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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 207/2005

R.A/C.P No.

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SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 207/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(S): Shri Gangadhar Das

Respondant(S): U.O. 1 2005

Advocate for the Applicant(S): MR J.L. Sarkar and S. Nain

Advocate for the Respondant(S): Chse. Mr. M.M. Ahmed

| Notes of the Registry | Date | Order of the Tribunal |
|---|------------------|---|
| <p>This application is in form of filed/C.F. Form No. 20/- deposited with IPC/BD No. <u>206/139/05</u> Dated <u>24.6.05</u> <u>9.8.05</u> By Registrar <u>1/c</u> <u>No steps</u></p> | <p>10.8.2005</p> | <p>Present : Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. Hon'ble Mr. K.V. Prahladan, Administrative Member.</p> <p>Heard Mr. J.L. Sarkar, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.</p> <p>This Tribunal by order dated 14.6.2005 in O.A. No. 129/2005 and in connected cases directed the 2nd respo- ndent to consider the representations filed by the applicants. The applicants was also directed to file additional representations, if any, in the matter. Pursuant to the said direction, the applicant submitted representation dated 17.6.2005 (Annexure - C) to the 2nd respondent which was forwarded by the 4th respondent to the 3rd respon- dent evidence by communication dated 21.6.2005 (Annexure - B). The 2nd respondent disposed of the representat- ion filed by the applicant and three others persons who were applicants in the earlier O.A. and rejected the request of the applicant for transfer to Guwahati. It is stated in the said order that the applicant had not submi- tted any representation as directed by</p> |

Received copy on
behalf of respondent
no. 2, 3 & 4
11/8/05
Inspector, Central Branch,
Law Cell, Guwahati.

Mr
11/8/05

Contd/-

Contd/-

10.8.2005 the Tribunal. The applicant then sent a communication dated 3.8.2005 to the 2nd respondent pointing out the facts that the applicant had filed ~~xxxx~~ representation and the same was forwarded to the Commissioner alongwith representations of two others applicants. The applicant also sought for stay of the transfer order.

Mr. J.L. Sarkar, learned counsel for the applicant submits that thrust in the order passed by this Tribunal on 14.6.2005 was on the education of the applicant's children and that the applicant had clearly stated in the additional representation that education of his children are in the mid session. Counsel submits that this aspect of the matter has not been considered by the 2nd respondent while rejecting the representation.

Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that he will verify whether the representation, Annexure - G submitted by the applicant has been received.

Since the 2nd respondent has not considered the circumstances regarding education of the applicant's children who are in the mid session, we order status quo as on today and direct the respondents to file an affidavit regarding receipt of the additional representation (Annexure - C) and the circumstances under which he could not be considered ^{as while} by passing the impugned order.

Post on 25.8.2005.

[Signature]
Member

[Signature]
Vice-Chairman

mb

13
O.A. 207/2005

25.8.2005

3
Heard learned counsel for the parties. The application is disposed in terms of the order passed in separate sheets at the admission stage itself.

Received copy for the respondents.
25/8/05
Inspector (Law), Control.
Enate, Ghy.

9
Vice-Chairman

mb

26.8.05

C. copy of the judgment has been collected by the applicant to-day.
S.

M.V. Suresh
31/8/05

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

O.A. No. 207 of 2005.

DATE OF DECISION: 25.08.2005

Shri Gangadhar Das

APPLICANT(S)

Mr. J.L. Sarkar, Mr. S. Nath

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Others

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgments?
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.

.....

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 207/2005

Date of Decision : This the 25th day of August 2005.

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

Shri Gangadhar Das,
Working as Superintendent,
Central Excise, Range - VI,
Guwahati.

... Applicant

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

- Versus -

1. 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,
N.E. Region, Shillong.
3. The Commissioner,
Central Excise, Shillong.
4. Deputy Commissioner,
Central Excise, Bhangagarh,
Guwahati.

... Respondents.

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

ORDER (ORAL)

SIVARAJAN. J. (V.C.)

The applicant is a Superintendent of Central Excise,
Range - VI, Guwahati. Being aggrieved by a transfer order, the



applicant had approached this Tribunal by filing O.A. No. 129/2005. The said application was disposed of by order dated 14.06.2005 directing consideration of the representation filed by the applicant. The applicant was also directed to file an additional representation and the respondents were directed to consider, the same. Pursuant to the said direction, the 2nd respondent passed an order rejecting the representation. It is stated in the said order that additional representation directed to be filed by this Tribunal has not been received by the 2nd respondent. The applicant has filed this O.A. contending that pursuant to the direction issued by this Tribunal, he had sent additional representation (Annexure - C) addressed to the 2nd respondents through Guwahati office and the same was forwarded by the said office to the 3rd respondent on 21.06.2005 (Annexure - B). Since the additional representation filed by the applicant has not been considered, this Tribunal by order dated 10.08.2005 directed the respondents to file an affidavit regarding receipt of the additional representation and to state the circumstances under which it could not be considered while passing the impugned order.

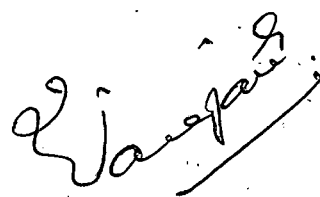
2. Now the respondents have filed an affidavit in which it is stated that the 2nd respondent could not consider the representation, for, in spite of best efforts it could not be traced out. It is also stated that the respondents are willing to abide by any direction to be issued by this Tribunal.

3. I 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.



4. The fact that the applicant has filed additional representation (Annexure - C) is not denied. The Guwahati Office instead of forwarding the representation to the 2nd respondent, had wrongly forwarded the same to the 3rd respondent and the 3rd respondent could not send it to the 2nd respondent. Now it is stated it is not forthcoming. It is in the above circumstances, the 2nd respondent has stated that no additional representation as directed was filed by the applicant. Now it has come out that the applicant has filed an additional representation (Annexure - C) evidenced by Annexure - B. Hence, I direct the 2nd respondent to consider the same seriously and pass a dispassionate speaking order within a period of one month from the date of receipt of this order. Since the respondents state that the additional representation, annexure - C is not forthcoming, the respondents will decide the matter with reference to the annexure - C which is a copy of the said representation. The interim order already passed will continue in force till an order is passed and communicated to the applicant.

The O.A. is disposed of at the admission stage itself as above. The applicant will produce this order before the 2nd respondent for compliance.


(G. SIVARAJAN)
VICE-CHAIRMAN

/mb/

A

O.A. No. - 207/05

— Applicant.

- Vs -

— Respondent.

✓ Approved the same
 filed
 25/8/05
 (A. MUSSAIN)
 Deputy Commissioner
 M. A. B. S. Central Excise & Guwahati Division
 Addl. Central Govt. Standing Counsel

1. That, I am the respondent No.4 and duly representing respondent No.2 , in the instant O.A. and have gone through the application filed by the Applicant and have understood the contents thereof and I am well acquainted with the facts and circumstances of the case based on records.

2. That, there is no any willful and reckless disobedience of the any order passed by this Hon'ble Tribunal. Since the respondents have highest regards for this Hon'ble Tribunal, and the respondents shall always abide by any order passed by the Hon'ble Tribunal in the context of the aforesaid O.A.

The detailed & genuine story is appended below :

(A) That, as regards to the additional representation, dated 17.06.05, the Answering Respondent beg to submit that, in compliance with the Hon'ble CAT Guwahati's Order dated 14.06.05 in O.A. No. 129/05, the applicant, Sri Gangadhar Das, Superintendent was to produce the Order alongwith the additional representation to be made within one week from the date of the Order i.e. within 21.06.05 to the respondents (Secretary, Ministry of Finance, New Delhi/ Chief Commissioner, Central Excise & Customs, Shillong). Neither the Order nor the additional representation was produced by Sri Gangadhar Das to the respondents within the time specified in compliance with the Hon'ble CAT Guwahati's directives.

(B) That, as regards to the circumstances under which the additional representation dated 17.06.05 of Sri Gangadhar Das could not be considered while passing the impugned order, the

Answering Respondent submits that since Sri Gangadhar Das, Superintendent had not Submitted Additional representation to the second respondent in the light of the Hon'ble CAT Guwahati's directives dated 14.06.05, his representation dated 03.06.05 submitted to the Commissioner of Customs (P), N.E.R., Shillong was taken up for consideration and is disposed off accordingly.

✓ It now transpires that Sri Gangadhar Das, the petitioner, had alongwith two other colleagues submitted their representation through the Central Excise Division Office at Guwahati. The latter forwarded the same to their Commissionerate Headquarters at Shillong. These representations which were addressed to the Chief Commissioner, Customs & Central Excise, N.E.R., Shillong were to have been forwarded to the said addressee but unwittingly not done so. They were bunched with other such representations of the petitioners who had obtained similar orders from the Hon'ble CAT Guwahati Bench and placed in a file for processing purpose in the Shillong Central Excise Commissionerate Office.

In the meantime, the Office of the Chief Commissioner of Customs & Central Excise, Shillong realizing that representations from only 4 (four) petitioners out of 9(nine) had been directly received in accordance with the Hon'ble CAT Guwahati Bench directives, contacted the office of the Commissioner of Central Excise, Shillong to enquire about representations, if any, received by them. On 15th July 2005, copies (not originals) of the representations from S/Sri M.S. Tyagi, R.K. Kalita and N.K. Nandi were obtained. Representations (or copies thereof) of S/Sri Gangadhar Das and B.B. Karmakar however, were not forthcoming. Even then, both their representations submitted before the lower authorities were taken into cognizance to meet the ends of justice.

However, in any verdict of the Hon'ble Court in the context of the O.A., the respondent (No.2) will always abide by the same.

VERIFICATION

Verified that all the facts stated above are true , nothing herein is false and nothing material has been concealed therefrom. Signed on this 25th day of August'2005

Deponent

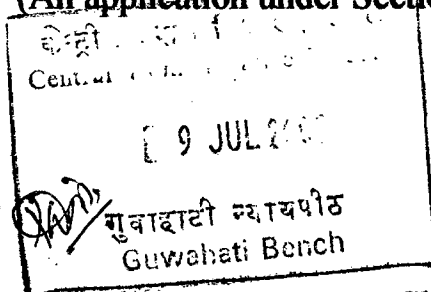
Azwan Hussain

(A. NUSSAIN)
Deputy Commissioner
Central Excise , Guwahati Division

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

(An application under Section 19 of the Administrative Tribunal Act'1985)



O.A. No. 207/2005

Between

Shri Gangadhar Das, working as Superintendent
Central Excise, Range-VI, Guwahati- -----Applicant

And

1. Union of India and others

Synopsis

The applicant is working as Superintendent, Central Excise in Guwahati Range VI w.e.f. February 2002. He filed O.A. No.129/2005 before this Hon'ble Tribunal against his order of transfer dated 3.6.05 and order dated 6.6.05 to Imphal.

78. The Hon'ble Tribunal by an order dated 14.6.05 held that the norm of issuing transfer order was fixed only to take care of the interest of the children who are studying in educational institutions. The OA was disposed with a direction to file representation supplementing earlier representation within a week.

The applicant submitted fresh representation on 17.6.05 explaining that his children are in mid session in education institution. The case of the applicant has been rejected on the ground that his fresh representation was not received by order dated 29.7.05.

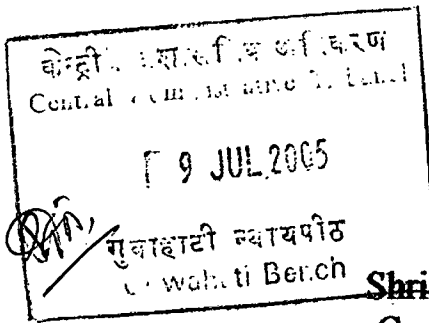
The applicant submitted representation dated 3.8.05 explaining the facts which is pending.

The applicant prays for similar reliefs given to ^{others} them by the respondents on ground of children's education, on consideration of his representation dated 17.6.05 submitted in time.

17
filed by the applicant -
through: Subroto Nath
Advocate
09.08.2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

(An application under Section 19 of the Administrative Tribunal Act' 1985)



O.A.No. 207/2005

Between

Shri Gangadhar Das, working as Superintendent
Central Excise, Range-VI, Guwahati- -----Applicant

And

1. 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,
N.E. Region, Shillong.
3. The Commissioner, Central Excise, Shillong
4. Deputy Commissioner, Central Excise, Bhangagarh,
Guwahati-

----- Respondents.

1. Particulars for which the application is made:

The application is made for enforcement of the order of the Hon'ble Tribunal dated 14.06.05 in OA No.129/2005, and against the order dated 29.07.05 passed by the respondent No.2 without complying with the said order dated 14.06.05 of the Hon'ble Tribunal.

2. The application is within the jurisdiction of this Hon'ble Tribunal.

3. The applicant declares that the application is within the period of limitation prescribed by the Section 21 of the A.T. Act' 1985.

4. Facts of the case:

4.1. That the applicant is a citizen of India and working as Superintendent Central Excise Range-VI, Guwahati w.e.f. February 2002, in Group "B" service.

4.2 That the applicant filed OA No.129/2005 before this Hon'ble Tribunal against his transfer order dated 03.06.2005 and 06.06.05 issued by the Commissioner, Central Excise, Shillong and the Commissioner, Customs, Shillong on the ground that the said transfer order was issued in violation of the circulated/published policy of transfer of the Department. The applicant has not completed four years of minimum tenure at Guwahati, Range -VI. The transfer has been ordered in mid academic sessions of the children. Moreover the order has been issued in June against the accepted policy and guidelines of transfer to be made by December/January.

4.3 That the Hon'ble Tribunal was pleased to dispose the said OA No.129/2005 by a common order with other OA No.130/2005, 131/2005 and 136/2005. The Hon'ble Tribunal inter-alia held: "I have considered the rival submissions. A Division Bench of this Tribunal had occasions to consider the challenge to the very same transfer orders in O A No 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 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 each year and such a norm was fixed only to take care of the interest of the children of the officers who were studying in educational institutions and not to effect their studies adversely. In these cases it is specifically averred by the applicants that their children are studying in the educational institutions and they are in the mid academic sessions....."

The Hon'ble ^{Tribunal} was pleased to mention about other alleged violation of the guidelines.

Copy of the common order dated 14.06.05 on OA No.129/2005, 130/2005, 131/2005 and 136/2005 is enclosed as Annexure A.

4.4. ^{before filing the above OA} That the applicant had submitted representation dated 03.06.05 and did not submit any representation after the transfer order dated 06.06.05 and on a prayer by his counsel the Hon'ble Tribunal was pleased to pass an order as under:

"If the applicants want to supplement the representation they are free to do so within a period of one week from today. The Chief Commissioner Central Excise and Customs shall consider the 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 in same place until a decision is taken as directed above."

4.5. That in compliance with the direction of the Hon'ble Tribunal the applicant submitted fresh representation on 17.06.05 to the Chief Commissioner Customs and Central Excise, N.E. region, Shillong enclosing a copy of the order of

Gangadhar Das

the Hon'ble Tribunal dated 14.06.05 through proper channel. The said representation dated 17.06.05 was sent to the Commissioner Central Excise, Shillong by the Deputy Commissioner Central Excise, Guwahati under letter dated 21.06.05 along with representations submitted by the applicants of OA 130/2005 and OA 131/2005.

Copies of the forwarding letter dated 21.6.05 and the applicant's representation dated 17.06.05 are enclosed as Annexure B and C respectively.

4.6. That the respondent No.2 passed identical orders dated 29.07.05 in respect of the applicants in common order of the Hon'ble Tribunal dated 14.06.05 up to page 7 of the said order dated 29.07.05 and from end of page 7 to 9 individual representation of the applicants have been taken up. The applicants in OA 130/2005 and OA 131/2005 have been retained in the present place on consideration of their fresh representations forwarded along with the fresh representation of the applicant. The applicant in OA 136/2005 has also been retained in the present place of posting by similar order. But most unfortunately the respondent No.2 without calling for the complete records of the establishment under his office passed an order that no representation was filed by of the applicant as per the direction of the Hon'ble Tribunal, though the representation of the applicant and of those of applicants in OA 130/2005 and OA 131/2005 were sent by the Deputy Commissioner Central Excise, Guwahati by the same forwarding letter dated 21.06.05. On this ground an earlier representation dated 3.06.05 of the applicant which was submitted before the issue of the transfer order dated 6.6.05 was rejected.

Cranganthar Dub.

It is stated that Transfer order dated 6.6.05 order him for posting at Imphal Division and Hon'ble Tribunal was pleased to pass orders permitting supplementing earlier representation and the applicant complied with the directions of the Hon'ble Tribunal within the directed time schedule. But the case of the applicant has been rejected without considering the fresh representation.

Copies of the order dated 29.7.05 for applicants in OA 130/2005 and OA 136/2005 are enclosed as Annexure D and E respectively. Copy of the order dated 29.7.05 in respect of the applicant is enclosed as Annexure F.

4.7. That the applicant after receipt of the aforesaid order dated 29.7.05 submitted a representation on 03.08.05 explaining the fact that he had submitted representation dated 17.06.05 after the order dated 14.06.05 and again explained the difficulties as regards the education of his children. The said representation

dated 03.08.05 has not yet been disposed nor the representation dated 17.06.05 has been disposed.

Copy of the representation dated 03.08.05 is enclosed as Annexure G.

4.8. That the applicant had stated in OA 129/2005 that his children are studying in different educational institutions at Guwahati and it is their mid academic sessions. His elder daughter is about 19 years of age and is a Higher Secondary student. His elder son is about 17 years and youngest son is about 15 years of age and reading in class X and IX respectively at Guwahati. Class X is the final year of HSLC examination. The Hon'ble Tribunal's finding in the order dated 14.06.05 is that the transfer guidelines stipulated the month of transfer in December and January 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.

4.9. The Hon'ble Tribunal directed to supplement earlier representation in the circumstances of the case within a time frame and the applicant did the same mentioning the case of education of his children.

4.10. That the respondent No.2 passed identical order dated 29.7.05 with individual facts in the representation, and favourably considered the cases involving interest of children education and retained them in present place of posting. The applicant's case has been rejected on the alleged ground that he has not submitted fresh representation, though in fact he submitted representation within time frame and the same was in office records.

4.11. That if the applicant is transferred during the mid academic sessions the applicant and his children shall suffer irreparable loss. It is stated that the applicant has not been released from the present post.

5. Grounds for reliefs with legal provisions

5.1. For that there has not been compliance of the Hon'ble Tribunal's order dated 14.06.05 by not considering the representation dated 17.6.05.

5.2. For that the statement in the order dated 29.7.05. that the applicant did not submit representation within time schedule given by the Hon'ble Tribunal is not correct.

5.3. For that non consideration of the representation dated 17.6.05 has denied justice to the applicant.

Crangadhar Das

5.4. For that non consideration of the finding of the Hon'ble Tribunal in order dated 14.06.05 that applicant's children are in mid academic sessions has denied justice to the applicant.

5.5. For that non consideration of the case of education of the children in the basis of the Hon'ble Tribunal's order dated 14.06.05 and also when ^{other} the cases on the grounds of education of children ^{are allowed} is arbitrary and discriminating and offending Articles 14 and 16 of the Constitution of India.

6. **Details of remedies exhausted.**

The applicant has exhausted remedy and the Hon'ble Tribunal is the only forum for remedy now.

7. The applicant declares that the matter is not pending before any other Court or Tribunal.

8. **Reliefs sought for:**

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

1. That his representation dated 17.6.05 be considered and till disposal of the order of the Hon'ble Tribunal dated 14.6.05 as regards posting of the applicant shall continue.

8.2. The representation 3.8.05 be considered and disposed, and order of rejection of the applicant's case on the basis of his earlier representation without considering the representation dated 17.6.05 be set aside and quashed.

8.3. Any other reliefs the Hon'ble Tribunal deems fit and proper.

9. **Interim relief :**

During the pendency of the application the applicant prays for the following interim relief:

1. The order dated 29.7.05 be suspended and he may be allowed to continue in the present post.

2. Any other reliefs the Hon'ble Tribunal deems fit and proper.

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

10. The application is filed through Advocate.

Gangadhar Das

11. Particulars of Postal order.

- (i) IPO No. : 204 134166
- (ii) Date : 24-06-05.
- (iii) Issued from : Guwahati, G. P. O.
- (iv) Payable at : Guwahati

12. List of Enclosures:

As per Index.

Verification

I, Shri Gangadhar Das, son of Late B. Das, aged about 49 years, do hereby verify that the statements made in Paragraphs 1,4,6 to 12 are true to my knowledge and those made in Paras 2,3, and 5 are true to my legal advice and that I have not suppressed any immaterial fact.

Guwahati

The 7.8.2005

Gangadhar Das
Signature.

Gangadhar Das

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.

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

Affected
Signature
Advocate
G.S.

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.

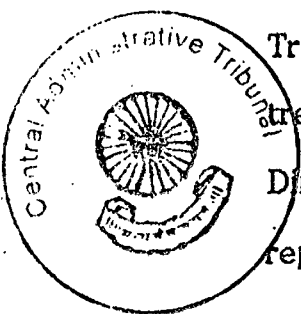
2. I have heard Mr J.L.Sarkar, learned counsel appearing for the applicants and Mr A.K.Chaudhuri and Mr M.U.Ahmed, learned Addl.C.G.S.Cs for the respondents. Mr Sarkar pointed out that the impugned transfer orders cannot be sustained for the sole reason that these orders are passed in the month of June, 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




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.

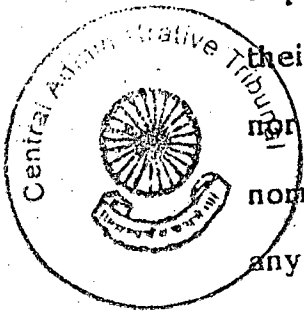
3. Mr A.K.Chaudhuri, learned Addl.C.G.S.C on the other hand submitted that there is no illegality in the transfer orders. The guidelines issued in the form of executive orders will not stand in the way of the respondents effecting transfers in public interest or in the exigencies of the administration.. 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



[Handwritten signature]

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



[Handwritten signature]

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

Certified to be true Copy
of the original

Section Officer (J) 1
C.A.T. GUWAHATI BRANCH
Guwahati 781005
10/10/16

5/8

OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE:
SETHI TRUST BUILDING, 6TH FLOOR
G.S. ROAD, BHANGAGARH, GUWAHATI-781 005.

Telephone - (0361)-2529 435, 2529 967, Fax- (0361)-2452 816,
E- Mail-(1) (2) cex0603guwahati@rediff.com

C.No.I(22)5/Misc./CAT/ET/ACG/2005/8849

Dated: 21-06-2005

To

The Commissioner,
Central Excise,
Shillong.

Subject:- Forwarding of Representation - regarding.

Sir,

Kindly find herewith the representations submitted by the following officers addressed to the Chief Commissioner, Customs and Central Excise, Shillong Zone, Shillong for further necessary action at your end.

1. Sri R.K. Kalita, Superintendent(Guwahati-VII Range),
2. Sri N.K. Nandi, Superintendent(Guwahati-II Range) and
3. Sri Gangadhar Das, Superintendent(Guwahati-VI Range).

Yours faithfully,

Enclo:- As above.

o/c

21/6/05

(A. HUSSAIN)
DEPUTY COMMISSIONER:
CENTRAL EXCISE:
GUWAHATI

Alfred
J. S. S. S. S.
S. S. S. S. S.

To

The Chief Commissioner,
Customs and Central Excise,
N.E.R :: Shillong.

(Through proper channel)

Sir,

Sub: Prayer for posting at Guwahati.

Most respectfully I want to draw your kind attention and favourable consideration with the following few lines :

1. That Sir, I was promoted as Superintendent in Dec' 2000 and posted at Central Excise Adjudication Branch, Shillong. Only on Feb'2002 I was transferred to Guwahati Central Excise - Division on compassionate ground due to my wife's illness and - posted at NOR Range (Oil Refinery Range) now Guwahati VI Range since Feb'2002 till date.
2. That Sir, in the recent adjustment order I was placed at the disposal of Imphal Customs Division, Imphal. I have completed only three years three months and yet to complete the six years tenure at Guwahati Central Excise Division. Moreover my wife has been suffering from various gynaecological problems and my presence is very much required as there is no other matured male members to look after her other than me.
3. That Sir, my sons is HSLC candidate for next year, 2006, my daughter is H.S 2nd Year and the youngest son is reading in Class IX. So, it is not possible to take my family along with me at Imphal as their academic session have already started.
4. That Sir, I submitted representation for rotational transfer within the Central Excise Division, Guwahati as I am working in the same Range since Feb '2002. I did not opted for Customs.
5. That Sir, as there was written in the Annual General Transfer order 'with the approval of Chief Commissioner'. No representation will be entertained".

Cont'd P..2

*Attested
by Advocate*

- : 2 : -

6. That Sir, as there was ~~not~~ no other option but to seek the redressal from the Hon'ble CAT. Accordingly CAT's has given its verdict vide OA No -129/005 dated 14th June 2005 to allow me to continue in the same post and same place until a decision is taken on the CAT's directives.

This is for favour of your kind information and I hope that I will get favourable decision in this regard and allow me to stay at Guwahati up to 6 years tenure and thus oblige.

Encls: CAT OA No. 129/005 dt. 14th June 05

Yours faithfully,

(Gangadhar Das)

Superintendent,
Central Excise: Guwahati VI Range,
Guwahati.
~~Superintendent~~
Central Excise: Guwahati Range VI
Guwahati

O/c

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Annexure-D

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

4th Floor, Crescens Building, MG Road, Shillong - 793001,
Phone: 0364-2500131. Fax: 0364-2224747.

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

ORDER No. 25/2005

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.

Attested for Advocate

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-11/95/29643-75 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

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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 N.K. Nandi, Superintendent, Central Excise, Range - II, Guwahati Division.

In his representation dated 20-06-2005 he has requested for stay at Guwahati so as to enable him to continue the diagnosis and treatment that he requires on the following ground that :-

- i) He is suffering from SARCOIDOSIS, BONE MARROW TUBERCULOSIS, ACUTE RENAL FAILUR, OSTEOPOROSIS and under going treatment accordingly at New Delhi / Guwahati.
- ii) He has been transferred to Guwahati on compassionate ground and just completed 2 ½ year as Superintendent at Guwahati.
- iii) His daughter, studying in class X, will appear in HSLC in February / March, 2006 (SEBA) and his son studying in class V, will appear his annual examination in November / December 2005 (SEBA)
- iv) His option submitted in the prescribed proforma for Central Excise/ Customs, Guwahati was not considered.

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. 130/05 on 14-06-2005. Observations on his representation are as under:-

- i) In Dibrugarh, there exists one of the oldest Medical College of the country besides other medical institutions. There does not appear any apparent reason of no medical treatment at Dibrugarh.

- ii) He has completed continuous stay of 6 years 6 months at Guwahati and thus exceeded the general tenure of stay of 4 to 6 years in one station.
- iii) There is no apparent reason of discontinuing studies of his daughter/son since the pattern of education is common in the state, both Guwahati and Dibrugarh being in Assam.
- iv) Option was asked for consideration of the next posting and not for retention in a particular station of an individual officer.
- v) Further, he has wrongly contended before the Hon'ble CAT, Guwahati that the orders were issued with the sole purpose of obliging certain Superintendents by soliciting representations from them. In fact, the Department has never solicited representations from any one. The Department has considered the representations submitted by the individual officers of their own volition as far as practicable/ possible against the available vacant post.

However, due cognisance is given to his personal medical history as submitted in his representation. In the circumstances, the transfer order pertaining to him (AGT 2005) is presently deferred and consequential adjustment order will be issued. I so order accordingly.

Sd/-

(J.S.R. KHATHING)
CHIEF COMMISSIONER

24-36
-10-

C.No. I(10)14/CCO/SH/2005/263

Dated : 29 JUL 2005

To

Shri N.K. Nandi, Superintendent, Central Excise, Range - II,
Guwahati Division for information.

29/7/2005
(J.S.R. KHATHING)
CHIEF COMMISSIONER



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

3rd Floor, Crescens Building, MG Road, Shillong -- 793001,
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E-mail:- ccshillo@excise.nic.in EDECS :- (zone18)

ORDER No. 24/2005

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.

For Advocate

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.

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 mala fide 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 transfer 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 M.S. Tyagi, Superintendent, Central Excise, Range - II, Guwahati Division.

In the representation dated 13-06-05 he sought stay at Guwahati on the following ground that :-

- i) He has a daughter studying in class X who is going to appear in Matric examination and one son in class VIII in the Army School. That in Dibrugarh Commissionerate there is no Army School. Thus it would be not possible for him to shift from Guwahati to Dibrugarh Commissionerate. His son and daughter would be deprived of his guidance and their education would suffer irreversibly and he could not imagine how could he be away from her during this first important milestone of her academic career.

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. 136/05 on 14-06-2005. Observation on his representation are as under :-

- i) He has represented that there is no Army School in Dibrugarh Commissionerate. Dibrugarh Commissionerate comprises of five Divisions viz. Dibrugarh, Digboi, Jorhat, Tinsukia & Tezpur and it is a fact that Army Schools are functioning within the jurisdiction of Tezpur, Jorhat & Tinsukia Divisions.
- ii) He has completed a continuous stay of 7 years at Guwahati and thus exceeded the general tenure of stay of 4 to 6 years in one station.

- iii) Further, he has wrongly contended before the Hon'ble C.M. Guwahati that the orders were issued with the sole purpose of obliging certain Superintendents by soliciting representations from them. In fact, the Department has never solicited representations from any one. The Department has considered the representations submitted by the individual officers of their own volition as far as practicable/possible against the available vacant post.

However, having regard to all the facts and circumstance of the case, I am inclined to defer his transfer for the present and consequential adjustment orders will be issued. I so order accordingly.

Sd/-

(J.S.R. KHATHING)
CHIEF COMMISSIONER

C.No. I(10)14/CCO/SH/2005/257

Dated: 29 JUL 2005

To
Shri M.S. Tyagi, Superintendent, Central Excise, Range - II
Guwahati Division for information.

(J.S.R. KHATHING)
CHIEF COMMISSIONER

Shri M.S. Tyagi
for
Shri M.S. Tyagi



OFFICE OF THE CHIEF COMMISSIONER
CENTRAL EXCISE & CUSTOMS
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ORDER No. 26/2005

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.

*Advised
Advocate*

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 Gangadhar Das, Superintendent, Central Excise, Range - II, Guwahati Division.

In his representation dated 03-06-2005 address to the Commissioner of Customs, N.E.R., Shillong he has requested for posting at Guwahati Customs Division on the following ground that :-

- i) He was transferred to Guwahati Central Excise Division on compassionate ground due to his wife's illness in February, 2002 and vide recent adjustment order he was placed at the Customs (P) Commissionerate, N.E.R., Shillong. He has completed only 3 years 3 month and yet to complete 6 year tenure at Guwahati Division.
- ii) His wife has been suffering from various gynecological problems and his presence is very much required as there is no other mature male member to look after her other than himself.

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. 129/05 on 14-06-2005. His representation is rejected on the following grounds that :-

- i) He has been working in Central Excise since 1982 [Tezpur Division - 9 years, Guwahati Division - 12, Shillong Hqrs - 2 years]. Thus, he has completed 23 years continuous stay in a Commissionerate and therefore due for posting to another Commissionerate. As he had not worked in Customs his name was cleared for posting to Customs.
- ii) Further, he has wrongly contended before the Hon'ble CAT, Guwahati that the orders were issued with the sole purpose of obliging certain Superintendents by soliciting representations from them. In fact, the Department has never solicited representations from any one. The Department has considered

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the representations submitted by the individual officers of their own volition as far as practicable/ possible against the available vacant post.

It is to be noted that as per the direction of the Hon'ble CAT Guwahati Bench, representation was to have been filed before the 2nd respondent i.e. Chief Commissioner of Central Excise & Customs, Shillong. Time frame was fixed by the Hon'ble CAT Guwahati Bench. However, no such representation was filed by him. Even then, his representation filed before the Commissioner of Customs, N.E.R., Shillong was taken up for consideration and is disposed off accordingly.

Sd/-

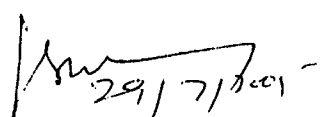
(J.S.R. KHATHING)
CHIEF COMMISSIONER

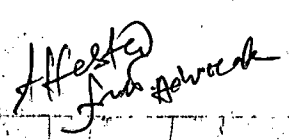
C.No. I(10)14/CCO/SH/2005/266

Dated : 29 JUL 2005

To

Shri Gangadhar Das, Superintendent, Central Excise, Range - II,
Guwahati Division for information.


(J.S.R. KHATHING)
CHIEF COMMISSIONER



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To

The Chief Commissioner,
Central Excise & Customs,
NER, Shillong, 3rd Floor,
Crescent Building,
M.G. Road, Shillong.

(Through Proper Channel)

Sir,

Sub: Prayer for stay at Guwahati Central Excise
and not to relieve till next AGT.

Please refer to your Order No. 26/2005 dated 29th July '05
made reasonable transfer Order on the guideline of Hon'ble CAT vide
OA No 129/2005.

That Sir, I want to draw your kind attention with the -
following few lines :-

That Sir, I am working as Superintendent in Guwahati
(Refinery) Range VI since 2002 till date. I was transferred to Customs
~~District~~ Commissionerate Shillong and posted at Imphal Customs -
Division in recent AGT. I represented to Customs Commissionerate
on 3.6.05 to post me in Guwahati Customs Division where I did not
highlight my children academic session.

But Sir, as per CAT's guidelines I submitted representation
vide C.No GL-1/2/ET/NOR/02/35 dated 17.6.05. which was duly forwarded
by Deputy Commissioner, Central Excise Guwahati vide C.No I(22)5/Misc/
✓ CAT/ET/ACG/2005/8049 dated 21.6.05 (photo copy enclosed) alongwith
Sri R.K.Kalita, Superintendent, Guwahati -VII Range, Sri N.K.Nandi,
Superintendent, Guwahati-II Range. In your order No. 26/2005 in last
paragraph it is alleged that I did not submitted representation as
per CAT's guideline. It is not known why you do not receive the same.

That Sir, in my representation dated 17.6.05 I highlighted
my children's academic session as my eldest son is appearing HSLC
examination, 2005-2006. Daughter HS final year and youngest son in
✓ Class IX. In such circumstances if I am transferred far away from
Guwahati their education will spoil.

Considering my above circumstances I may not be relieved
till a reasonable consideration is made during this academic studies
of my children.

Dated : 3rd August 2005.

Yours faithfully,

Sd/- *Illegible*

(G DAS)
Superintendent,
Central Excise : Range - VI,
Guwahati.

Accepted
for signature