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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 272/2005

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SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 272/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(S): A. Mahendra Kumar

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

Advocate for the Applicant(S): Dr. M. C. Sarma, H. G. Boruah

Advocate for the Respondant(S): CAK

Notes of the Registry	Date	Order of the Tribunal
The application is in form is filed, C. P. No. 26- deposited vide IPC/BD No. <u>26-218280</u> Dated <u>20-10-05</u>	8.11.05 lm	Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. <u>Vaigyan</u> Vice-Chairman

colt.
Dy. Registrar
Colt.

9/11/05

Certified copy of
the report has been
collected by the applicant
and a copy of the same
has been handed over to
the Addl. C.S.C. for the
records.

11/11/05
Addl. C.S.C.

CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH.

O.A. No. 272 of 2005

DATE OF DECISION: 08.11.2005.

Sri Mahendra Kumar

APPLICANT(S)

Dr.M.C.Sarma

**ADVOCATE FOR THE
APPLICANT(S)**

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

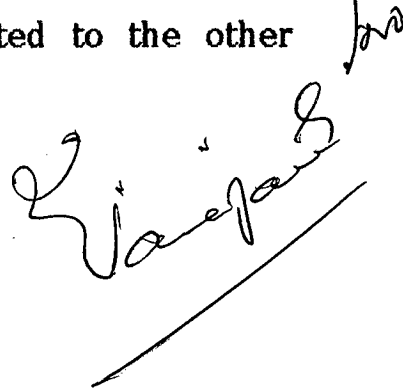
Mr M.U.Ahmed, Addl.C.G.S.C.

**ADVOCATE FOR THE
RESPONDENT(S)**

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

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



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.272 of 2005.

Date of Order: This the 8th Day of November, 2005.

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

Sri A.Mahendra Kumar
S/O.Late A.R.Singh
O.A.43 Assam Rifles,
C/O.99 APO.
Sonitpur.

Applicant.

By Advocate Dr.M.C.Sarma and Mr.H.G.Baruah
-Versus-

1. The Union of India,
Represented by the Secretary to the Govt. of India,
Ministry of Home Affairs, North Block,
New Delhi.
 2. The Director General, Assam Rifles.
Mahanideshalaya, Shillong.
 3. The Commandant,
O.A.43 L Assam Rifles,
C/O.99 APO.
 4. The Captain (Adjt.)
OAL 43 Assam Rifles,
CO.99 APO.
- By Advocate Mr.M.U.Ahmed, Addl.C.G.S.C.

Respondents.

ORDER(ORAL)

SIVARAJAN,J.(V.C);

The applicant is a Junior Teacher in 43 Assam Rifles 99 APO. Being aggrieved by an order dated 10th October, 2005 (Annexure A) transferring him to 12 Assam Rifles , Nagaland , the applicant made a representation dated 15.10.05(Annexure B) to the 2nd respondent. His present grievance is that though he had submitted the representation dated 15.10.05 through proper channel requesting for retention of his service in 43 Assam Rifles 99 APO itself, the said representation has not so far been disposed of. In the above circumstances, the applicant seeks for cancellation of the transfer order in so far as it relates to his transfer and also to retain to him in the same place.

[Handwritten signature]

2. I have heard Dr.M.C.Sarma, learned counsel appearing for the applicant. Counsel submits that the applicant had served in a hard station - 22 Assam Rifles Thoubal district Manipur for 3 years and 10 months and that in the said circumstances he had been transferred to Sonitpur in Assam. Dr.Sarma further submitted that without any provocation the applicant was again transferred prematurely to another hard station in Nagaland. The counsel also submits that there is no public interest or exigencies involved in the matter of present transfer. The counsel submitted that the respondents have acted in an arbitrary manner in transferring the applicant from Sonitpur to Nagaland long before expiry of his tenure posting.

3. I have also heard Mr.M.U.Ahmed learned Addl.C.G.S.C. appearing for the respondents. The Standing counsel submitted that the applicant has not shown any statutory violation or malafide in the matter of transfer and that transfer is incidental to his services.

4. I have considered the rival submissions. In the representation dated 15.10.05 (Annexure B) it is stated that the Principal, Assam Rifles School, Lokra on 14th October informed the applicant about the transfer order and he was ordered to proceed to 12 Assam Rifles. The applicant had submitted representation against the transfer order on 15th October, 2005. Now almost three weeks have expired since the date of filing of the representation. The applicant, it is stated, is on leave. The counsel for the applicant has pointed out that nobody else has been posted as on today in the vacancy arising on account of transfer of the applicant. Considering the above I am of the view that this application can be disposed of with direction at the admission stage itself.



5. In the circumstances, I direct the 2nd Respondent to dispose of the Representation (Annexure B) submitted on 15.10.05 by a reasoned order within a period of three weeks from the date of receipt of this order.

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

The applicant will produce the order before the 2nd respondents for compliance within a week.



(G.SIVARAJAN)
VICE-CHAIRMAN

LM

DISTRICT: SONITPUR.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH:

ORIGINAL APPLICATION NO. 272/05.

Sri A Mahendra Kumar

.....Petitioner/Applicant

-Vs-

Union of India & Ors.

....Respondents.

SYNOPSIS

The applicant is presently working in 43 Assam Rifles 99 APO as a Junior teacher. The petitioner is a non-combatised employee working under the Respondent No.2 and has been rendering and performing his duties as per order, need and requirement of the commandant 43 AR with the best of his abilities. Suddenly on the petitioner has been transferred 12 Assam Rifles (Nagaland) vide HQDGAR (G.S. Branch) signal No. 02270 and 02272 dated 07 Oct. By and order dtd. 10th Oct. 2005 Capt Adjnt vide memo No. 43076/A-3/2005/890 (A Branch) The petitioner is transferred to 12 Assam Rifles (Nagaland) and he is requested joint in the 12 Assam Rifles on the said 10th Oct. 2005. The petitioner has been informed by the principal Assam Rifles School Lokra on 14th Oct 2005 about the said transfer.

The petitioner was transferred to 31 Assam Rifles Lokra (Assam) from 28 Assam Rifles Thoubal

13
10/11/05
7/11/05
DA.M.C. SARMA
Advocate.

(Manipur) on 23-07-05 and accordingly he joined there. Thereafter again the petitioner was transferred from 13 Assam Rifles to 43 (Present Unit) Assam Rifles vide HQDGAR GS (Trs) Signal No. 02234 dated 29th March 2005. Therefore petitioner transfer's to 12 Assam Rifles is prematured and vitiated by malafide. The petitioner is transfer from 43 AR to 12 AR which is made against the mandatory statutory Rule hence it is bad in law. The petitioner already served in hardest and insurgent area for 3years 10 months. There is no administrative reason and or exigencies of administration which requires or call for an order of prematured transfer. Petitioner filed an application addressing the Director General Assam Rifles through principal of the school on 15th Oct, 2005 praying for retaining his posting in 43 AR till completion of his tenure in the presents location but yet no positive step has been taken by him. Having no alternative petitioner approaches this forum as a lone forum of redressed.

Submitted by



Hara Gobinda Boruah.

Advocate

DISTRICT: SONITPUR.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH:

ORIGINAL APPLICATION NO. 272/05.

Sri A Mahendra Kumar

.....Petitioner/Applicant

-Vs-

Union of India & Ors.

....Respondents.

LIST OF DATE

<u>Sl.No.</u>	<u>Annexure</u>	<u>Page</u>	<u>Contents.</u>
1..	Annexure- A 10-10-05		Order dtd 10 th Oct, 2005 passed Capt Adjnt 43 AR vide memo No. I43076/A-3/2005/890 transferring the petitioner to 12 AR (Nagaland)
2.	Annexure-B 15-10-05		Application dtd. 15 th Oct 2005 filed by the petitioner addressing the Director General of Assam Rifles.
3.	Annexure-C 15-10-05		Forwarding letter dtd. 15 Oct 2005 vide Memo No. I 43001 /ARS/01/2005/29 issued by principal AR School Lokra (Sonitpur).

Submitted by

Hara Gobinda Boruah

Hara Gobinda Boruah
Advocate.

DISTRICT: SONITPUR.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH:

ORIGINAL APPLICATION NO. /05.

10
Filed by the petitioner
Through
Hansa Gurbinda Borthakur
Advocate.

Sri A. Mahendra Kumar

S/O. Late A.R. Singh

O.A. 43 Assam Rifles

C/O. 99 APO

Sonitpur

....petitioner/applicant.

-Vs-

1. The Union of India,
Represented by the
Secretary to the Govt. of
India, Ministry of Home
Affairs, North Block, New
Delhi.

2. The Director General
Assam Rifles,
Mahanideshalaya, Shillong.

3. The Commandant,
OA: 43 LAssam Rifles,
C/O: 99 APO.

4. The Captain (Adjnt)
OAL 43 Assam Rifles,
CO: 99 APO.

....Respondents.

THE DETAILS OF THE APPLICATION.

1. Particulars of the application:

1.1. Name of the applicant: A Mahendra Kumar

1.2. Name of the Father : S/O. Late A.R.Singh.

1.3. Design.of the office : JT 0055, Junior Teacher

OA: 43 AR,

C/O. 99 APO.

1.4. Address after service: A. Mahendra Kumar

S/O. Late A.R. Sing

J.T.0055, Junior teacher

OA: 43 AR,

C/O. 99 APO.

2. Particulars of Respondents:

2.1 Name of Designation : (I) The Secretary to the
respondents.

Govt. of India Ministry
of Home Affairs , North
Block, New Delhi.

(II) The Director General
Assam Rifles
Mahanideshalaya,
Shillong.

(III) The Commandant
OA: 43 Assam Rifles,
C/O: 99 APO.

(IV) The Captain (Adjnt)
OA: 43 Assam Rifles,
C/O: 99 APO.

2.2. Office Address of : (I) Office of the
the respondent Secretary to the Govt.
of India Ministry of

Home Affairs, North
Block, New Delhi.

(II) Office of the
Director General of Assam
Rifles Mahanideshalaya,
Shillong.

(III) Office of the
Commandant 43 Assam
Rifles, 99 APO.

(IV) Office of the
Captain Adj. 43 Assam
Rifles, 99 APO.

2.3. Address for service of Notice.

:(I) Office of the
Secretary to the Govt.
of India Ministry of
Home Affairs, North
Block, New Delhi.

(II) Office of the
Director General of Assam
Rifles Mahanideshalaya,
Shillong.

(III) Office of the
Commandant 43 Assam
Rifles, 99 APO.

(IV) Office of the
Captain Adj. 43 Assam
Rifles, 99 APO.

Order vide HQDGAR (GS Br)
Signal No. 02270 and
02272 dated 7th Oct. 2005
and

3. Particulars of the
against which
application is made

Order dated 10th Oct 2005
issued by Capt/Adjt
(A BRANCA) vide Memo
No.I43070/A-3/2005/890
whereby the petitioner is
Transferred to 12 AR
and to joined in 12 AR on
the same date i.e. 10th
Oct, 2005 received
through the Principal AR
School, Lokra Sonitpur
on 14-10-05.

4. Jurisdiction of the Tribunal:

The applicant declares that the subject matter
of the case against which he wants redressal is
within the jurisdiction of the tribunal.

5. Ground for Rifles:

5.1. That the petitioner is transfer from 43 A.R.
C/O. 99 APO Sonitpur to 12 AR which is against the
Mandatory Statutory rules/provisions therefore bad
in law.

5.2. That the petitioner is transferred to 12 AR
from 43 AR by an order dtd 10th Oct. 2005 issued by
Capt/Adjt (A BRANCH) vide memo No. I43076/A-
3/2005/890 whereby he was directed to join in 12 AR
on the said 10 Oct. 2005 which is received by the
petitioner on 14th Oct, 2005.

5.3. The transfer has been made to 12 AR from 43 AR
is prematured posting as because the petitioner was
posted to 31 AR (Lokra) from 28 AR (Manipur) on 23-
7-03 and again on 29th March 2005 the petitioner was

posted from 31 AR to 43 AR due to interchange of battalion vide HQDGAR GS (Trn).

5.4. That as per PE of AR a unit/Battalion is authorized to keep 2 (two) JT only. There are already 2 (two) J.T. in 43 AR including the petitioner and not a single Junior teacher is surplus.

5.5. That there is no administrative reason and exigencies of administration which requires or call from order of premature posting.

5.6. That the petitioner makes representation on 15th Oct, 2005 addressing Director General Assam Rifles to stay his transfer, and it is incumbent on the respondents to heard the same.

6. Limitation:

The application further declares that this application is filed within the period of limitation of prescribed under section 21 of the Administrative Tribunals Act 1985.

7. Facts of the case:

The facts of the case are given below:

7.1 That the applicant is presently working in 43 Assam Rifles 99 APO as Junior teacher the petitioner is a non-combatised employee working under the respondent No.2.

7.II That the Assam Rifles is directly under the General superintendence and control of the Central Govt. as per provisions of the Assam Rifles Act 1941. Section 5 of the Assam Rifles Act 1941 specifies the classes and ranks in the Assam

Rifles. The teachers are classified as non-combatised personnel in Assam Rifles.

7.III That the petitioner as a Junior teacher in 43 AR has been rendering and performing his duties as per order, needs and requirement of the commandant 43 Assam Rifles and concerned authorities with honesty and with conscientiousness.

7.IV That the petitioner has been transferred to 12 Assam Rifles from 43 Assam Rifles via HQDGAR (GS BRANCH) signal No. 02270 and 02272 dated 07 Oct, 2005. By an order dtd. 10th Oct, 2005 Capt. (Adjnt) vide memo No. I43076/A-3/2005/890 (A Branch) The petitioner is transferred to 12 Assam Rifles Nagaland and he is directed to Join in 12 Assam Rifles on the said 10th October. The petitioner has been informed by the principal Assam Rifles Lokra on 14th Oct, 2005 about his transfer.

A copy of the said order dtd. 10th Oct 2005 issued by the Capt, Adjnt is annexed herewith and marked as **Annexure-A.**

7.V. That the petitioner was transferred to 31 Assam Rifles Lokra (Assam) from 28 Assam Rifles Thoubal (Manipur) on 23-07-05. Thereafter the petitioner was transferred from 31 Assam Rifles to 43 Assam Rifles due to interchange of battalion vide HQDGAR GS (TRI) signal No. 02234 dated 29th March 2005. Therefore the petitioner's transfer to 12 Assam Rifles is prematured and vitiated by malafide.

7.VI That the petitioner was posted to 31 Assam Rifles Lokra (Assam) which is a soft/peace location from 28 Assam Rifles Thoubal District, Manipur which one of the hardest and insurgent locations of Assam Rifles. The petitioner already served in such locations for 3 years 10 months.

7.VII That as per PE of Assam Rifles a unit/Battalion is authorized to keep 2(two) Junior teacher. There are only 2(two) Junior teachers including the petitioner is 43 AR and not a single Junior teacher is surplus. There is no administrative reason and or exigencies of administration which requires or call for an order of prematured transfer.

7.VIII That the petitioner is transferred from 43 AR to 12 AR which is made against the mandatory statutory Rule.

7.IX. That the petitioner filed on application addressing the Director General Assam Rifles, through Principal of the School on 15th Oct, 2005 praying for retaining his posting in 43 AR till completion of his tenure in the location.

A copy of the said Application is annexed herewith and marked as **Annexure-B.**

7.X. That the application of the petitioner dtd 15th Oct 2005 is forwarded by the Principal AR school, Lokra, Sonitpur to Director General Assam Rifles by forwarding letter dtd 15th Oct, 2005 vide Memo No. I 43001/ARS/01/2005/29 for necessary action of the Respondent No. 2.

A copy of the said forwarding letter is annexed herewith and marked as **Annexure-C**.

7.XI That the transfer of the petitioner violate the mandatory provisions of law therefore it is bad in law.

8. Details of remedies Exhausted:

That the applicant declares that he has availed of all the remedies available to him.

8.1 That the applicant filed application before the Respondent No. 2 on 15-10-05 and since nothing has been done by the Respondents which compelled him to approached the Hon'ble tribunal.

9. Matter not pending with any others courts etc. The applicant further declares that the matter regarding in which the application has been made is not pending before any court of law, any authority or any other bench of the tribunal.

10. Relief sought:

In view of the facts mentioned in para 5 above the applicant prays for the following relief:

It is prayed that the respondents is to be directed to cancel/quash the impugned order with regard to the transfer of the petitioner as specified in para (IV) of para 7 after hearing the parties and perusal of records:

11. Interim order of granted for:

Pending final decision of the application the applicant seeks issue of the following interim order:

It is prayed that pending decision of the application the Respondent is be directed to stay the operation of the impugned order as specified in sub-para (IV) of para 7.

12. Where and who the application is filed:

The application is presented personally before the registrar Central Administrative Tribunal, Guwahati Bench.

13. Particulars of the posted order:

Post order in respect of the application fee

- (I) No of the Indian Postal order..... :
- (II) Name of the post office..... : Guwahati
- (III) Date of Issues..... : Do.
- (IV) Post office at which payable... : Do.

14. List of enclosure:

- (I) Annexure- A Transfer order dtd. 10th Oct, 2005 issued by the Captain.
- (II) Annexure-B Application of the petitioner dtd 15th Oct, 2005 addressing Director General Assam Rifles.
- (III) Annexure-C A Forwarding letter dtd 15th Oct, 05 issued by the principal AR School Lokra.

VERIFICATION

I, Sri A. Mahendra Kumar S/O Late A.R. Singh aged about 36 years OA 43 AR C/O 99 APO Dist Sonitpur do hereby verify that the contents from paragraph 1 to 14 are true to my personal knowledge and belief and I have not suppressed any material facts.

A. Mahendra Kumar

Signature of the Appellant

Place:

Date:

Annexure-A.

43076/A-3/2005/890

Dated: 10th Oct. 2005**A BRANCH****POSTING TEACHING STAFF**

1. The posting of following teachers have ordered vide HQ DGAR (GSRr) Signal No. 02270 and 02272 both dated 07 Oct, 2005.

(a) Shri Gaurishankar Singh
Hindi Teacher

(b) Shri A. Mahendra Kumar
Junior Teacher

To 12 AR

Date of Reporting
10th Oct, 2005.

2. Please inform concerned teachers.

Sd/-

S.K. Dhit

Capt.

Adjt.

Copy to be made
H. K. Dhit
Advocate

From:

JT0055, Junior Teacher
Mr. A Mahendra Kumar
43 Assam Rifles
C/o 99 APO

To The Directorate General Assam Rifles ✓
G S Branch
Shillong-11

(Through- Proper channel)

Sub ; RETENTION ON POSTING

Sir,

Respectfully, I beg to state the following few lines for favour of your kind consideration and necessary action please.

That Sir, I have been posted to 12 Assam Rifles from 43 Assam Rifles vide HQDGAR (G S Branch) signal No.02270 and 02272 dated 07 Oct 2005. Accordingly, I have been informed by Principal Assam Rifles School Lokra on 14 Oct 2005 about the posting vide- 43 Assam Rifles (A- Branch) Letter No. I.43076/A-3/2005/890 dated 10 Oct 2005 and was ordered to proceed to 12 Assam Rifles.

Sir, my posting has been made to 12 Assam Rifles under PREMATURE POSTING. I was posted to 31 Assam Rifles Lokra, (Assam) from 28 Assam Rifles Thoubal, (Manipur) on 23-07-2003. Further, I was posted from 31 Assam Rifles to 43 Assam Rifles due to interchange of battalions vide HQDGAR G S(Trg) Sig.No.02234 dated 29 March 2005.

Sir, it is stated for your perusal information that I was posted to 31 Assam Rifles Lokra (Assam) that is a soft/peace location from 28 Assam Rifles Thoubal Distt. (Manipur) which is one of the hardest and insurgent locations of Assam Rifles after rendering of 03 years and 10 months (Approx) of service in that location. Further, the tenure of duty in soft/hard Unit/Location of Assam Rifles is normally 03 (three) years. Now at present, I have completed only approx. 02 (two) years of my tenure and 01 (one) year is still left to complete full tenure in the location.

That Sir, as per PE of Assam Rifles a Unit/Battalion is authorised to keep 02 (two) Junior Teachers only. There are already 02 (two) Junior Teachers including me in 43 Assam Rifles and not a single Junior Teacher is surplus. Further, it is not understood that what exigency of task/work has emerged in 12 Assam Rifles for which I have been there under premature posting. Sir, I am a Jr. Teacher in 43 Assam Rifles and performing my duty in the children school as per the order, need and requirement of the Commandant 43 Assam Rifles and concerned authorities with honesty and conscientiousness.

Therefore, keeping in view of the above mentioned fact, your kind honour is requested to retain my posting in 43 Assam Rifles till the completion of my tenure in the location. For which I shall be highly obliged.

Thanking you.

Yours faithfully,

Date 15 Oct 2005

(A Mahendra Kumar)
Junior Teacher

Certified to be true Copy
The Advocate

I.43001/ARS/01/2005/29

Dated : 15 Oct 2005

Annexure - C

ASSAM RIFLES SCHOOL, LOKRA

RETENTION OF POSTING

Application for retention of posting submitted by Shri A Mahendra Kumar, Junior Teacher is fwd herewith in triplicate for your further necessary action please.

A Branch

Principal
Assam Rifles School
Lokra, Sonitpur

Certified to be true Copy.
H. B. Nath
Advocate