made in December 2004. The concerned officers who are due for transfer as per the accepted guidelines for transfer of this Commissionerate will be considered for transfer.

Briefly the accepted guidelines for transfer in respect of Superintendents/Inspectors are reiterated below for the benefit of the officers.

Superintendents who have completed their tenure as below will be considered for transfer:

- (i) In the same station for a continuous period of 4 (four) to 6 (six) years,
- (ii) In the same Section/Office for a continuous period of 2 (two) years, and
- (iii) In the same Commissionerate for a continuous period of 4 (four) years

Similarly, Inspectors who have completed their tenure will be considered for transfer:

- (i) In the Divisional Hqrs. Office for a continuous period of 6 (six) years,
- (ii) In the Ranges outside the Divisional Office for a period of 3 (three) years,
- (iii) In Central Excise Hqrs. Office for a period of 6 (six) to 8 (eight) years and
- (iv) In the same Commissionerate for a continuous period of 4 (four) years

Also, Superintendents and Inspectors of Shillong Central Excise Commissionerate who opts for Customs or Dibrugarh Commissionerate should send in the same Transfer Proforma.

It is therefore requested to forward the options of officers for posting in Central Excise and Customs in order of preference for next posting indicating the reasons thereof. Options in the prescribed proforma (enclosed) should reach this office on or before 31.10.2004. Options received after 31.10.2004 will not be taken into consideration for Annual General Transfer 2004. It is, therefore, requested to take personal initiative to send this office on or before the said date. While forwarding the proforma, it may be ensured that the same is duly verified by the Head of Office.

Please acknowledge receipt.

(B. THAMAR)

ADDITIONAL COMMISSIONER (P&V)

9/58
10.10.04
Adm. Adv. Secy.

C.No. II(26)20/ET.II/95/

Dated:

Copy forwarded for information and necessary action to:

1. The Chief Commissioner, Customs and Central Excise, Shillong Zone, 'CRESCENS' Building, M.G. Road, Shillong.
2. The Commissioner, Customs (Preventive) NER, Shillong.
3. The Commissioner, Central Excise, Dibrugarh.
4. The Commissioner (Appeals), Central Excise, Guwahati.
5. The President/General Secretary, Group 'B/C' Executive Officers Association, Customs and Central Excise, Shillong.
6. The Zonal Secretary, Group 'B/C' Executive Officers Association, Customs and Central Excise, _____.

(D. THAMAR)
ADDITIONAL COMMISSIONER (P&V)

C.No. II(13)1/ET/ACC/2001/Ph I./12688-707

Dt:- 08-10-2004

Copy forwarded for information & necessary action to the Superintendent/Administrative Officer, _____, Central Excise, Guwahati. He/she also requested to circulate the same among the staff under his/her control. Options is to be reach to this office on or before 20-10-2004.

Encls:- Prescribed proforma

Samir
08.10.04
(B.C. SARMA)
ADMINISTRATIVE OFFER
CENTRAL EXCISE GUWAHATI

Annexure - D

1. Name of the Officer (In Block Letters):
2. (a) Date of Apptt. in the Deptt. and grade:
(b) Date of Apptt. in the present grade :
(c) Date of Birth :
3. Name of the Home town & State :

4. HISTORY OR POSTING SINCE ENTRY

Sl. No.	Station	Post Held	From	To

5. Please indicate choice of posting in order of preferences:
1 to 3 for Central Excise and 4 to 6 for Customs with brief reasons:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Note: The choice of posting does not necessarily imply that the Officer will be given a posting of his choice. Officers are liable to be transferred before completion of full term in the exigencies of Service.

STATION:

DATE:

SIGNATURE OF OFFICIAL AND DESIGNATION

Forwarding Officer's Comments:

- (i) The particulars given above are verified and found to be correct.

STATION:

DATE:

SIGNATURE, NAME AND DESIGNATION
OF THE FORWARDING AUTHORITY

RECEIVED BY THE COMMISSIONER (P&V)

*Attested
by
Advocate*



- 14 - Annexure - E. 32

**OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG**

110 Mahatma Gandhi Road, Shillong – 793001, Meghalaya
Phone: 0364-222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cussgh@sancharnet

ORDER. 11/2005

Dated Shillong the 5th July 2005

Subject:- Transfer and posting in the grade of Superintendent, Group 'B' officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong – order reg.

The following transfer and posting in the grade of Superintendent, Group 'B' officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong is hereby ordered with immediate effect and until further orders.

Sl. No.	Name of Officers	Place of Posting	
		From	To
1	Shri S.R. Dhar	Dholai CPF Karimganj Cus. Division	Shillong Cus. Division
2	Shri L. N. Sonowal	Numaligarh CPF Dimapur Cus. Division	Imphal Cus. Division

Sd/-
(Chitra Gouri Lal)
Commissioner.

CNO. II (3) 6/Hqrs. Estt/SH/2004/5517-36(A)
Copy forwarded for information and necessary action to:-

Dated:- 5.07.2005

- 1 The Chief Commissioner, Customs & Central Excise, Shillong Zone, Shillong.
- 2 The Commissioner of Central Excise, Shillong/Dibrugarh.
- 3 The Additional Commissioner (P & V), Customs & Central Excise, Shillong.
- 4 The Joint Commissioner, Customs (Prev.), NER, Guwahati/Imphal.
- 5 The Deputy Commissioner, Dimapur/Karimganj/Shillong Customs Division. (Copy meant for the concerned officer is enclosed for delivery).
- 6 The Chief Accounts Officer, Customs/Central Excise, Shillong.
- 7 The Pay & Accounts Officer, Customs & Central Excise, Shillong.
- 8 The Superintendent, SIU-Vig. Branch, Customs Hqrs. office, Shillong.
- 9 The Branch-in-charge, ET-I / Condl / CIU –cum-VIG Branch of Cus. & Central Excise, Shillong.
- 10 Shri S.R. Dhar/L.N. Sonowal, Superintendent, for compliance.
- 11 The General Secretary, Group 'B' Officers' Association, Customs & Central Excise, Shillong.
- 12 Guard File.

(Gaigongdin Panmei)
Additional Commissioner.

Advocate

To

The Commissioner of Customs (Preventive)
North Eastern Region
Shillong.

Subject: - Prayer for stay order at CPF Numaligarh.

Madam

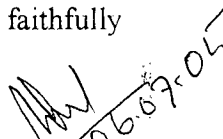
With reference to the above, I have the honour to state that I have been transferred from CPF Numaligarh and posted in the Customs divisional office, Imphal vide your Order No. 11/2005 dated 05.07.2005, communicated under C. No. II (3) 6/Hqs. Estt/SH/2004/5517-36 (A) dated 05.07.2005. In this regard, I would like to lay down few lines for your kind consideration and sympathetic order.

1. That Madam, my school going son is reading in Class X and he is going to appear HSLC Final Examination shortly. At this stage, I have to take care of my son in his studies.
2. That Madam, my old mother also resides with my family. Now a days my mother has been suffering from various diseases due to extreme old age. Intensive care and regular medical check up is urgently required at this juncture. On the other hand, there is no other adult member in my family except my wife.
3. That Madam, my wife is also working as Extension Officer (W/C), at Barbaruah Development Block under the Director of Panchayat and Rural Development, Assam.
4. That Madam, the right leg of my wife got fractured recently and now she can not move as usual.
5. That Madam, Imphal Customs divisional office is more than 400 Kms. away from my home town, Moran. On the contrary, Numaligarh CPF is only 140 Kms. away from my home town. So I can look after my family off and on from Numaligarh.

It is, therefore, requested that your honour will graciously be pleased to stay me at Numaligarh CPF considering the above facts and circumstances.

Date: 06.07.2005.
Place: Numaligarh.

Yours faithfully


(LN Sonowal)
Superintendent
CPF Numaligarh.


Advocate

- 28 -
- 16 -

Annexure - 36 39

Annexure-

No. 28034/2/97-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, the 12th June 1997

OFFICE MEMORANDUM

Sub: Posting of husband and wife at the same Station.

The undersigned is directed to say that on the subject mentioned above, Government has issued detailed guidelines vide O.M. No. 28034/7/86-Estt.(A) dated 3.4.1986. The Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organization at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

2. The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt. (A) Dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence.
3. It is further clarified that even cases where only the wife is a government servant, the concession elaborated in para 2 of this O.M. would be admissible to the government servant.

*Affected
for
Advocate*

-29-

-17-

35

4. These instructions would be applicable only to posts within the same department and would not apply on appointment under the Central Staffing Scheme.
5. A copy of this Department's OM No. 28034/7/86-Estt. (A) Dated 3.4.86 is enclosed for ready reference and guidance.
6. Hindi version of the OM is enclosed.

Sd/- Illegible
(Harinder Singh)
Joint Secretary to the Govt. of India
Tel. No. 301 1276

To

1. All Ministries/Departments of the Government of India.
2. Department of Women & Child Development.
3. The National Commission for Women, 4, Deendayal Upadhyay Marg, ITO, New Delhi.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 127/2005

Date of Order : This the 13th day of June, 2005

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman

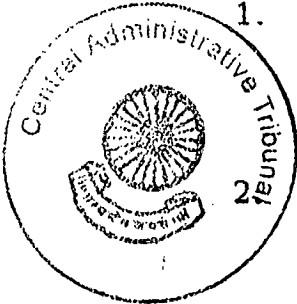
The Hon'ble Sri K.V. Prahladan, Administrative Member.

Smt. Kironmoyee Das
Working as Superintendent,
Central Excise, Amguri Range.

... Applicant

By Advocates Mr. J.L. Sarkar, Mr. A. Chakrabarty.

Versus -



1. The Union of India represented by the
Secretary, Ministry of Finance,
Department of Customs and Central Excise,
New Delhi.

2. The Chief Commissioner,
Customs and Central Excise,
North Eastern Region,
Shillong.

... Respondents

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

ORDER (ORAL)

SIVARAJAN. I. (V.C.)

The matter relates to transfer and postings of Officers in the Grade of Superintendent Group 'B' of Central Excise and Customs Department on rotation basis.

2. The applicant is working as Superintendent, Central Excise, Amguri Range since March 2003. Her husband is also working in the

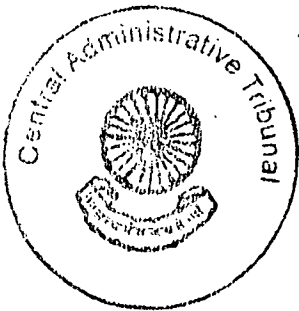
Shri A.K. Chaudhuri

same department and is posted at Jorhat. The husband of the applicant while working as Superintendent at Sonari met with a road accident and had undergone surgery. Thereafter on the request of her husband she was posted at Jorhat with effect from June 2003. It is stated that the husband of the applicant is not yet completely cured and he still needs care and attention of the family members. The children of the applicant is studying in educational institutions at Jorhat and are in mid session.

3. The applicant is presently aggrieved by her transfer from Amguri Range in Assam to Dimapur Customs Division in Nagaland as per orders dated 3rd and 6th June, 2005.

4. It is stated that the transfer orders made in June 2005 is against all the accepted norms for transfer contained in Annexure - A and B of the application and are made only to oblige certain Superintendents out of turn and against the norms as could be seen from Annexure - D order itself. According to the applicant apart from the violation of the transfer norms even the well accepted policy of accommodating husband and wife in the same station is violated even though there was no public interest or exigencies of service other than to oblige certain employees. It is also stated that though a representation is filed there is no response.

5. We have heard Sri J.L. Sarkar, learned counsel for the applicant and Sri A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. We are of the view that since the representation submitted by the applicant is pending before the second respondent this application can be disposed of at the admission stage itself.



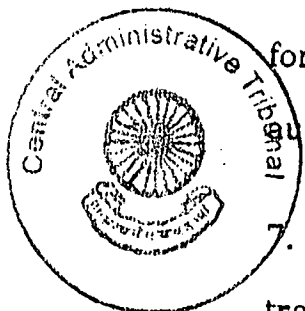
[Handwritten signature]

6. Norms for transfer of Group 'B' Officers in North East are contained in Annexure - A. Further, so far as the Central Excise and Customs department is concerned the norms are stated in Annexure - B. As per Annexure - B a Superintendent is entitled to continue in the same station for 4 to 6 years continuously. The applicant, does not appear to have continuous service in the same station for 4 to 6 years but only 2 years and odd. That apart, the husband and wife being government employees working in the same department are entitled to be accommodated in the same station unless any public interest or exigency of service warrant otherwise (See Bank of India V Jagjit Singh Mehta AIR 1992 SC 519). If the transfer is made in public interest and for administrative reasons the Courts would not interfere since there will be complete chaos in the administration which would not be conducive to public interest. The proper course for the affected party is to file representation before the higher authority and it is for that authority to pass appropriate orders.

7. In the instant case the transfer orders shows that these transfers are not made in public interest or in the exigencies of Administration. Annexure - D order shows that the said order was the result of representations made by certain Superintendents. It is not clear whether any representations were invited from the Superintendents for transfer so as to say that no further representations will be entertained unless the officers join their new places of postings.

8. We, prima facie, feel that the impugned orders were passed without considering the guidelines rather, throwing the guidelines to

ma



wind. We do not wish to state more since the application is being disposed of at the admission stage itself.

9. Since the applicant has filed a representation before the 2nd respondent the said authority will consider the same and pass appropriate orders keeping in mind the guidelines, the observation made hereinabove and in accordance with law within a period of one month from the date of receipt of this order. Since the applicant wants to supplement the representation she is directed to file additional representation with copy of the guidelines - Annexure A & B to the 2nd respondent within one week from today. This order will also be sent alongwith for compliance. If the applicant is not relieved till this day she will be retained in the present post till the disposal of the application as directed herein above.

The O.A. is disposed of as above at the admission stage itself.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

TRUE COPY

प्रतिलिपि

N. S. S.
14.6.05
Section Officer (I)
C.A.T. GUWAHATI POWER
Guwahati-781 005

14/6

Annexure - I

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Applications No. 129/2005, 130/2005, 131/2005 and
136/2005.

Date of Order : This the 14th Day of June, 2005.

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

1. Shri Gangadhar Das (O.A.129/2005)
2. Shri Nijit Kr. Nandi (O.A.130/2005)
3. Shri R.K.Kalita (O.A.131/2005)
4. Shri Madhu Sudan Tyagi (O.A.136/2005)

All the applicants are working as Superintendent
under different ranges of Central Excise, Guwahati ... Applicants

By Advocate Shri J.L.Sarkar for all the Applicants.

- Versus -

1. Union of India, represented by
the Secretary, Ministry of Finance,
Department of Customs & Central Excise,
New Delhi.

2. The Chief Commissioner,
Customs & Central Excise,
North Eastern Region,
Shillong.

... Respondents

By Mr A.K.Chaudhuri, Addl.C.G.S.C in O.A.No.129/05 & 130/05.
Mr M.U.Ahmed, Addl. C.G.S.C in O.A. No. 131/05 & 136/05

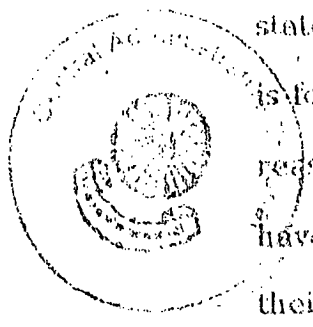
ORDER (ORAL)

SIVARAJAN J.V.C)

In all these cases the applicants challenged the propriety of the transfer orders dated 3.6.2005 and 6.6.2005 issued by the Commissioner of Central Excise and Customs. Apart from their individual circumstances, according to them these orders are passed in patent violation of the accepted norms regarding transfer of Group B employees contained in Annexures A and B. It is the contention of the applicants that these orders have been issued with the sole purpose of obliging certain Superintendents by soliciting

Advocate

representations from them. It is also stated that persons like the applicants are not afforded an opportunity to make representations before the Commissioner in regard to their peculiar circumstances. It is stated that the applicant in O.A.No.130/2005 is undergoing treatment for serious ailments and in O.A.131/2005 the mother of the applicant is undergoing treatment for cancer and that there is only one Cancer Institute for treatment in Guwahati for the entire North East Region. It is their grievance that the applicants were never informed of the intention of the respondents to effect transfers and postings during the month of June contrary to the well accepted norms that transfers and postings of Group B officers will be effected only in the month of December or at the latest by 31st January of each year. It is also their contention that as per the norms prescribed in Annexure A and B, particularly Annexure B where it is specifically stated that the normal tenure of Superintendent in a particular station is for a continuous period of 4 to 6 years and that without any valid reason the applicants, who have not completed more than 2 to 3 years have been transferred out from Guwahati to distant places without their volition.



2. I have heard Mr J.L.Sarkar, learned counsel appearing for the applicants and Mr A.K.Chaudhuri and Mr M.U.Ahmed, learned Addl.C.G.S.Cs for the respondents. Mr Sarkar pointed out that the impugned transfer orders cannot be sustained for the sole reason that these orders are passed in the month of June, when the children of the applicants are in the mid academic session of their studies. Counsel submits that these orders have been issued at this late hour only to oblige certain Superintendents in the department by getting representations from them. Counsel also submits that the transfer

For

orders are passed in patent violation of the well accepted norms contained in Annexures A & B, which are made with mala fide intention. Counsel also drew my attention to the order dated 3.6.2005, from which it is seen that pursuant to representations made by more than 20 Superintendents they have been transferred to places of their choice and it is stated that they are not entitled to TA/DA since the transfers were made as per their requests. Counsel submits that no further proof is required to establish mala fides in the matter.

3. Mr A.K.Chaudhuri, learned Addl.C.G.S.C on the other hand submitted that there is no illegality in the transfer orders. The guidelines issued in the form of executive orders will not stand in the way of the respondents effecting transfers in public interest or in the exigencies of the administration! Standing Counsel also submits that this Tribunal will not interfere in transfer matters and it is for the applicants, if they are aggrieved, to make representation before the respondents.

4. I have considered the rival submissions. A Division Bench of this Tribunal had occasion to consider the challenge to the very same transfer orders in O.A.127/2005 and rendered judgment on 13.6.2005. Direction was issued to the respondents to consider the representation made by the applicant therein in the light of the guidelines and also not to relieve her from the present place until the representation is disposed of. The guidelines clearly show that the transfer orders are to be issued only in the month of December and as far as possible before 31st January of each year and such a norm was fixed only to take care of the interest of the children of the officers who are studying in educational institutions and not to affect their studies adversely. In these cases it is specifically averred by the



Pa

applicants that their children are studying in the educational institutions and they are in the mid academic session. That apart, Annexures A & B guidelines would show that Superintendents of the Customs and Central Excise department will normally have a continuous service in a particular station for 4 to 6 years. In these cases both the aforesaid norms are seen violated and the only reason for departing from the aforesaid well accepted norms I could gather from the impugned orders is that representations made by the certain Superintendents were considered and transfers are effected to suit their convenience. To put it differently there was no public interest nor any exigencies of service involved in these transfers. Though normally guidelines issued by way of executive orders may not have any binding effect in the absence of any public interest or administrative exigencies, the respondents are bound to make transfers and postings on the lines of the guidelines issued that to after due discussions, deliberations with the Association of employees. In the instant case it is seen that the applicants have made representations against the transfer/posting order dated 3.6.2005 and no interim orders have been passed thereon. In view of the alleged violation of the guidelines, particularly, those discussed hereinabove the concerned respondent, namely, the Chief Commissioner of Customs and Central Excise will consider the representations made by the applicants with reference to the guidelines (Annexures A & B) and the observations made hereinabove and take a decision thereon within a period of one month from the date of receipt copy of this order. If the applicants want to supplement the representations they are free to do so within a period of one week from today. The Chief Commissioner, Central Excise and Customs shall consider the

Eda

- 27 = 26 -

44

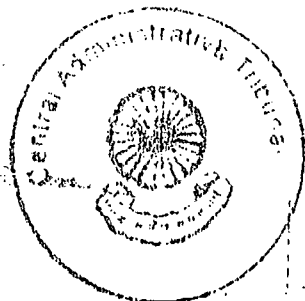
5

Individual representations submitted by the applicants as directed above and pass a reasoned order. In the meantime, if the applicants have not so far been relieved from the respective post held by them they will be allowed to continue in the said post and same place until a decision is taken as directed above.

The O.As are disposed of accordingly.

The applicants will produce this order alongwith the additional representation to be made within one week from today to the respondents.

SD/VICE CHAIRMAN



pg

For the true copy
of the order

Section Officer (II)

CHIEF OF THE BRANCH

1/5/05

- 27 -

Amexwe - J

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.144 of 2005

Date of decision: This the 15th day of June 2005

The Hon'ble Justice Shri G. Sivarajan, Vice-Chairman

The Hon'ble Shri K.V. Prahladan, Administrative Member

Mr. Challienkhum Songate
S/o Hrangthankhum
Joint Commissioner
Central Excise, Shillong.

.....Applicant

By Advocates Mr J.L. Sarkar and Mr S. Nath.

- Versus -

1. Union of India, represented by the
Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Chairman
CBEC,
Department of Revenue
North Block, New Delhi.

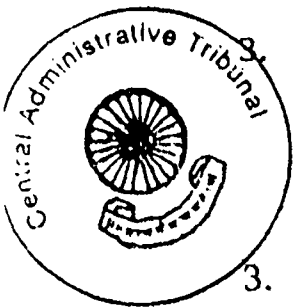
The Deputy Secretary (AD-II)
CBEC,
Department of Revenue,
Ministry of Finance,
Government of India, New Delhi.

3. The Chief Commissioner,
Central Excise & Customs (East Zone)
Shillong.

.....Respondents

By Advocate Mr M.U. Ahmed, Addl. C.G.S.C.

.....



M.U. Ahmed
Advocate

- 28 -

46

ORDER

SIVARAJAN. J. (V.C.)

The matter relates to the transfer and posting of Joint Commissioners in the Customs and Central Excise Department of the Central Government. The applicant is a Joint Commissioner, Customs Preventive Commissionerate, N.E.R. and posted at Shillong since October 2002. He is aggrieved by his transfer from Shillong to Kolkata as per order dated 10.6.2005 (Annexure-I). It is the case of the applicant that his children aged 5 years and 7 years are studying in Meghalaya State Police Public School, Shillong and that if the transfer is effected at this point of time it will adversely affect the education of his children. Further, it is stated that the applicant's wife is Group 'A' Central Government employee and is posted at Shillong and that the policy of the Government is to accommodate both husband and wife in the same station as far as practicable. It is also stated that the applicant had exercised his option to continue in the North Eastern Region for at least one more year and that by ignoring all these the respondents have passed the impugned transfer order only to oblige certain officers who had made representations for transfer to their place of choice.

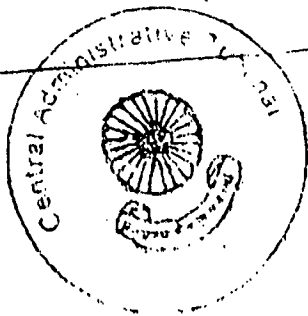
2. We have heard Mr J.L. Sarkar, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents. It is not clear as to whether the respondents had offered an opportunity to make representation to all the officers in the post of Joint Commissioner. However, it is seen that the impugned orders are

[Signature]

passed mainly on the basis of representations made by some of the Joint Commissioners.

3. Taking into account all the circumstances we direct the applicant to make a detailed representation before the respondent No.1 for the relief sought for in this application within a period of ten days from today. If any such representation is filed the respondent No.1 will dispose of the same in accordance with law within a period of six weeks thereafter. If the applicant has not so far been relieved he would be allowed to continue in the present post till orders are passed on his representation to be filed as directed herein now. If the applicant does not file the representation in time, certainly the respondents are free to proceed according to law. The applicant will produce this order alongwith the representation for compliance.

The application is accordingly disposed of.



Certified to be true copy
प्रमाणित प्रतिनिधि

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

Section Officer (J)

C.A.T. GUWAHATI BRANCH

Guwahati. 16/5