

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 79/2005

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SECTION OFFICER (Judl.)

Shahid
2/10/18

Fresh copy

FORM NO. 4
(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 78/2005 OF 199

Applicant(s) Himank Bhattacharjee

Respondent(s) U. O. I & Ors.

Advocate for Applicant(s) A. Ahmed

Advocate for Respondent(s) C. G. S. C. Md. U. U. Ahmed

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed. F. No. 30/- deposited with P. B. D. No. <u>24.9.11.79.11.</u> Dated <u>27.1.05</u></p> <p><u>11C Dy. Registrar</u> <u>22.3.05</u></p> <p><u>Steps taken with</u> <u>envelops.</u></p> <p><u>Power has been filed.</u> <u>22/3/05</u></p>	<p>23.03.2005</p>	<p>Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.</p> <p>Heard Mr. A. Ahmed, learned counsel for the applicant and also Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.</p> <p>The Respondents shall show cause as to why the application shall not be admitted.</p> <p>The applicant earlier approached this Hon'ble Tribunal by filing O.A. No. 13/2004 which was disposed of by order dated 01.03.2005, wherein it was ordered as follows: -</p>

Contd/-

Notes of the Registry	Date	Order of the Tribunal
2	Contd/- 23.3.2005	<p>"The Respondents vide order dated 04.02.2005 cancelled the transfer order of the applicant. The applicant received that order on 22.02.2005. The respondents are directed to consider the choice posting of the applicant as per Rules."</p> <p>The O.A. was disposed of on that basis. Now, the grievance of the applicant is that without considering the direction issued by the this Tribunal in the order dated 01.03.2005 a transfer order has been passed on 17.03.2005 vide Annexure - L. Sri A. Ahmed, learned counsel for the applicant submits that this order is bad in law and the same has been issued without compliance of this Tribunal's order dated 01.03.2005 (Annexure - K.). The Tribunal's power in interfering with the issue of transfer is limited in view of the various decisions of the Supreme Court, unless clear allegations of malafide against the officer issuing the transfer order has been made. In view of the fact there is nothing to show that the direction issued by this Tribunal in the order dated 01.03.2005 has been considered while issuing the transfer order dated 17.03.2005, in the circumstances, the transfer order dated 17.03.2005 is stayed till the next hearing date. It is made clear that this order shall not be effective if the substitute appointment has already been made in the post held by the applicant in pursuance of the Annexure - L.</p> <p>List on 6.4.05.</p>

Notice & order
sent to D/section
for issuing to
resp. Nos. 1, 2, &
by regd. A/D post.
and resp. No-3
received by hand.

5-4-05

5-12-2005

[Signature]

[Signature]

Vice-Chairman

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

ORDER SHEET

Original Application No. 78/05

Misc. Petition NO. _____

Cobtempt petition No. _____

Review Application No. _____

Applicants. Hireak Bhattacharyee

Respondents. W.O.I. Jais

Advocates for the Applicant. A. Ahmed

Advocates of the Respondents. CASE Md. M.U. Ahmed

Notes of the Registry

Dated

Order of the Tribunal

This application is in form
is filed/C. F. for Rs. 50/-
deposited vide IPC/BD
No. 206/117911
Dated 27.1.05

23.03.2005

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

Heard Mr. A. Ahmed, learned counsel for the
applicant and also Mr. M.U. Ahmed, learned Addl.
C.G.S.C. for the respondents.

The Respondents shall show cause as to why the
application shall not be admitted.

The applicant earlier approached this Hon'ble
Tribunal by filing O.A. No. 13/2004 which was
disposed of by order dated 01.03.2005, wherein it was
stated as follows: -

"The Respondents vide order dated 04.02.2005
cancelled the transfer order of the applicant. The
applicant received that order on 22.02.2005. The
respondents are directed to consider the choice
posting of the applicant as per Rules."

The O.A. was disposed of on that basis. Now, the
grievance of the applicant is that without considering
the direction issued by the this Tribunal in the order
dated 01.03.2005 a transfer order has been passed on

Contd/-

Steps taken
with envelopes.

22/3/05
Dy. Registrar

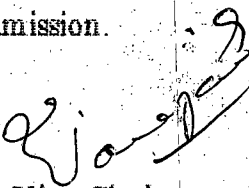
Panel has been filed

22.3.05

Contd/-
23.03.05

17.03.2005 vide Annexure - L. Sri A. Ahmed, learned counsel for the applicant submits that this order is bad in law and the same has been issued without compliance of this Tribunal's order dated 01.03.2005 (Annexure - K.). The Tribunal's ^{response} scope in interfering ^{with} the issue of transfer is limited in view of the various decisions of the Supreme Court, unless clear allegations of malafide against the officer ^{in issuing the transfer order} has been made in the ^{transfer} order. In view of the fact that there is nothing to show that the direction issued by this Tribunal in order dated 01.03.2005 has been considered while ^{issuing} the transfer order dated 17.03.2005, in the circumstances, the transfer order dated 17.03.2005 is stayed till the ^{in hearing} next date. It is made clear that this order shall not be ^{be} effective ^{if already} if the substitute appointment has been made in the post held by the applicant in pursuance of the Annexure - L.

List on 06.04.2005 for admission.


Vice-Chairman

mb

(3)

5

Notice duly
Served on resp.
Nos. 1, 2 and resp.
No. 3 received by
Hand.
Ce
11/4

6.4.2005 Mr.M.U.Ahmed, learned Addl.C.G.S.C. submits that substitute appointment has already been made. Mr.A.Ahmed, learned counsel for the applicant submits that he would like to file additional affidavit in this regard.

Post on 4.5.2005. Additional affidavit and written statement in the meantime

[Signature]
Vice-Chairman

bb

Service Completed.

4.5.05 Mr A.Ahmed, learned counsel for the applicant is present. Mr M.U.Ahmed, learned Addl.C.G.S.C submits that he has not received any instruction in the matter.

List on 1.6.05 for order. Reply if any has to be filed before 1.6.05.

[Signature]
Vice-Chairman

pg

01.06.2005 Mr. A. Ahmed, learned counsel for the applicant is present. Mr. M. M U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that written statement is being filed today. Post on 22.6.2005 for hearing. rejoinder, if any, in the meantime.

[Signature]
Vice-Chairman

mb

22.6.2005 Learned counsel for the applicant is not present. Post on 30.7.2005

[Signature]
Member

[Signature]
Vice-Chairman

bb

31-5-05
NO reply has been given.
[Signature]

6.6.05
W/s Submitted
by the Respondents.
Nos. 1 to 3.
[Signature]

No. Rejoinder has
been filed.

[Signature]
21.6.05

20.7.05
Rejoinder filed
by the Applicant
[Signature]

① W/s and Rejoinder
has been filed.

[Signature]
1.8.05

(4)

78/2005

O.A. 78/2005

2.8.05

At the request of Mr A.Ahmed, learned counsel for the applicant the case is adjourned to 22.8.05.

[Signature]
Member

[Signature]
Vice-Chairman

The case is ready for hearing on 22.8.05. regard w/s and Registrar.

Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs.

[Signature]
19.8.05

[Signature]
Vice-Chairman

lm

29.8.05

Copy of the order has been sent to the office for issuing the same to the applicant as well as to the A.D., C.G.S.C.

[Signature]
30/8/05

9

2

CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH.

O.A. No. 78 of 2005.

DATE OF DECISION: 22-08-2005.

Shri Hirak Bhattacharjee

APPLICANT(S)

Mr. A. Ahmed

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

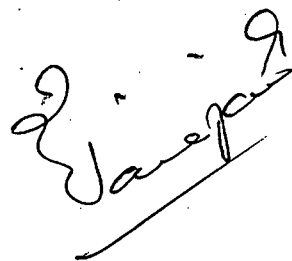
Mr. M. U. Ahmed Addl. C.G.S.C

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.78 of 2005.

Date of Order: This the 22nd Day of August 2005.

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

Shri Hirak Bhattacharjee,
MES No.229603
Junior Engineer(QS&CO)
Office of the Garrison Engineer.
(A/F) Borjhar,Guwahati-781005.
By Advocate Mr.A.Ahmed

Applicant.

-Versus-

1. The Union of India represented by the Secretary to the Government of India, Ministry of Defence, New Delhi-1.
2. The Chief Engineer(Head quarters), Eastern Command, Engineer Branch, Fort William, Kolkata-21.
3. The Garrison Engineer(A/F), Borjhar, Guwahati-15.

Respondents

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

ORDER (ORAL)

SIVARAJAN,J(V.C):

The applicant is a Junior Engineer. He was initially posted at Borjhar, Guwahati under the Garrison Engineer, Air force. He was transferred from the said place to Shillong as per order dated 3.5.2003(Annexure B). The applicant being aggrieved by the said order approached this Tribunal by filing O.A.No.165 of 2003. The said O.A. was disposed of by order dated 14.8.2003(Annexure K) directing the applicant to make representation and the Respondents were directed to pass orders thereon. The applicant accordingly made a representation (Annexure G). The Respondents then passed an order dated 1.10.2003 cancelling the transfer order dated 3.5.2003

(Annexure H). Again the applicant was transferred to Shillong as per order dated 31.12.2003 (Annexure I). Being aggrieved by the said order the applicant again approached this Tribunal by filing O.A.No. 13 of 2004. During the pendency of the said O.A. the Respondents have passed an order (Annexure J) cancelling the transfer order dated 31.12.2003. The said communication also directed obtaining fresh choice posting from the applicant. Based on the above, the O.A. was disposed of by order-dated 01.03.2005 (Annexure K). The Respondents were directed to consider the choice posting of the applicant as per Rule. The grievance of the applicant is that instead of giving transfer to one of the three choice places - (i) Narangi, (ii) Silchar, (iii) Bagdogra stated in the representation the applicant has been transferred to a different place Siliguri by order dated 17.3.05 (Annexure L). The applicant is aggrieved by the said order. The Respondents have filed their written statement. It is stated therein, that though the applicant was provided an opportunity to point out the choice station the applicant requested for posting in any part of Assam only. Accordingly, he was posted to CE Siliguri. It is also stated that the applicant has completed more than three years at Borjhar which is more than a normal tenure and he did not serve in staff appointment in his entire service. Though the applicant has filed the rejoinder he did not deny the aforesaid contentions stated in the written statement

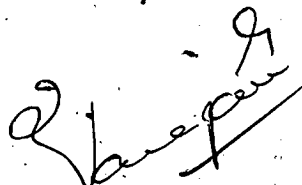
2. I have heard Mr.A.Ahmed learned counsel for the applicant and Mr.M.U.Ahmed learned Addl.C.G.S.C. appearing for the Respondents. Mr.A.Ahmed counsel for the applicant submits that Siliguri is away from Bagdogra which is one of the choice place requested for even if the applicant cannot be posted in Assam on account of his illness he

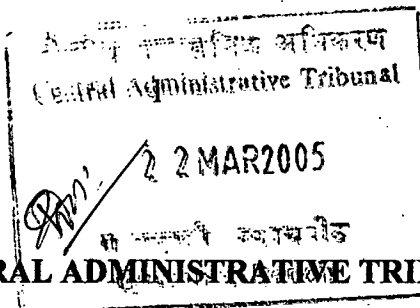
[Signature]

could have been posted in Bagdogra which is not in Assam. Mr.M.U.Ahmed counsel for the Respondents on the other hand submits that Siliguri is nearer to Bagdogra. As already noted the applicant in his representation (Annexure G) dated 8.9.03 had given his choice as Narangi, Siliguri and Bagdogra. The Tribunal has directed the Respondents to consider the representation for posting of his choice. The respondents also have called for the choice places. The Respondents in the impugned order did not state any reason as to why the applicant could not be transferred to any one of the three places mentioned above. Silchar, it appears to be nearer to Bagdogra. That does not mean that the direction issued by this Tribunal can be ignored and the applicant cannot be posted to any one of the places other than the three places as already mentioned above without assigning any valid reasons. No reasons are stated. In view of the above circumstances, if the applicant makes a representation in this regard before the respondents within a months from to-day, the Respondents will consider the same for giving him choice place in one of the three places mentioned in the representation and pass appropriate order in accordance with the law within three months thereafter.

Application is disposed of as above.

Applicant will produce this order alongwith the representation before the respondents for compliance.


(G.SIVARAJAN)
VICECHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. ⁷⁸ OF 2005.

BETWEEN

Shri Hirak Bhattacharjee

... Applicant

-Versus-

The Union of India & Others

... Respondents

LIST OF DATES AND SYNOPSIS:

Annexure-A is the photocopy of Office Letter No.131306/1/9/Engrs/EIC(I) dated 20 December 2001.

Annexure-B is the photocopy of the Posting Order No.18/2003 dated 3rd May 2003.

Annexure-C is the photocopy of letter dated 06-06-2003.

Annexure-D is the photocopy of New Transfer Policy vide letter No.131306/1/72/Engrs/EIC(I) dated 20-11-2002 issued by the office of the Respondent No.2.

Annexure-E is the photocopy of rejection letter dated 26-06-2003.

Annexure-F is the photocopy of the judgment and order dated 14th August 2003 passed by this Hon'ble Tribunal in O.A. passed by this Hon'ble Tribunal in O.A.No.165 of 2003.

Hirak Bhattacharjee

Annexure-G is the photocopy of representation dated 8th September 2003.

Annexure-H is the photocopy of the letter No.131322/2/2003/JE(QS&C)/144/Engrs./EIC(I) dated 1st October 2003.

Annexure-I is the photocopy of the posting Order No.47 of 2003 dated 31st December 2003.

Annexure-J is the photocopy of Order No.131/13/04/43/Engrs./EI(Legal) dated 04 February 2004.

Annexure-K is the photocopy of Order dated 01-03-2005 passed in O.A.No.13 of 2004.

Annexure-L is the photocopy of Order No.12 dated 17th March 2005.

This application is directed against the illegal and arbitrary transfer of the Applicant vide posting Order No.12 Dated 17th March 2005 by which your Applicant is transferred to the Office of the Chief Engineer (Air Force), Siliguri Zone from Office of the Garrison Engineer (A/F) Borjhar, Guwahati-781005.

RELIEF SOUGHT FOR:

That the impugned Order No.12 of Transfer dated 17th March 2005 at Annexure-L may be set aside and quashed.

To direct the Respondents to give the Applicant the benefit of choice place of posting as submitted by the Applicant in his representation dated 8th September 2003 as per Hon'ble Tribunal's Order dated 14th August 2003 pass in O.A.No.165 of 2003.

To pass any other relief or relieves to which the Applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

To pay the cost of the application.

Hirak Bhattacharjee

INTERIM ORDER PRAYED FOR:

The Applicant most respectfully prays for an Interim Order from this Hon'ble Tribunal by way of suspending the impugned Order No.12 of Transfer dated 17th March 2005 at Annexure-L in case of the Applicant.

Hirak Bhattacharjee

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 78 OF 2005.

BETWEEN

Shri Hirak Bhattacharjee,
MES No.229603,
Junior Engineer (QS&CO,
Office of the Garrison Engineer,
(A/F) Borjhar, Guwahati-781005.

...Applicant

-AND-

- 1) The Union of India represented by the
Secretary to the Government of India,
Ministry of Defence, New Delhi-1
- 2) The Chief Engineer (Head Quarters),
Eastern Command, Engineer Branch, Fort
William, Kolkata-21.
- 3) The Garrison Engineer (A/F),
Borjhar, Guwahati-15.

... Respondents

**1) DETAILS OF THE APPLICATION PARTICULARS OF THE
ORDER AGAINST WHICH THE APPLICATION IS MADE:**

This application is directed against the illegal and arbitrary transfer of the Applicant vide posting Order No.12 Dated 17th March 2005 by which your Applicant is transferred to the Office of the Chief

Hirak Bhattacharjee

Filed by
Shri Hirak Bhattacharjee
Applicant
through
CAJIL AHMED
Advocate

Engineer (Air Force), Siliguri Zone from Office of the Garrison Engineer (A/F) Borjhar, Guwahati-781005.

2) JURISDICTION OF THE TRIBUNAL:

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

3) LIMITATION:

The Applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4) FACTS OF THE CASE:

Facts of the case in brief are given below:

4.1) That your humble Applicant is a citizen of India and as such he is entitled to all rights and privileges guaranteed under the Constitution of India.

4.2) That your Applicant begs to state that he is working as a Junior Engineer (QS&C) under the Garrison Engineer, Air Force, Borjhar. He was posted to Borjhar from Teliamura vide Office Order No.131322/2/2000/JE (QS&C)/119/Engrs/EIC(I) dated 07th Dec.2000. He joined at Borjhar Air Force Station ^{on 17.1.01, which was a} tenure Station. (2)

4.3) That your Applicant begs to state that after completion of tenure in Tenure Station the individual working there are entitled for three choice Stations of posting. It may be stated that individual may send their choice place of posting in 4(four) months in advance before completion of stipulated tenure period for proceeding with their parent command.

4.4) That your Applicant begs to state that, he was transferred to Shillong Zone from Borjhar vide posting Order No.18/2003 dated 3rd May 2003 issued by the Office of the Respondent No.2. It may be stated

Hirak Bhattacharyjee

that your Applicant at that time has not completed full tenure at Borjhar, i.e. 3 years as per posting/transfer policy of Group C & D personnel of the MES vide Office Letter No.131306/1/9/Engrs/EIC(I) dated 20 December 2001 issued by the Office of the Respondent No.2.

Annexure-A is the photocopy of Office Letter No.131306/1/9/Engrs/EIC(I) dated 20th December 2001.

Annexure-B is the photocopy of the Posting Order No.18/2003 dated 3rd May 2003.

4.5) That your Applicant begs to state that after receiving the said Transfer Order dated 3rd May 2003 your Applicant enquired into the matter with the similarly situated other offices and found that the Transfer Policy has been changed on 20-11-2003 and the Tenure Station period of posting has been reduced to two year from three years. As such, he was not aware of the new policy and he could not submit the choice place of posting in time. Then he immediately filed a representation on 14-05-2003 before the Respondent No.2 by giving three places of Choice Station, i.e. Jorhat, Silchar and Kalaikunda and he also requested to the authority concerned if the said choice station vacancies are not available then he may be posted any Station/formation in the State of Assam only. His representation was recommended by the Respondent No.3 by giving remark that the case of the individual is genuine hence highly recommended.

4.6) That your Applicant begs to state that he has received the said new Transfer Policy of Group C&D employee only on 06-06-2003. The said policy was issued by the Respondent No.2 vide letter No.131306/1/72/Engrs/EIC(I) dated 20-11-2002.

Annexure-C is the photocopy of letter dated 06-06-2003.

Annexure-D is the photocopy of New Transfer Policy vide letter No.131306/1/72/Engrs/EIC(I) dated 20-11-2002 issued by the office of the Respondent No.2.

Hirak Bhattacharyee

4.7) That your Applicant begs to state that his representation was rejected was rejected by the Respondent No.2 vide letter No.131322/2/2003/JE(QS&C)/53/Engrs/EIC(I) dated 26th June 2003 which was received by the Applicant on 07-07-2003.

Annexure-E is the photocopy of rejection letter dated 26-06-2003.

4.8) That your Applicant begs to state that being ^{received} by ~~the~~ the rejection Order, your Applicant approached this Hon'ble Tribunal by filing Original Application No.165 of 2003. The Hon'ble Tribunal vide its Order dated 18-07-2003 stayed the impugned transfer Order dated 03-05-2003. The Hon'ble Tribunal finally heard the matter on 14th August 2003 and was pleased to direct the Respondents to consider representation of the Applicant submitted for his choice posting, ~~the~~ the Applicant was also directed that he may submit a fresh representation within 4 (four) weeks from the date of receipt of the Order. The Respondents shall therefore consider the same and pass appropriate order as expeditiously as possible preferably within 2 (two) months from the date of receipt of the Order. The interim Order dated 18-07-2003 shall remain in force till disposal of the representation. Subject to above the application stands dispose of.

Annexure-F is the photocopy of the judgment and order dated 14th August 2003 passed by this Hon'ble Tribunal in O.A. passed by this Hon'ble Tribunal in O.A.No.165 of 2003.

4.9) That your Applicant begs to state that as per Hon'ble Tribunal's judgment and order dated 14th August 2003 pass in O.A.No.165 of 2003 your Applicant submit a representation on 8th September 2003 before the Respondents. In the said representation he chose three place of choice posting, i.e.(i) Narangi, (ii) Silchar, (iii) Bagdogra.

Annexure-G is the photocopy of representation dated 8th September 2003.

Hirak Bhattacharjee

4.10) That your Applicant begs to state that the Respondent No.2 vide his letter No.131323/2/2003/JE(QS&C)/144/Engrs./EIC(I) dated 1st October 2003 cancelled the impugned Transfer Order of the Applicant.

Annexure-H is the photocopy of the letter No.131322/2/2003/JE(QS&C)/144/Engrs./EIC(I) dated 1st October 2003.

4.11) That your Applicant begs to state that the Respondents did not take any action of the representation dated 08-09-2003 submitted by the Applicant as per earlier order passed by this Hon'ble Tribunal nor the Respondents consider the choice place of posting of the Applicant as directed by the Hon'ble Tribunal. But surprisingly the Respondent No.2 vide his posting Order No.47 of 2003 dated 31st December 2003 posted your Applicant again in the Office of the Chief Engineer Shillong Zone and your Applicant ^{was} directed to join to new place of posting within 31st January 2004. It is pertinent to mention here that as per earlier judgment and order dated 14th August 2003 passed by this Hon'ble Tribunal in O.A.No.165 of 2003 the Respondents were directed to consider the representation of the Applicant for his choice place of posting and the Interim Order dated 18-07-2003 shall remain in force till disposal of the representation.

Annexure-I is the photocopy of the posting Order No.47 of 2003 dated 31st December 2003.

4.12) That your Applicant begs to state that he submitted a representation on 08th September 2003 before the Respondents as per this Hon'ble Tribunal Judgment and Order dated 14-08-2003 passed in O.A.No.165 of 2003. In the said representation he choose three place of choice posting i.e. (i) Narangi (ii) Silchar (iii) Bagdogra. The Respondents vide their letter No.131322/2/2003/JE(QS&C)/144/Engrs./EIC(I) dated 1st October 2003 cancelled the impugned transfer order of the Applicant. But the Respondent did not take any action of the representation dated 08-09-2003 submitted by the Applicant. But surprisingly the Respondent No.2 vide his posting order No.47 of 2003 dated 31st December 2003 posted your Applicant again in the Office of the Chief Engineer, Shillong Zone without considering his

Hirak Bhattacharjee

choice place of posting. Being aggrieved by this the Applicant again approach this Hon'ble Tribunal by filing Original Application No.13 of 2004, challenging the impugned illegal, arbitrary said transfer vide Order No.47/2003 issued by the Respondents. The Hon'ble Tribunal again stayed the said Transfer Order of the Applicant. During the pendency of the said Original Application the Respondents again cancelled the Transfer Order of the Applicant vide their Order No.131/13/04/43/Engrs./EI(Legal) dated 04 February 2004. But in the said order your Applicant was asked for fresh choice of posting limited to Chief Engineer Office only. The individual choice will be taken forthwith and send to the Office. In case individual refuse to give a choice the same will be intimated within Seven (7) days from today for use of their discretion in posting individual. After the issue of the said letter the Respondents approach the Hon'ble Tribunal for disposed of the Original Application No.13 of 2004. The Hon'ble Tribunal vide its Order dated 01-03-2005 disposed of the said Original Application with a direction to the Respondents to consider the choice place of posting of the Applicant as per Rule.

Annexure-J is the photocopy of Order No.131/13/04/43/Engrs./EI(Legal) dated 04 February 2004.

Annexure-K is the photocopy of Order dated 01-03-2005 passed in O.A.No.13 of 2004.

4.13) That your Applicant begs to state that the Respondents vide Order No.12 Dated 17th March 2005 have again transferred your Applicant to the Office of the Chief Engineer (Air Force), Siliguri Zone by violating all the norms and procedures of choice place of posting.

Annexure-L is the photocopy of Order No.12 dated 17th March 2005.

4.14) That your Applicant begs to state that his posting/transfer from Garrison Engineer (Air Force), Borjhar was considered as tenure posting /transfer by the Head Quarter Chief Engineer Eastern Command, Kolkata itself since he was ordered for posting/transfer to the Office of the Chief Engineer Shillong Zone from Garrison Engineer (Air Force), Borjhar

Hirak Bhattacharjee

after completion of his two years tenure. Apart from this also paragraph 13(m) of the new policy No.131306/1/95/Engrs/EIC(I) Dated 30th August 2003 of Posting/Transfer of Group C & D personal of the MES it has been stated that "a tenure station will not be treated as a tenure station for those employees of N.E.Region who belongs that station. Remaining all other declared tenure station will be the tenure station for them". In the instant case the Applicant do not belongs to Borjhar station. As such the present place of posting of the Applicant at Borjhar cannot be treated as non-tenure station as per the new transfer policy adopted by the Respondents. Now it is very clear that Applicant's posting at the Office of the Garrison Engineer (Air Force), Borjhar cannot be treated as non-tenure station. As such he is entitled for choice place of posting/transfer as he is working in a tenure station. The policy letter of posting/transfer issued by the Head Quarter Chief Engineer, Eastern Zone, Kolkata vide letter No.131306/1/95/Engrs/EIC (1) Dated 30th August 2003 as referred by the Respondents is not at all applicable to the Applicant with respect to the date of his initial posting/transfer order Dated 3rd May 2003. The said posting/transfer policy was issued and circulated later on after his initial posting/transfer. In the instant case the posting/transfer policy vide letter No.131306/1/9/Engrs/EIC (1) Dated 20th December 2001 is only applicable to the instant Applicant. Moreover the Applicant is also entitled to get his choice place of posting/transfer with reference to para 10 of the said new posting/transfer policy dated 30th August 2003. As per paragraph 10 of the said new policy "the individuals due for tenure posting/transfer also shall be posted/transferred to the one of their choice stations subject to availability of vacancy. And in his case existence of vacancy is established in the state of Assam as desired by him from the Srl.No. 7, 14 and 20 of his posting/transfer order issued vide HQ CEEC Kolkata letter No.131322/2/2003/JE Qs & C/245/Engrs./EIC (1) dated 31 Dec 2003 ; because in initial representation dated 14th May 2003 to HQ CEEC Kolkata before going to this Hon'ble Tribunal, he had submitted that he may be posted/transferred to any where in the state of Assam in case of non-availability of vacancy (Refer note under para 4 of his representation to HQ CEEC Kolkata dated 14th May 2003). But the Respondent ignored his appeal and the Hon'ble Tribunal judgment dated 14th August 2003 and posted/transferred him again to the same station i.e. CESZ Shillong in spite of existence of clear vacancy in the state of

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Assam (Where three other individuals were posted/transferred) without imitating any reasons either to him or to the Hon'ble Tribunal. The Applicant had already served in CWE Tezpur as in staff appointment w.e.f. 29th June 1995 to 13th October 1998 (i.e. for 3 years and 4 months) before his posting to another consecutive staff appointment to CWE (P) Agartala as per Deptt.'s choice. He was posted to GE(P) Agartala after mere 10 months service in the said disbanded/closed office. And there after again he was adjusted/posted to GE(I)(P) Teliamura after 8 months service in GE(P) Agartala due to another disbandment/closure of GE(P) Agartala. As such it is established that his second tenure as staff appointment in CWE(P) Agartala was for 10 months was not due to his fault rather he has faced immense problem due to two frequent adjustment posting/transfer in Respondent's choice. It is worth to mention here that as per paragraph 40 of the new posting/transfer policy issued by the Head Quarter Chief Engineer, Eastern Command, Kolkata vide No.131306/1/95/Engrs/EIC(I) Dated 13th August 2003 has clearly mention that Junior Engineers will be moved on turn over from Executive/Sensitive posts to staff office/formation after continuous six years of service in the Executive/Sensitive posts. But in case of the instant Applicant he has served for only two years and eleven months in the Executive/Sensitive posts after his last service at the staff appointment in CWE(P), Agartala till the date of his first posting/transfer order from Garrison Engineer (AF), Borjhar to Chief Engineer, Shillong Zone, Shillong. It may also be stated that some individuals are getting their choice place of posting one after another. For example of such cases the Applicant begs to state that one Shri Rahul Choudhury (JE Qs & C) was initially posted to GE868(Dimapur) from Siliguri. He changed his said posting/transfer by filing representation and got his choice place of posting at GE(AF), Borjhar. Now again he has got his choice posting/transfer recently to GE Sevoke Road from GE (AF), Borjhar and he has already joined there and Shri Subhashis Dutta (JE E/M) was initially posted to ENGRS park Misamari from Agartala. He changed his said posting/transfer by filing representation and got his choice posting to GE(AF), Borjhar. Now again he has got his choice posting/transfer recently to GE Silchar from GE (AF), Borjhar and he has already joined there and one Shri S.S.Das (JE Qs & C) got three consecutive executive/sensitive posting/ transfer from AGE(I) Charduar to GE Hassimara and from there to GE Bengdubi and another person namely

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Shri P.Ghosh (JE E./M) got three consecutive executive/sensitive posting/ transfer from GE(S) Kokata to GE (AF) Borjhar and from there to GE(C) Kokata.

4.15) That your Applicant submits that the Respondents have deliberately and intentionally discriminated Applicant by not considering the Representation of the Applicant as per earlier judgment and Order passed by this Hon'ble Tribunal. But the Respondents have again transferred him to Office of the Chief Engineer, Siliguri Zone by violating all the norms and procedures to be adopted by the authority concerned.

4.16) That your Applicant submits that he all along carried out his Transfer Order ever since his entry to the Department and he is serving the Department with utmost sincerity and full satisfaction to the authority concerned.

4.17) That your Applicant submits that the procedure adopted by the authority in case ^{this is illegal as such} of it is fit Case to interfere by the Hon'ble Tribunal by giving necessary directions to the Respondents to quash and set aside the impugned Order No.12 dated 17th March 2005 and also to issue direction to the Respondents to give choice place of posting to the Applicant as per earlier representation filed by the Applicant. 21

4.18) That your Applicant submits that the Respondents have resorted the colourable exercise of power to deprive the Applicant and also to accommodate their interested persons in their favourable place. The action of the Respondents is arbitrary and whimsical and also against the policy adopted by the Government of India.

4.19) That your Applicant submits that the Respondents have violated the fundamental rights of the Applicant and also violated the principle of natural justice.

4.20) That in view of the facts and circumstances it is a fit case for interference by the Hon'ble Tribunal by passing an interim stay of the impugned Transfer Order No.12 dated 17th March 2005 of the Applicants to protect the interest of the Applicant and his family members

4.21) That your Applicant submits that the Respondents deliberately done serious injustice by giving mental trouble to the Applicant.

4.22) That this application is made bona fide and for the ends of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1) For that, due to the above reasons narrated in detail the action of the Respondents is in prima facie illegal, mala fide, arbitrary and without jurisdiction and hence, the same is liable to be set aside and quashed.

5.2) For that, the Respondents have not considered their own guideline regarding choice place of posting. As such, there is no jurisdiction in denying the said benefit to the Applicant. Hence the impugned Transfer Order No.12 Dated 17th March 2005 of the Applicant is to be set aside and quashed.

5.3) For that, it is settled proposition of laws that when the same principle have been laid down in given cases, all the persons who are similarly situated should be granted the same benefit. Hence the impugned Transfer Order No.12 Dated 17th March 2005 of the Applicant is to be set aside and quashed.

5.4) For that, the Respondents have violated the Article 14,16 and 21 of the Constitution of India.

5.5) For that, the Respondents have not considered the representation of the Applicant nor the Respondents even bothered to pass an order on the representation submitted by the Applicant as per Hon'ble Tribunal. As such the impugned Transfer Order pass by the Respondents in case of the Applicant is whimsical, arbitrary and also without jurisdiction. Hence the impugned Transfer Order No.12 Dated 17th March 2005 of the Applicant is to be set aside and quashed.

5.6) For that, the action of the Respondents is arbitrary, mala-fide and discriminatory with an ill motive. Hence the impugned Transfer Order

No.12 Dated 17th March 2005 of the Applicant is to be set aside and quashed.

5.7) For that, the Applicant's case is genuine and need to be considered by the Respondents due to facts and circumstances narrated above and as such the impugned Transfer Order No.12 Dated 17th March 2005 of the Applicant is to be set aside and quashed.

5.8) For that, the impugned Transfer Order is bad in the eye of law and is liable to be set aside and quashed.

5.9) For that, similarly situated persons who are given the benefit of choice place of posting after completion of tenure the Respondents being model employer cannot deprive the benefit to the Applicant without any reasons or causes. As such, the Applicant's transfer Order is illegal, arbitrary, mala-fide and with a motive behind. Hence the impugned Transfer Order No.12 Dated 17th March 2005 of the Applicant is to be set aside and quashed.

5.10) For that, in any view of the matter the action of the Respondents are not sustainable in the eye of law and as well as fact. Hence the impugned Transfer Order No.12 Dated 17th March 2005 of the Applicant is to be set aside and quashed.

The Applicant craves leave of this Hon'ble Tribunal advance further grounds the time of hearing of this instant application.

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the Applicant except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

Hirak Bhattacharjee

That the Applicant further declares that he has not filed any application, Writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, writ petition or suit is pending before any of them.

8) RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the Applicant most respectfully prayed that Your Lordship may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the Applicant may not be granted and after hearing the parties and the cause or causes that may be shown your Lordships may be pleased to direct the Respondents to give the following relieves.

8.1) That the impugned Order No.12 of Transfer dated 17th March 2005 at Annexure-L may be set aside and quashed.

8.2) To direct the Respondents to give the Applicant the benefit of choice place of posting as submitted by the Applicant in his representation dated 8th September 2003 as per Hon'ble Tribunal's Order dated 14th August 2003 pass in O.A.No.165 of 2003.

8.3) To pass any other relief or relieves to which the Applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

8.4) To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

9.1) The Applicant most respectfully prays for an Interim Order from this Hon'ble Tribunal by way of suspending the impugned Order No.12

of Transfer dated 17th March 2005 at Annexure-L in case of the Applicant till the disposal of this Original Application.

10) Application is filed through Advocate.

11) **Particulars of I.P.O.:**

I.P.O. No. :-

Date of Issue :-

Issued from :-

Payable at :-

12) **LIST OF ENCLOSURES:**

As stated above.

Verification

Hirak Bhattacharjee

-VERIFICATION-

I, Shri Hirak Bhattacharjee, MES No.229603, Junior Engineer (QS&C), Office of the Garrison Engineer,(A/F) Borjhar, Guwahati-781015 do hereby solemnly verify that the statements made in paragraph nos. 4.1, 4.2, 4.3, 4.5, 4.14, are true to my knowledge, those made in paragraph nos. 4.4, 4.6 to 4.13, are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 22nd day of March 2005 at Guwahati.

Hirak Bhattacharjee

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ANNEXURE - A29

101 Eastern Command
Z. Bhaganta Sakha
Engineers Branch
East Walling
Kolkata-21

131306/17.9 /Engis/EIC(1)

20 Dec 2001

- CE Siliguri Zone
- CE Shillong Zone
- CE(AF) Shillong Zone
- CE Kolkata Zone
- CE (UPD) Kolkata
- Comdt ESD Kankharia
- CE(I) R&D Chandipur
- Dalagore (Orissa)

POSTING/TRANSFER POLICY GROUP 'C' AND 'D'
PERSONNEL OF THE MPE

The posting/transfer policy of all Group 'C' & 'D' personnel in the MPE of this command is prepared based on certain guidelines contained in Govt of India, Min of Defence letter No. 8(3)/V2/D(Appls) dated 23 Jan 94 and E-in-C's Branch, AHQ letter No 79040/121C(I) dated 31 Aug 94, and amendment received from time to time.

2. The broad principles, under which transfers of Group 'C' and 'D' civilian subordinates are to be carried out, are stipulated in min of Def OM No 13(1)/01D(Apps) dated 29 Nov 72 and 32(1)/13/D(Apps) dated 21 May 75.
3. Posting of Group 'C' and 'D' individuals less industrial personnel will be issued by this HQ on the following grounds:-
 - (a) Administrative
 - (b) Adjustment of surpluses and deficiencies
 - (c) Posting to tenure stations
 - (d) Promotion
 - (e) Mutual/compassionate grounds
 - (f) Local turnover

POSTING ON ADMINISTRATIVE GROUNDS

4. No individual will normally be posted to tenure stations or other normal stations on administrative grounds. Where it is considered that such a step is absolutely essential, Prior approval of CE/Addl CE Command will be obtained. The proposal should be forwarded to this HQ with a statement of case signed by CE Zone/Comdt. If the individual to be posted out on administrative grounds happens to be due for posting to a tenure station, he will be posted out to such station, even if this involves posting out of turn. This HQ will keep E-in-C's Branch informed of such cases. In case the individual is protected against transfer, prior approval of E-in-C's Branch will be obtained.

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ADJUSTMENT OF SURPLUS/DEFICIENCIES

5. In all cases where staff are rendered surplus by reduction in the authorised strength and their re-adjustment within Command becomes necessary, the longest stayee in the station/complex stations will be posted out. In the case of posting involving inter command transfers, the junior most person in the grade within the Command will be declared surplus.
6. In the exigencies of service, situations may arise when officers/works units are asked to move en-bloc to other locations. In such cases, the personnel to be moved should be selected based on their length of service in the station/complex station i.e. the longest stayee should be moved by making local adjustments.
7. In determining the longest stayee in a station/complex station, all MES Units located in that station/complex station including satellite stations will be taken into consideration. The seniority in that station/complex station will be decided by the CE Command. Grouping of various units in a station including Complex stations have already been done vide this HQ letter No 131306/1/122/Engg/EIC(1) dated 09 Dec 2000. Volunteers, if any will, however, be given preference in all such cases.
8. Where units/formations are closed down due to reduction in workload, the adjustment of surplus staff will first be done in the residual formations in matter of filling up of deficiencies within overall manning level. Thereafter the remaining surplus staff will be adjusted outside the stations as per seniority on the basis of three choices of the individuals as far as possible.
9. In order to maintain manning level in all units/formations evenly, CE Command may move personnel from one station to another. While doing so, volunteers will be considered first. The principle of station seniority will be strictly observed when volunteers are not available.

TURN OVER TENURE STATION

10. Revised list of Tenure Stations will be issued separately on finalisation. In case a station is tenured or de-tenured its effect will not be made applicable from retrospective dates. The exercise of de-tenuring of existing tenure station in view of its improved living conditions should continue as at present. A tenure station once de-tenured may not be declared a tenure station again except in exceptional circumstances. However declaring of any station tenure or non-tenure will be decided by CE Command only.
11. The following guide lines will be strictly followed while nominating the subordinates for posting to tenure station:-
 - (a) ~~Only Volunteers~~, presumably those who have completed 3 years in a station will be given preference.
 - (b) Personnel who have not done service in a tenure station since joining the MES, provided the individuals have completed 3 years stay in the station.
 - (c) Personnel posted to the MES under adjustment of surplus/deficiencies scheme reckon seniority for the purpose of promotion/confirmation from the date they join duty in the MES. Their seniority for posting to tenure station will also reckon from the date of joining MES.

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Advante

(d) Every individual nominated for service in tenure station must complete his full tenure by posting back to one of his choice stations. For the purpose of determining the period of stay in a tenure station, an individual must be physically present in that office for the full period of tenure excluding the period of absence of leave or otherwise. If for reasons, due to illness or extreme compassionate grounds, an individual is repatriated prior to completion of his tenure, he may again be posted to tenure station after an expiry of 3 years of service. His tenure would start afresh and he is to complete the tenure of 3 years at one stretch and not for the left over period only. Unit will submit proforma particulars as per Appx 'B' attached in respect of individuals who have actually completed/will be completing their full physical tenure service up to 30 Jun and 31 Dec of the year. These facts should be checked thoroughly and certified by an officer under his signature just below the statement of nominal roll. The individuals who are completing their two/three yrs tenure by 30 Jun and 31 Dec of that year will send their three choice stations through their concerned unit/line after completion of 1 year and 6 months/2 years and 6 months respectively in the tenure station.

* *

(e) While calculating the physical stay at a tenure station, the period of leave availed to the extent of leave earned during stay at the tenure station will be included in the tenure period for determining the physical stay.

(f) Nomination of persons who have already done a tenure will be done strictly on the basis of their last date of return from tenure stations.

* *

(g) The normal age limit for tenure station is 52 years. Subordinates over 52 years may also be posted for shorter tenure but none will be retained at a tenure station beyond the age of 55 yrs. Subordinates above 52 years of age will not be posted to high altitude/snow bound areas and to tenure stations where the tenure is 2 years. The age for such postings will be considered as on date of signing of posting in the office of GE Command.

(h) Those posted from other commands to this command on compassionate grounds will not be nominated until completion of 3 years service in the choice station. This protection is not applicable to persons who have moved on mutual posting.

(i) Persons posted from other commands on promotion will not be turned over till completion of 3 years physical stay or as per status of the tenure station. Their repatriation proforma for turn over to their parent Command will be forwarded by indicating three or more choice stations four months in advance before completion of stipulated tenure period for processing with their parent Command.

(k) For individual serving in executive offices in tenure station, maximum one year Extra will be given in two spells and if they want to extend another tenure they tenure, they will be staffed within the station/complex station/satellite station on staff appointment.

(l) If an individual does not apply for turn over extension on completion of tenure liability, the tenure station where he has been serving will be treated as his choice station and thereafter he will be posted to a tenure station as per seniority of that station/complex station.

(m) The indi posted from peace station to tenure station will move first and similarly the indi posted from staff appt to executive appt will move first for easy implementation of posting.

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(a) The group 'D' personnel who were promoted/reclassified to group 'C' posts will be considered for tenure posting and their date of joining in group 'C' posts will be treated as cutoff date for deciding the seniority for the purpose of tenure posting.

12. CE Zone/Comdt will forward the names of volunteers for postings to tenure stations. The volunteers will be given preference. Seniority of personnel in each category will be prepared by this HQ for posting to tenure stations.

13. Disabled/handicapped persons should not be posted to a tenure station if the disability prohibits his free movement/functioning. The case shall be decided by CE Command on merits. However, if a disabled individual is willing to go to a tenure station voluntarily he would be allowed such posting.

14. An individual serving in a tenure station may submit his choice of posting six months before completion of his tenure, for any three stations where staff as well as executive officers are located and in three distinct places/complexes separated by at least 20 Kms. Two out of three choice Stns should be in different CE Zones. The three stations so indicated by the indls on completion of his tenure service will be treated as non tenure station for him being his own choice stations irrespective of the location/station i.e. tenure/peace.

15. On completion of tenure, the individual will be adjusted in any one of the three choice stations given by him in the Repatriation proforma. In the case of non-availability of a vacancy in any of the three choice stations, the affected person due for turnover may be allowed to remain in the tenure station till a vacancy arises in his choice station. Such employees may be given the benefit of deferment for his re-posting to tenure station in his next turn for such posting. The exact period for which the benefit is to be given will be decided by CE Command, based on the following norms:-

(a) Up to 6 months stay in excess of the tenure. No benefit to be given.

(b) Excess stay of more than 6 months but upto 12 months. Deferment @ 50% of excess time (months) spent.

(c) Excess stay of over 12 months and above. Deferment 75% of excess time (months) spent.

16. In case an individual who has completed his tenure does not want to continue at the tenure station, he may be repatriated to one of his three choice stations who has completed three years or a volunteer may be moved out to a nearer station/choice station as far as possible, where a vacancy exists to make a room for the tenure completed employees. The longest stayee in that particular category will be determined by clubbing the three choice stations of the repatriatee. The longest stayee moved from a peace station for making room for adjustment of a tenure completed individual will be brought back to the same station after completion of 3 years in the new station.

17. The indls who were declared NB and NER recruits based on their initial appt but hail from other areas, will be considered for posting back from NB/NER. The indls so affected may submit their choice of posting strictly as per para 14 above. Since there are huge Nos of pers affected, as such for bringing them back the following procedure will be adopted:-

(a) Keeping in view the huge deficiencies in each cadre, hard scale rule will be worked out to the extent of proportionate deficiency in the command.

Advocate

- (b) For repatriation, hard scale with will be considered for ascertaining the clear vacancies.
- (c) The individuals will be brought back strictly as per their seniority in tenure station.
- (d) While submitting their choice for repatriation, the three choice area should fall in three complexes and minimum in two Zones as per para 14.

POSTING FROM PEACE TO PEACE STATION

19. All individuals who are to move from one peace station to another peace station to make room for a new entrant, should be posted to one of his three choice stations, as far as possible. This facility will not be available to other types of posting like posting on administrative grounds, promotion and as on mentioned in para 14 above. Posting Zones for peace to peace station should be delimited preferably State wise, to the extent possible.

POSTING ON LOCAL TURNOVER

20. The local limit over posting has already been decentralised vide this HQ letter. No posting from one unit/formation to other unit/formation, where only one unit is functioning in a station will be done by this HQ. CE Zone will forward the names of the personnel who have completed their mandatory period of 3 Years in such cases. Turnover within the unit should, however, be done every 3 years by unit Commanders.

POSTING ON PROMOTION

21. Staff on promotion will be adjusted in the same station (not necessarily in the same unit) provided vacancies are available based on manning level. However, if no vacancies are available in the station then the promotion will be adjusted in one of the three choice stations as far as possible. In case no vacancies are available in the choice stations, the individuals can be moved in other stations based on availability of vacancies/manning level. In such large Command move is necessitated, the junior most promoted will be moved out.

COMPASSIONATE POSTING/MUTUAL TRANSFER

- 22. Following guidelines for compassionate & mutual transfers will be followed:
 - (a) Individuals should themselves apply for compassionate postings through proper channel. Applications from relatives or those received directly would be rejected and attempts to bring in would be severely discouraged.
 - (b) Applications on domestic grounds should be verified, if required, in consultation with civil authorities. If the CE/CE Zone is not satisfied of the genuineness of the grounds.
 - (c) Application on medical grounds should be accompanied by appropriate medical certificates from Authorised Medical Attendants (where AMA is not available, from Registered Medical Practitioners) indicating the nature of illness and justification for transfer of the individual. No cases recommended with replacement will be forwarded.

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- (d) This HQ will order a Board of Officers to assemble every 6 months in Jan & Jul to screen the applications.
- (e) Compassionate postings shall only be affected against clear vacancies, failing which against volunteers if any.
- (f) To avoid grant of undue benefit, it will be ensured (before compassionate/mutual transfers are accepted and orders issued) that affected persons are not due for posting to tenure stations.
- (g) All mutual postings and those on compassionate grounds will be at the expense of the individual.
- (h) Approval for inter-Command posting on compassionate grounds/mutual basis will be issued by E-in-C's Branch.
- (i) Mutual transfer is not to be treated as a compassionate posting and no protection can be claimed by the individual.
- (k) The period of posting on compassionate grounds will be restricted to 3 years so as to accommodate other compassionate posting cases.
- (l) Travelling allowances can be paid to the individuals posted on last leg compassionate grounds at the time of retirement only to his/her home town/selected place of residence, subject to approval of the transferring authority who will record reasons for such postings.
- (m) The compassionate postings will be ordered to a non-sensitive appointment as far as possible.

TIMINGS OF TRANSFERS

22. Care will be taken to ensure that transfers during the middle of the academic year are avoided as far as possible. Exceptions should only be to meet an emergent requirement in the exigencies of service. It will be desirable to give two months time in the posting order for completion of the move to enable an individual to sort out his personal administration. However, moves on administrative grounds may be ordered giving lesser time.

AGE FACTOR

23. Government servant should not be transferred proceeding three yrs of their retirement except at their request to station of their choice. However, if they have to move on promotion and if there is no clear vacancy in the station where they are serving, they may still be moved irrespective of the consideration of age as per instructions on move on promotion (Para 20).

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FEMALE EMPLOYEES

24. The female employees will also be covered by the above policy subject to the under mentioned concessions:-

(a) Female employees are exempted from posting to the remote stations.

(b) They would not be posted to long distance stations even in the case of peace to peace station transfers unless female employee given her choice of a station at a distant place.

(c) They will be transferred from one peace station to another peace station on tenure basis (within 600Kms approx at the rail head/bus terminus) on the analogy of tenure system adopted for the male employees. Their stay will be for a minimum period of 3 years and these employees would have the privilege of exercising three choices for their posting on return from that station including the home station.

(d) Widow employees appointed on compassionate grounds and female employees who lost their husbands while in service would also be exempted from the transfer from one peace station to another peace station.

(e) Where both the husband and wife are central Govt employees the present policy to keep both at the same station as far as possible, may be maintained. However, there will be no exemption to the husband from tenure posting in his tenure on repatriation, the husband will as far as possible be posted to the availability of a suitable vacant post provided it does not tantamount to successive/sensitive appointment.

(g) Where one spouse belongs to one of the All India Services and the other spouse belongs to MES:-
The endro Controlling Auth of the MES may post the officer to the station or if there is no post in the station to the State where the other spouse belonging to the All India Service is posted.

(g) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service(MES):-

The spouse with the longer service at station may apply to the appropriate endro controlling authority and the said authority may post the said officer to the station, or if there is no post in that station to the state where the other spouse belonging to the other Central Service is posted.

(h) Where one spouse belongs to MES All India Service and the other belongs to Public Sector Undertaking:-

.....8/-

Amul
JG / Am G

The spouse employed under the Public Sector Undertaking may apply to the competent auth and said auth may post the said officer to the stn, or if there is no post under the PSU in that stn, to the state where the other spouse is posted.

(j) Where one spouse belongs to a central Service (MES) and the other spouse belongs to PSU:-

The spouse employed under the PSU may apply to competent auth and the said auth may post the officer to the stn or if there is no post under the PSU in the stn, to the state where the other spouse is posted. If, however, the request can not be granted because the PSU has no post in the said station/state, then the spouse belonging to the Central Service (MES) may apply to the appropriate cadre controlling authority and the said auth may post the said officer to the station or if there is no post in that stn, to the state where the spouse employed under PSU is posted.

(k) Where one spouse is employed under the Central Govt, (MES) and the other spouse is employed under the State Govt:-

The spouse employed under the Central Govt (MES) may apply to the competent auth and the Competent auth may post the said officer to the station or if there is no post in that station the state where the other spouse is posted.

(l) In all the above mentioned cases there will be no exemption to the husband from tenure posting in his turn. On repatriation, the husband will as far as possible be posted to a station where his wife is employed subject to the availability of a suitable vacant post provided it does not tantamount to successive executive/sensitive appointment.

VACANCIES

25. All posting orders will be issued by this HQ against clear vacancies. To ascertain a clear vacancy, the authorization of particular category or ceiling on holding whichever is less will be taken into account. Vacancies will be based on sanctioned authorisation/Ceiling and manning levels based on functional authorisation.

DECLARATION OF HOME TOWN

26. As per the above policy a new recruit should not be posted to a town where he has been born or brought up.

Attn
JL
Puro

26 37 REPRESENTATION

27. Representation if any against the posting order will be made by the affected individual within 21 days of the receipt of posting order in their concerned office. The representation shall be processed by the intermediate firm and be forwarded to CE Command office for consideration. Each intermediate formation shall endorse the following remarks: considered and Recommended or considered and Not recommended. Once the CE Command rejects the appeal, the indl can either move to his new duty station or alternatively or represent second time from the same office within 15 days of the receipt of the decision given by CE Command. The second representation will be disposed off by the CE Zone/Comd. If no new factors/reasons i.e. other than those included in the first representation are brought out. If CE Zone considers that the second representation is reqd to be fwd to this HQ, this will be signed by CE with specific recommendations. Thereafter, once decision is given by CE Command no further representation will be entertained and the indl will be SOS within 15 days from the date of receipt of the decision of this HQ. If the individual is still not satisfied with the decision of this HQ, he may represent his case to E-in-C's Branch, Army HQ through proper channel. However the move of the indl will not be held up for decision from E-in-C's Branch. In case the decision is pronounced in favour of the individual by E-in-C's Branch, Army HQ, the individual will be moved at the Govt Expense in the first available vacancy occurring at the station mentioned in the decision of E-in-C's Branch.

28. This HQ letter No 131306/1/2/EOG/ETC(1) dated 31 Jan 96 stands superseded with the issue of this letter.

29. Please acknowledge.

(Signature)
 (J Dixit)
 Btgr
 ACE (Pers)
 For Chief Engineer

Copy to:-
 E-in-C's Branch
 AHQ
 Kashmir House
 DHQ, PO New Delhi-110011

Handwritten notes:
 A.H. 21
 28
 1
 June 96

- 27 - 22

POSTING ORDER NO : 13/2003

ANNEXURE - 3

Mil Tele : 2222-2700.

REGISTERED SDS

Chief Engineer
Headquarters
Eastern Command
Fort William
Kolkata - 700 021

131322/2/2003/JE QS&C/02/Envs/EIC (I)

10 May 03

Chief Engineer
Kolkata Zone
Shilong Zone
Siliguri Zone
(AF) Shillong Zone
(R&D (Pickel) Secunderabad

POSTING/TRANSFER ON TENURE TURN OVER JE QS&C

1. The following posting/transfer are hereby ordered in the interest of state :-

Ser No	MES No, Name & Designation	Posted		Due Date	Remarks
		From	To		
(a)	(b)	(c)	(d)	(e)	(f)
1.	MES-203364 Shri Amit Kundu	GE (FW) Kolkata	GE (P) (I) Teliapara	15 Jul 03	
2.	MES-NYA-Shri Sashi Bhushan Kumar	GE (FW) Kolkata	AGE (I) (AF) Singarshi	Forthwith	
3.	MES-213799 Shri Bipradas Ghosal	GE (C) Kolkata	GE 872 EWS	31 Jul 03	
4.	MES-270477 Shri Sumit Kapur	GE (C) Kolkata	GE 859 EWS	15 May 03	
5.	MES-NYA-Shri Prasun Paul	GE Barrackpore	CE (AF) Shillong Zone	Forthwith	
6.	MES-208009 Shri A K Maity	CE (M) Kolkata	CE Shillong Zone	15 Jul 03	
7.	MES-281831 Shri SK Nandi	AGE (I) (AF) Singarshi	CWE (AF) Kalnikunda	15 Jul 03	
8.	MES-225735 Shri SK Ghosh	AGE (I) (AF) Singarshi	GE (AF) Harsimara	Forthwith	
9.	MES-281795 Shri SC Paul	CWE (AF) Kalnikunda	GE (AF) Shillong	20 Jul 03	
10.	MES-281794 Shri AK Tivari	CWE (AF) Kalnikunda	GE (AF) Shillong	15 Jul 03	
11.	MES-281752 Shri Bidya Baskar	GE (AF) Kalnikunda	CE Shillong Zone	15 Jul 03	

Contd 2.../-

Handwritten signature and initials

Ser No	MES No, Name & Designation	Posted		Due Date	Remarks
		From	To		
(n)	(b)	(c)	(d)	(e)	(f)
12.	MES-214953 Shri RK Nag	GE(I) (R&D) Chandipur	GE(S) Bhubaneswar	31 May 03	
13.	MES-239217 Shri R C Das	GE Panagarh	GE(I) R&D Chandipur	25 May 03	
14.	MES-209715 Shri Gautam Chatteropadhyay	CWE(P) Kolkata	GE Shillong	31 May 03	
15.	MES-263336 Shri Bidyat Majhi	AGE(I) (Fya) Tezpur	CWE (P) Kolkata	15 Jun 03	
16.	MES-260293 Shri Rajiv Sarker	STE EC Kolkata	GE Harangi	15 Jul 03	
17.	MES-260292 Shri Kaushik Ghosh	STE EC Kolkata	GE (AF) Bonga	20 Jul 03	
18.	MES-NYA-Shri Ramesh Ghosh	CE Siliguri Zone	CWE Tezpur	15 Jul 03	
19.	MES-266097 Shri Pajal Sen	CE Siliguri Zone	CWE Shillong	20 Jul 03	
20.	MES-281797 Shri Prasenjit Dhar	GE (AF) Bonga	GE (AF) Kalaikunda	20 Jul 03	
21.	MES-NYA-Shri L K Roy	GE (AF) Haldimata	GE (AF) Bonga	31 Jul 03	
22.	MES-NYA-Shri Kiborland Marwein	CE Shillong Zone	CWE Tezpur	31 Jul 03	
23.	MES-NYA-Shri JK Sinha	CE Shillong Zone	GE (C) Kolkata	31 Jul 03	
24.	MES-NYA-Shri Binod Das	CE Shillong Zone	GE (AF) Tezpur	15 Jul 03	
25.	MES-264638 Shri Anil Chakraborty	CE (AF) Shillong Zone	GE GCB LT/S	15 Jul 03	
26.	MES-243447 Shri Prangopal Nath	CE (AF) Shillong Zone	AGE (I) Bonga	31 May 03	
27.	MES-229937 Shri Raj Bharali	CWE Shillong	CWE (AF) Jorhat	31 Jul 03	
28.	MES-NYA-Shri WW Langchung	GE Shillong	CE (AF) Shillong Zone	10 Jul 03	
29.	MES-234674 Shri Ashutosh Debnath	CWE Tezpur	CWE (AF) Kalaikunda	25 Jul 03	
30.	MES-264691 Shri Bikash Paul	GE (AF) Tezpur	AGE (I) Charduar	Forthwith	
31.	MES-244705 Shri A K Nag	GE C&D EWS	GE Shillong	20 Jul 03	

Contd 3./-

Attended
Shri C

Ser No	MES No, Name & Designation	Posted		Duo Date	Remarks
		From	To		
(a)	(b)	(c)	(d)	(e)	(f)
32.	MES-234698 Shri P K Nath	GE Misamari	GE 869 EWS	20 Jul 03	
33.	MES-281407 Shri Sanjay Kumar	GE (AF) Jorhat	HQ 137 WE	15 Jul 03	
34.	MES-229640 Shri Anilman Meoh	GE (AF) Chabua	HQ 137 WE	31 May 03	
35.	MES-208496 Shri SK Benerjee	HQ 137 WE	GE(FW) Kolkata	31 Aug 03	
36.	MES-244028 Shri Narayan Neog	GE 868 EWS	GE (AF) Jorhat	31 Jul 03	
37.	MES-244020 Shri T R Singh	GE 869 EWS	GE Tezpur	31 Jul 03	
38.	MES-233975 Shri SR Boro	AGE(I) Rangiya	CWE(AF) Borjar	15 Jun 03	
39.	MES-229603 Shri Hirak Bhattacharjee	GE(AF) Borjar	CE Shillong Zone	31 Jul 03	
40.	MES-244046 Shri Sumonli Doy	GE Silchar	STIE EC Kolkata	31 Jul 03	
41.	MES-232969 Shri UC Ojha	GE Narangi	CE Shillong Zone	31 Jul 03	
42.	MES-280173 Shri KK Debnath	GE Tezpur	GE(I)(P) Teliamura	20 Jul 03	
43.	MES-234716 Shri Pinku Baidya	AGE(I) Charduar	CWE(AF) Jorhat	31 Jul 03	
44.	MES-209692 Shri R N Dutta	GE(I) (P) Teliamura	GE(FW) Kolkata	31 May 03	

(Item Forty Four only)

2. Your attention is drawn to this HQ letter No 131306/1/9/Engr/EIC (I) dt 20 Dec 01 for strict compliance. All concerned may be informed accordingly.

3. The posting order to be implemented within 60 days of the duo date indicated. The concerned unit will also forward a completion report indicating the date of SOS within the same period.

Contd 4.../-

Handwritten signature and initials

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4. Failing of above will be seriously viewed and will be treated as insubordination of the order of CE Eastern Command.

(Achintya Datta)
Lt Col
Offg Col (Pers)
for Chief Engineer

Copy to:-

CWE Kolkata, CWE Barrackpore, CWE (AF) Kalaikunda, CWE (P) Kolkata, CWE (AF) Borjar, CWE Shillong, CWE Tezpur, CWE (AF) Jorhat, HQ 137 WE, CWE (AF) Shillong, CWE Bengdubi, GE (FW) Kolkata, GE (C) Kolkata, GE Barrackpore, GE (N) Kolkata, AGE (I) (AF) Singarshi, GE (AF) Kalaikunda, GE (I) (R&D) Chandipur, GE Panagarh, AGE (I) (Fys) Bolangir, STE EC Kolkata, GE (AF) Bagdogra, GE (AF) Hassimara, GE Shillong, GE (AF) Tezpur, GE 859 EWS, GE Misamari, GE (AF) Jorhat, GE (AF) Chabua, GE 868 EWS, GE 869 EWS, AGE (I) Rangiya, GE (AF) Borjar, GE Silchar, GE Narangi, GE Tezpur, AGE (I) Charduar, GE (I) (P) Teliamura, GE 872 EWS, GE (S) Binnaguri,

Internal :-

EID, EIR, M/T, C/F & O/Copy

Att
JL
Datta

— 37 —

ANNEXURE - D

06 June 2003

1. B/M BOX J R
 2. B/R BOX J R
 BSO BOX J R
 1. E/M Dlg R U

SECRET

1. A photo copy of the CE EC Kolkata letter No.131300/1/72/Engrs/EIC(I) dated 20 Nov 1982 is fwd herewith for your information please,

ENCLOSURE (02 sheets)

(An Encyclopaedia)
JSC
for Carlson Engineer (AF)

Copy to: (Internal)

All section work please - E-1 succ., E-2 (P-10), E-2 (P-10 X), E-2,
E-3, E-6, E-3 succ.

E-8 See - A photocopy of HQ CEEC
Delicate Ltr. No. 131306/1/
72/Encls 1 EIC(1) dated
20 Nov '2002 is enclosed
here with for your
info. please.

Attain /
Jill / Dan

-32- -38-

u3

ANNEXURE - D

- 39 -

Tele: 222-2700

ANNEXURE 'F'

Chief Engineer
HQ-Eastern Command
Fort William, Kolkata-21

Letter No: 131306/1/72/Engrs/EIC(1)

Dtd: 20 Nov: 2002

CE KOLKATA ZONE
CE SILIGURI ZONE
CE SHILLONG ZONE
CE (AF) SHILLONG ZONE
CE (OFD) KOLKATA ZONE
COMDT ESD KANKINARA
GE(1) RLD CHANDIPUR

POSTING TRANSFER POLICY : GROUP 'C' AND 'D' PERSONNEL
OF THE MES

1. E-in-C's Branch had amdt Para 15 of posting policy letter No: 79040/EIC(1) Dtd: 20th Nov: 2001.
2. The contents of the above amdt clarifies that all Group 'C' & 'D' personnel of MES having more than 10 years service will serve for a period of two years in a tenure/ hard station declared by E-in-C's branch/ CE Command and personnel having less than 10 years service for a period of 3 years.
3. Keeping in view the large number of tenure/hard stations under jurisdiction of eastern command a case was taken up with E-in-C's branch to review the above amdt, and to maintain the status quo.
4. E-in-C's branch in turn has now clarified vide letter no. B/20148/PP/ EIC(1) dtd: 30th Oct. 2002 that the above quoted amdt, was based on the DOP&T guide lines, and the same is required to be implemented.
5. In view of the foregoing a revised list of tenure &/ hard stations is enclosed at Appendix 'A' attached. The same may be incorporated wrt Para 10 of this HQ posting policy letter No: 131306/1/9/Engrs./EIC(1) dtd: 20th Dec: 2001. The same is required to be disseminated upto AGE(1) and equivalent level under your jurisdiction.
6. Further, in this connection the following letters of this HQ may be treated cancelled:-

- (a) 131306(1) (38/Engrs./EIC(1) dtd: 03 Feb: 2002.
- (b) 131306(1/40/Engrs./EIC(1) dtd 18th Feb: 2002.

Handwritten signature and initials

ad / Achintu

-33- 39
Telo : 2222-2529

Mukhyalaya Purvi Kaman
HQ Eastern Command
Abhiyanta Shakha
Engineers Branch
Fort William
Kolkata - 21

131322/2/2003/JH(QS&C)/57/Engrs/HIC(I)

26 Jun 2003

CE (AF) Shillong Zone

POSTING/TRANSFER ON TENURE TURN
OVER POSITIVE : JH(QS&C)/

1. Refer your letter No 81006/9/SA/13/HIC(I) dated 06 Jun 2003.
2. The application of MES-229603 Shri Mirak Bhattacharjee, JH(QS&C) of CE (AF) Borjar has been considered sympathetically and examined in its entirety with view to ensure that no natural justice is denied to the individual. However, it lacks substance and has been rejected by appropriate level at this HQ.
3. Please instruct CE (AF) Borjar to despatch the individual to his new unit i.e. CE Shillong Zone by 31 Jul 2003 and submit completion report by 10 Aug 2003.

hant
(J. Padhi)
Major
SO-II (Pern)
for Chief Engineer

Copy to :-

CWE (AF) Borjar

CE (AF) Borjar

6/5/14
A Hand
Jil
hant

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34 - 40 - ANNEXURE - F.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 165 of 2003.

Date of Order : This the 14th Day of August, 2003.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

Shri Hiralak Bhattacharjee,
MIS NO: 229603,
Junior Engineer (QS&C),
Office of the Garrison Engineer,
(A/F) Borjhar, Guwahati-781015.

. . . Applicant

By Advocate Sri A.Ahmed.

- Versus -

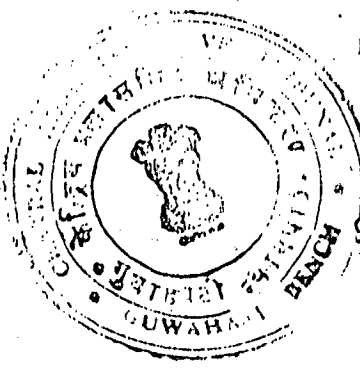
1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Defence, New Delhi.
2. The Chief Engineer (Head Quarters)
Eastern Command, Engineer Branch,
Forth William, Kolkata-21.
3. The Garrison Engineer (A/F)
Borjhar, Guwahati-15.

. . . Respondents.

By Sri A.Deb Roy, Sr.C.G.S.C.

ORDER

CHOWDHURY J.(V.C)



The issue basically relates to posting and transfer. The applicant is working as Junior Engineer (QS&C) under the respondent No.3, the Garrison Engineer, Air Force, Borjhar. He was posted to Borjhar from Teliamura vide order dated 7.12.2000 where he joined on 17.1.2001. Borjhar station is also a tenure station as per the posting transfer policy of Group 'C' and 'D' personnel in the M.E.S. The applicant pleaded that as per the scheme, on completion of the tenure he is entitled for three choice station posting. As per the arrangement ^{is} required to complete three years as indicated in the MES office letter dated 31.1.96 which is subsequently amended vide letter No.79040/EIC(1) dated

A. Ahmed
S. A. Deb Roy

- 35 -
- 2 -

20.11.2001. As per, the amendment all Group 'C' and 'D' personnel of MES having more than ten years service is to serve for a period of two years in a tenure/hard station declared by E-in-C's branch/CE command and personnel having less than ten years service for a period of three years. The applicant came to know of the amended policy when he received new transfer policy of Group 'C' and 'D' employees on 6.6.2003 when the same was issued to him by the office of respondent No.2. The applicant in this application assailed the order dated 3.5.2003 transferring and posting the applicant from Borjhar station to the office of the C.E. Shillong Zone. The applicant on receipt of the said order submitted representation praying for posting him in any of the choice station, Jorhat, Silchar and Kalaikunda with the note that in the absence of non availability of vacancy in the said stations, he may be posted in any stations/formations in the State of Assam. The representation was duly forwarded by his immediate officer to the Headquarters, Eastern Command, Engineers Branch, Fort William, Kolkata which was finally rejected by the concerned authority vide order dated 26.6.2003. Hence this application praying for a direction on the respondents for considering his case for posting him in any of the choice place of posting.

2. I have heard Mr.A.Ahmed, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.J.B.C. for the respondents at length. The discretion of posting and transfer is indubitably vested on the employer. For the sake of perspecuity, the employer fairly announced its protocol in the matter of transferred and posting from time to time. In the case in hand the respondents also made known its professed policy the guidelines of transfer and postings by communication dated 31.1.96. As per the policy a list of tenure stations are indicated.

contd/-

Attended
Jal
L. H. G.

The policy also provides that an individual serving in a tenure station to submit his choice six months ahead of completion of his tenure for any three stations where staff as well as executive offices are located. The three stations so indicated by officer on completion of his tenure service will be treated as non tenure station for him being his own choice stations irrespective of the location/ station i.e. tenure/peace. On completion of the tenure the individual is to be adjusted in any one of the three choice stations given by him in the repatriation proforma. In the case of non availability of a vacancy, the affected persons due for turn over may be allowed to remain in the tenure station till a vacancy arises in the choice station. The said policy further undergone amendment from time to time. The last amendment was made in the year 2002 as expressed in communication dated 20.11.2002. The amendment also cut down the period of tenure from three years to two years as indicated earlier. Admittedly the applicant completed his tenure. It is for the authority to consider for the posting of the applicant as per administrative exigency and also keeping in mind the policy of posting and transfer. There is no dispute that applicant could not give his choice before the authority since he was not aware of the amended policy whereby he was made eligible for a choice posting. The applicant though submitted representation the same was turned down on the count that the representation "lacks substance". As alluded earlier it is the employment that is to make transfer and posting and which has also proclaimed a policy to guide itself in the matter of posting and transfer. Seemingly the applicant is entitled for consideration for a choice station.

contd/-

After En
[Signature]
[Signature]

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in the light of the policy guidelines. The applicant by his representation dated 14.5.2000 gave his choice stations. It is for the competent authority to consider the same as per law. Mr. A. Deb Roy, learned Sr. C.G.S.C. on the other hand submitted that though the applicant by his representation indicated his choice station the same was rejected.

3. I have given my anxious consideration on the matter. On perusal of the guidelines for transfer and posting and transfer it does not appear that the respondents addressed its mind to the facts situations cited in the applicant's representation. The order rejecting the representation is evidently abstruse and vague. The party affected is entitled to know as to the reasons that operated in passing of the order against him. Giving of reasons is one of the basic principles of natural Justice. Reasons furnish the connection between constituents of which the conclusions are based and the tangible conclusion. It is the discernable safeguard against injustice and arbitrariness. "The giving of reasons is one of the fundamentals of good administration." Said Lord Denning in Breen v. Amalgamated Engineering Union (1971) 1 All ER 1148.

4. On consideration of all the aspects of the matter I am of the view that ends of justice will be met if a direction is issued on the respondents to consider the representation of the applicant submitted for his choice posting. The applicant may also submit a fresh representation within four weeks from the date of receipt of the order. The respondents shall, thereafter consider the same and pass appropriate order as expeditiously as possible, preferably within two months from the date of receipt of the order.

CONFIDENTIAL

Attended
by
Mr. T

-38-

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- 66 -

-5-

The interim order dated 18.7.2003 shall remain in force till disposal of the representation. ✓

Subject to the above the application stands disposed of. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

PG.

Submitted to the Court
for final disposal

20/8/03

Section Officer (J)
C.A. G. GUWATI RANCH
Guwahati-781005

Attested

11

11

NOT NOT INSURED

RECEIVED AT THE
Office of the Chief Engineer
No. 27/2

Received a Registered*
Letter No. 1282
Addressed to:
The Chief Engineer
Call - 21
Signature of Receiving Officer

ANNEXURE - G

From:-

MES-229603
Shri Hiral Bhattacharjee, JE (QS & C)
GE (A/F) Borjar
GUWAHATI - 781 015

To,

The Chief Engineer
Headquarters
Eastern Command
Fort William
Kolkata - 700 021

(Through GE (A/F) Borjar)

Subject: SUBMISSION OF FRESH REPRESENTATION FOR RECONSIDERATION OF
TRANSFER TO ONE OF THREE CHOICE STATIONS AS PER JUDGEMENT OF
HON'BLE CAT GUWAHATI BENCH GUWAHATI DATED 14 AUG '2003.

OA No. 165 OF 2003, HIRAK BHATTACHARJEE

Vs.
US2 AND OTHERS

Sir,

1. References :-

- Srl. No. 39 of your HQ POSTING/TRANSFER ON TENURE TURN OVER : JE (QS & C).
- My appeal/application dated 14 May '2003 forwarded to your HQ duly recommended by GE (A/F) Borjar, CWE (A/F) Borjar and CE (AF) SZ Shillong vide CE (AF) SZ Shillong letter No. 81006/9/SA/13/EIC(I) dated 05 Jun '2003 and
- Your HQ rejection letter No. 131322/2/2003/JE (QS & C)/53/Engrs/EIC(I) dated 26 Jun '2003

2. With due respect it is submitted that, on receipt of your HQ rejection letter mentioned in Para 1(c) above against my application/appeal mentioned in Para 1(b) above, I left with no other alternative except seeking justice from Law.

3. Accordingly I applied to Hon'ble CAT Guwahati for justice and Hon'ble CAT Guwahati vide order dated 18 Jul '2003 (copy enclosed) granted me STATUS QUE and listed the case giving three weeks time on the 14 Aug '2003 for ADMISSION and HEARING.

4. On hearing the case on 14 Aug '2003, the Hon'ble CAT GUWAHATI admitted the case (copy of Judgement enclosed) and directed me to submit fresh representation before your HQ within four weeks from the date of Judgement i.e. 14 Aug '2003, for consideration of my posting/transfer to one of my three choice stations.

Contd.....2/P

Handwritten signature and date 08/9/03.

Handwritten signature and date 08/9/03.

5. In view of the above most earnestly I am submitting my three choice stations below.

(i) Narangl

(ii) Silchar

(iii) Bagdogra ✓

6. I will be highly obliged and will remain ever grateful to your highness if you kindly post/transfer me to one of my three choice station.

Thanking you,

Yours faithfully,


(Hiralak Bhattacharjee)
JE (QS & C)

Dated : 08 Sept '2003.

Station : Borjar, Guwahati-15.

General 61

Affected
Sd/-
Bante

41
Tela : 2222-2529

52
A 0190 THE XXX PLE H.
Mukhyalaya, Purvi Kaman
HQ Eastern Command
Abhiyanta Shakha
Engineers Branch
Fort William
Kolkata - 21

131322/2/2003/JE(QS&C)/(L)/Engrs/EIC(I)

01 Oct 2003

CE(AF)Shillong Zone

CE Shillong Zone

POSTING/TRANSFER ON TENURE TURN OVER : JE(QS&C)

1. Refer this HQ letter No 131322/2/2003/JE(QS&C)/02/Engrs/EIC(I) dated 03 May 2003.
2. The following amendment may please be made to our letter under reference :-
"Delete all the entries against Srl No. 39"
3. All other entries will remain unchanged.

(L Padhi)
Major
SO-II(Pers)
for Chief Engineer

Copy to :-

CWE (AF) Borjar

GE (AF) Borjar

INTERNAL

E/7, EIR, EID, EDP Cell, M/F and O/Copy

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15/10

Amul
J.P.
Date

42-
Gr (AF) Borjar
POSTING ORDER NO: 47/2003

59
ANNEXURE - I.

Mil Tele : 2222-2700

REGISTERED SDS

Chief Engineer
Headquarters
Eastern Command
Fort William
Kolkata - 700 021

131322/2/2003/JE(QS&C)/245 /Engrs/EIC (I)

Dec 03

Chief Engineers
Kolkata Zone
Siliguri Zone
Shillong Zone
(AF) Shillong Zone

POSTING/TRANSFER ON TENURE TURN OVER : JE (QS&C)

1. The following posting/transfer are hereby ordered in the interest of state :-

Ser No	MES No, Name & Designation	Posted		Due date	Remarks
		From	To		
(a)	(b)	(c)	(d)	(e)	(f)
1.	264690 Shri Manik Mazumdar	GE (A) Kolkata	GE (AF) Borjar	31 Jan 2004	
2.	270603 Shri K C Naskar	GE (N) Kolkata	CE Shillong Zone	31 Jan 2004	
3.	439145 Shri Sanjit Banik	GE Bengdubi	CWE Shillong	20 Jan 2004	
4.	243440 Shri Ramanuj Chakraborty	GE Sevoke Road	GE (N) Kolkata	31 Jan 2004	
5.	269006 Shri SR Das	GE Sevoke Road	GE (AF) Hassimara	20 Jan 2004	
6.	203949 Shri Mridul Das	CE Shillong Zone	GE (N) Kolkata	20 Jan 2004	
7.	281008 Shri A K Doley	GE (AF) Jorhat	GE (AF) Tezpur	10 May 04	
8.	203289 Shri Debashish Chakraborty	GE 868 EWS	CWE (C) Kolkata	31 May 04	
9.	264677 Shri Subhash Barman	GE 872 EWS	HQ 136 WE	31 May 04	
10.	605570 Shri Prabhudha Sarkar	AGE (I) (AF) K'Gram	CE Siliguri Zone	31 May 04	

Contd 2/-

Attch
JL
Date

1.	264665 Shri A K Das	GE (N) Kolkata	GE 868 EWS	31 May 04	
12.	486244 Shri Santanu Purekayastha	CWE (C) Kolkata	GE 872 EWS	31 May 04	
13.	214177 Shri Debabrata Paul	GE (N) Binnaguri	GE 869 EWS	20 Apr 04	
14.	238822 Shri Biplab Kumar Baidya	HQ 136 WE	AGE (I) (AF) K'Gram	15 May 04	
15.	263335 Shri Partha Pratim Deb	HQ136 WE	GE (AF) Shillong	15 May 04	
16.	213882 Shri Mukul Mitra	GE Khaprail	GE (AF) Borjar	25 May 04	
17.	268006 Shri B C Roy	CE Shillong Zone	GE Sevoke Road	30 Apr 04	
18.	203840 Shri Partha Sarthi Paul	GE 859 EWS	GE (P) Kolkata	31 May 04	
19.	268007 Shri Rahul Chowdhury	GE (AF) Borjar	GE Sevoke Road	31 Jan 04	
20.	280520 Shri Lubh Barua	GE 869 EWS	GE (AF) Jorhat	30 Apr 04	
21.	281011 Shri Abdur Rahim	GE (AF) Borjar	GE 859 EWS	20 May 04	
22.	232982 Shri SS Das	GE (AF) Hassimara	GE Benglubi	31 Jan 2004	
23.	229603 Shri Hirak Bhattacharjee	GE (AF) Borjar	CE Shillong Zone	31 Jan 2004	

(Total Twenty Three pers only)

2. Your attention is drawn to this HQ letter No. 131306/1/95/Engrs/EIC (I) dt 30 Aug 03 for strict compliance. All concerned may be informed accordingly.

3. Individuals from peace to tenure station will move first within the stipulated time frame and will not be held up for relief.

4. The posting order to be implemented within due date as indicated above. The concerned unit will also forward a completion report indicating the date of SOS within the same period.

Contd.....3/-

Attent
[Signature]

5. Failing of above instructions will be seriously viewed and will be treated as disobedience of the order of CE Eastern Command.

(Achintya Dass)
Lt Col
SO I (Pers)
For Chief Engineer

Copy to :-

CWE Kolkata, CWE (C) Kolkata, CWE (S) Barrackpore, CWE Bengdubi, HQ 136 WE, CWE Shillong, CWE Tezpur, CWE Dinjan, HQ 137 WE, CWE (AF) Borjor, CWE (AF) Kalaikunda, CWE (AF) Jorhat, GE (P) Kolkata, GE (AF) Tezpur, GE (AF) Shillong, GE 859 EWS, GE 868 EWS, GE 869 EWS, GE Bengdubi, GE (N) Dinaguri, GE (AF) Jorhat, GE (AF) Borjor, GE (AF) Haldimam, GE (A) Kolkata, GE (N) Kolkata, GE Sevoke Road, GE 872 EWS, AGE (I) (AF) Kumbhigram

Internal

EID, EIR, Master Folder, C/F & Office copy.

Amir
S. J. J. J.

45-
FAX

Annexure - J. Eb

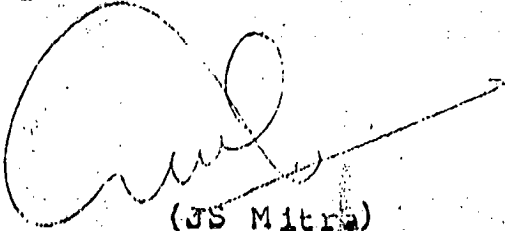
2222-2525

OP IMMEDIATE

OR NO. 13/04/43/Engrs/EI(Legal)
VS UOI AND OTHERS

1. Posting Order in respect of MES/229603 Shri Hirak Bhattacharjee, JE(QS&C) of GE (AF) Borjar as issued vide this HQ No 131322/2/2003/JE(QS&C)/245/Engrs/EIC(I) dated 31 Dec 2003 is hereby cancelled. This may accordingly be intimated to the Hon'ble CAT for disposal of the case.

2. Please also ask for fresh choice of posting limited to Chief Engineer Office only from Shri Hirak Bhattacharjee. The indl's choice be taken forthwith and sent to this office. In case indl refuses to give a choice, the same be intimated within seven days from to-day for use of our discretion in posting indl.


(JS Mitra)
Col
Dir(Pers)
for Chief Engineer

Copy to :-

CE (AF) Shillong Zone

GE (AF) Borjar

INTERNAL

EI(Legal)Section : for information wrt their ION No
131309/13/04/43/Engrs/EI(Legal)
dated 04 Feb 2005.

Abu-4
Sl
Abu-4

46

57

ANNEXURE-K

FORM NO. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Org. App./ Misc. Petn./ Cont. Petn./ Rev. Appl. 13/04

In O.A.

Name of the Applicant(s) Hireak Bhattacharya

Name of the Respondent(s) M. O. J. Pure.

Advocate for the Applicant Adil Ahmed

Counsel for the Railway/ C.G.S.C. A.K. Chaudhury

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

mb

28

01.03.2005

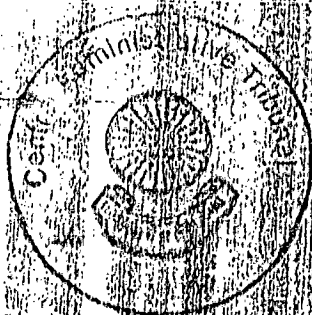
Present : The Hon'ble Mr. K.V. Prahladan, Member (A).

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

The Respondents vide order dated 04.02.2005 cancelled the transfer order of the applicant. The applicant received that order on 22.02.2005. The respondents are directed to consider the choice posting of the applicant as per Rules.

The O.A. is disposed of. No order as to costs.

Sd/MEMBER(A)



CAJ/1/05

01.03.05

2/3/05

Adil Ahmed
A.K. Chaudhuri

58
ANNEXURE - L

POSTING ORDER NO. 17

Tele : 2222-2525

Mukhyalaya Purvi Kaman
HQ Eastern Command
Abhiyanta Shakha
Engineers Branch
Fort William
Kolkata - 21

131322/2/2005/JE(QS&C) 103 Tengra/EIC(I) 17 Mar 2005

CE (AF) Shillong Zone

CE Siliguri Zone

POSTING/TRANSFER : JE(QS&C)

1. The following posting/transfer are hereby ordered in the interest of state :-

Ser	No.	Name	From	To	Date	Remarks
1.	229603	Shri HIRAK BHATTACHARJEE	GE(AF) Borjar Zone	CE Siliguri	Forthwith	

(One indl only)

2. Move will be completed immediately.
3. All concerned may be informed accordingly.

(JS Mitra)
Col
Dir(Pers)
for Chief Engineer

Copy to :-

CWE (AF) Borjar

GE (AF) Borjar

INTERNAL

EIR, EID, Legal Cell, M/F, O/Copy

Attchd
JL
Amte

-48-

59

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI : BENCH AT GUWAHATI

केन्द्रीय प्रशासनिक न्यायिकरण
Central Administrative Tribunal
16 JUN 2005
गुवाहाटी बेंच
Guwahati Bench

Handwritten signature and date 26/6/05

A Nadeem Rafat
Lt Col
Garrison Engineer (AF)

IN THE MATTER OF :

O.A.No.78/05

Sri Hiralak Bhattacharjee

....Applicant

-Vs-

The Union of India & ors

...Respondent

- A N D -

IN THE MATTER OF :-

Written statement submitted by the

Respondent No.1 to 3.

WRITTEN STATEMENT

The humble answering Respondents submit their statement as follows :-

- (1) (a) That I am the Garrison Engineer (A/F), Borjhar, Guwahati-15, and Respondent No.3 in the above case. I am acquainted with the facts and circumstances of the case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statements, the contentions and statement made in the application may be deemed to have been denied. I am competent and authorised to file the written statement on behalf of all the Respondents.
- (b) The application is filed unjust and unsustainable both on facts & in law.

contd...2p/-

Handwritten signature

Molli Ud-Din Ahmed, M.A.B
Addl. Central Govt. Standing C
Gauhati Bench

[Signature]

A Nadeem Rafat
Lt Col
Garrison Engineer (AF)

(c) That the application is bad for non-joinder of Necessary parties and misjoinder of unnecessary parties.

(d) That the application is also hit by the principles of waiver, estoppel and acquiescence and liable to be dismissed.

(2) That with regard to the statements made in paragraph 1 to 4.1 of the application the respondents have no comments on them and the applicant is put to strictest proof thereof.

(3) That with regard to statement made in para 4.2, the answering Respondent beg to state that The version of the applicant that GE(AF) Borjar is a tenure station for him is incorrect. The applicant while serving in tenure station at CWE(P) Agartala/GE(P) Taliamara has given GE(AF) Borjar as one of his choice station for posting out repatriation proforma based on which his posting to GE(AF) Borjar was issued by HQ CE EC Kolkata letter No.131322/2/2000 /JE(QS&C/119/Engrs/EIC(i) dt.07 Dec 2000.

ANNEXURE 'A' is the copy of repatriation proforma.

Further, it is pertinent to mention here, before going to reply in details, that on 23/3/05 this Hon'ble Tribunal was pleased to stay of the Transfer order, issued by HQ, CE EC Kolkata vide their letter No.131322/2/2005/JE Q&C/03/Engrs/EIC(1) dtd 17/3/05, till the next hearing

contd...3p/-

[Handwritten mark]

/3/

50 -
A Nadeem Rafat
Lt Col
Garrison Engineer (AF)

and also it has been cleared that the aforesaid order passed by this Tribunal shall not be effective if the substitute appointment has already been made in the post held by the applicant.

Since the substitute appointment of the Applicant has already been made vide HQ, CE, EC Kolkata letter No. 131322/2/2005/JE QS&C/O2/Engrs/EIC (1) dtd 3/5/03, so the aforesaid interim order dtd 23/3/05 shall not be effective as desired/instructed by this Hon'ble Tribunal.

4. As per policy on posting/transfer of Group C & D MES employees issued vide HQ CE EC Kolkata letter No. 131306/1/95/Engrs/EIC(i) dt. 30 Aug 2003 attached as annexure 'B' and as per stipulation contained in para 16 thereof read as the three stations so indicated by the individual on completion of his tenure service at Taliamura GE(AF) Borjar will become a NON Tenure station for him this being one of his choice station. Therefore Shri Hirek Bhattacharjee JE(QS&C) has got no right for his posting to another choice station from GE(AF) Borjar.

5. That with regard to the statements made in para 4.4. to 4.12, the Answering Respondent has denied the correctness of the same except the statements based on records.

contd...4p/-

9

/4/

That the said Transfer of order is not capricious, mala fide and also not based on extraneous considerations or in colourful exercise of power. The administrative exigency did require to shift the applicant from the place as per Rules & guideline of the department.

Moreover, although the transfer is an incident of service, once agreed by the applicant as contemplated in the appointment order, ^{can't} latter on adopted pick & choose method in respect of the terms & condition of the appointment order by not abiding/accepting the transfer order, which is necessary for the smooth running of the entire department and for the benefit of the other employee & good administration.

But the act of the applicant to resort to litigation and protest the normal posting again and again at the cost of the benefit of other employee/staff and Administration, clearly shows that he does not want to serve the organisation causing problem to the entire chain of the Transfer & promotion.

6. That with regard to the statement made in para 4.13 to 4.22 the answering Respondent submits that as per posting/Transfer policy dt 30 Aug 2003 every employee of his category will have to move on turn over from executive/sensitive post to staff appointment. While completing period of tenure in sensitive appointment, entire service profile of the individual irrespective of the stay in present unit/station/complex will have to be considered

contd...5p/-

[Signature]

A Nadeem Rafat
Lt Col

Garrison Engineer (AF)

[Handwritten mark]

[Signature]

A Nadeem Rafat
Lt Col
Garrison Engineer (AF)

/5/

in that purpose. Since the individual has never served in Zonal Chief Engineer office during his entire 17 years of service in this department, his earlier posting to HQ Chief Engineer Shillong Zone and as well present posting to HQ CE Siliguri Zone vide HQ CE EC Kolkata letter No. 131322/2/2005/JE QS&C/03/Engrs/Elc(i) dt 17 Mar 2005 is considered fully justified and as per posting policy rules and in compliance with honourable CAT judgement dated 01 Mar 2005 in OA No.13/04 .As brought out at para 3 above, the individual was not entitled for choice posting as he was not at a tenure station still he was asked vide HQ CE EC letter No.131307/2/HB/29/Engrs/Elc(i) dt.21 Feb 2005 (Attached at Annexure 'C') to furnish choice station where Zonal CE Office exists as he was due for his posting in Zonal CE Office, Individual vide his application dt.25 Feb 2005(Copy attached at annexure 'D') again submitted his request to post him any where in Assam knowing the facts that there is no CE Zonal office exists in Assam thus forfeited his right of furnishing choice stations. Accordingly he was posted to CE Siliguri Zone by respondent No.1 after giving due opportunity to the individual to furnish his choice station.

7. That it is also submitted that as per para 10 of the above posting policy (Annx B) indication of choice station/complex does not confer automatic right on individual to get posted to those tenure stations/Complex only as it will depend upon vacancies available on placement of their seniors.

contd...6p/-

[Signature]

[Signature]
A Nadeem Rafat
Lt Col
Garrison Engineer

/6/

The substitute of the applicant has already been made vide HQ CE EC Kolkata letter No.131322/2/2003/JE QS&C/02/Engrs/E1C91) dt 03 May 2003 (Ref Ser No.17) and physically reported in this office on 18 Feb 2004 since than Shri Hiral Bhattacharjee JE(QS&C) is on the surplus holding with this office.

8. That on receipt of posting order from HQ CE Eastern Command Kolkata vide letter No.131322/2/2005/JE WS&C/03/Engrs/E1C(1) dt 17 Mar 2005 for HQ CE Siliguri Zone, this office relieved the individual vide Movement order No.1147/85/EiE dt 19 Mar 2005 with struck of strength wef 02 Apr 2005 (ANO). The individual has proceeded on posting and submitted his departure report on 02 Apr 2005.

Annexure E & Annexure F are the copy of Movement order and departure report respectively.

9. That posting of the applicant to HQ CE Siliguri Zone has been issued strictly as per rules of posting policy and there is no mala fide intention in the issuing of posting of the individual to HQ CE Siliguri Zone as alleged by the individual.

10. That with regard to the statement made in para 5 (para 5-1 to 5.10) the respondent beg to state that the prayer of the applicant is misguiding. The act of the applicant to resort to litigation and ~~pro~~ protest the normal posting time & again clearly shows that he does not want to leave Borjar/Guwahati. He has completed more than 4 years at Borjar which is more than a normal tenure and he did not serve in staff appointment in his entire service. He was given full opportunity to give

contd.....7p/-

54-
/7/

A Nadeem Rafat
A Nadeem Rafat
Lt Col
Garrison Engineer (AF)

his choice station where Zonal CE office exists but he didn't honour the same and requested to post any part of Assam knowing well that there is no CE Office exists.

11. That the respondents submit that the application is devoid of Merit and as such the same is liable to be dismissed.

12. That this written statement is made as a bonafide and for the ends of justice & equity.

13. That under the above circumstances, your Lordship would be pleased to dismiss the original Application No. OA 78/2005 filed by Shri Hiral Bhattacharjee JE(QS&C) against his posting to HQ CE Siliguri Zone immediately since individual applicant has already moved on posting as ordered by HQ CE EC Kolkata vide their letter dt. 17 Mar 2005 and his substitute has also joined on 14 Feb 2005.

VERIFICATION

I, Lieutenant Colonel A. Nadeem Rafat, do hereby solemnly verify and declare that the statements made hereinabove are true to my knowledge, belief and information and nothing being suppressed.

I sign this verification on this 24th day of May 2005 at Guwahati.

SIGNATURE,

A Nadeem Rafat
A Nadeem Rafat
Lt Col
Garrison Engineer (AF)

8-

131300/TO/4/2192

1951-1952

11-23-2015

[illegible]

2.

Not available 11 months in
CWE(P) Agartala
07 months in
GE (P) Agartala
03 months in
GE(I) (P) Teliamura

Total 21 months upto
Jun 2000 in the Sth
Agartala

140

(H Bhattacharjee)
JE (QS&C#

9
- 56 -
HQ Eastern Command
Abhiyanta Sakha
Engineers Branch
Fort William
Kolkata - 21

131306/1/Engrs/EIC(I)

30 Aug 2003

CE Siliguri Zone
CE Shillong Zone
CE(AF) Shillong Zone
CE Kolkata Zone
CE(OFB) Kolkata
Comdt ESD Kankinara
GE(I) R&D Chandipur
Balasore (Orissa)

POSTING/TRANSFER POLICY : GROUP 'C' AND 'D'
PERSONNEL OF THE MES

1. The posting/transfer policy of all Group 'C' & 'D' personnel in the MES of this Command is prepared based on certain guidelines contained in Govt of India, Min of Def letter No 8(3)/92/D(Appts) dated 23 Jan 94, E-in-C's Branch AHQ letter No 79040/EIC(I) dated 31 Aug 94 and B/20148/PP/EIC(I) dated 16 Apr 2003 and amendments received from time to time.
2. The broad principles, under which transfers of Group 'C' & 'D' civilian subordinates are to be carried out, are stipulated in Min of Def OM No 13(I)/70/D(Appts) dated 29 Nov 72 and 32(4)/73/D(Appts) dated 21 May 75.
3. Posting of Group 'C' & 'D' individuals less industrial personnel will be issued by this HQ on the following grounds :-
 - (a) Tenure Stations/Complexes turn over
 - (b) Compassionate grounds
 - (c) Maintenance of Command Manning Level (CML)
 - (d) Local Turn Over
 - (e) Promotions
 - (f) Mutual Basis
 - (g) Administrative ground
 - (h) Adjustment of surplus/deficiency

Tenure Stations/Complexes turn over

4. Tenure service is mandatory and each individual is required to fulfill his tenure liability as per his seniority. Stations, mentioned in Appx 'A' to CE EC letter No 131306/1/72/Engrs/EIC(I) dt 20 Nov. 02 as amended vide 131306/1/79/Engrs/EIC(I) dt 27 Dec 02 have been declared as Tenure Stations. Current list of tenure stations in the Comd is att as Appx 'A' to this letter. Normal Period of tenure at these tenure stations will be three yrs for individuals with service 10 yrs or less and two yrs for those with service more than 10 yrs. No station is tenured/de-tenured or re-tenured with retrospective effect. The exercise of detenuring of existing tenure stations in view of its improved living conditions should continue as at present. A tenure station once de-tenured may not be declared a tenure Station again except in unavoidable circumstances. However, declaring of any station tenure or non-tenure will be decided by CE Command only.

5. On completion of the stipulated period at tenure stations/Complex, such individuals are required to be repatriated to one of their three choice stations/Complexes as per availability of vacancies.

6. A categoriwise list of individuals of Basic Staff including those who are due for tenure in their turn and those who are initially appointed at tenure Stns/Complexes and subsequently transferred to other stations/Complexes, will be circulated by this HQ prior to issuance of tenure turn over postings in Jan every year.

7. These lists will be circulated down to GE/AGE(I) level and all accepted pers will be informed in writing so that they are mentally prepared to move to tenure stations/complexes on issuance of their posting order. The acknowledgements of these affected indls will be kept on the record by the unit/fmn concerned and confirmed by respective Zonal CEs in their report to the CE Command. The seniority list will be circulated well in advance for units concerned to scrutinize the list in time. The case of any omission, discrepancies, appeals if any against these warning lists will be forwarded to the Command CE not later than 15 Feb every year. The same will be assumed as Nil, thereafter and onus of omission, if any, will rest with the head of the office /Formation.

CWE (AF) No. 2, 58-69

-3-

8. The case of the following nature will be reported to the Command HQ by the specified dates so as to enable them to take appropriate action at the time of planning of postings :-

- (a) Personnel who are elected members of the works committee for the first time, indicating the period of their present term with specific dates. Those elected for second or subsequent terms are not eligible for protection.
- (b) Personnel who are important office bearers of recognized Unions/Associations and are entitled for protection for posting as per existing rules with the date upto which they are exempted. First time elected members only are entitled.

© In case, there are any individuals in the seniority list who have moved or stand posted to other stations/complexes, this information must be intimated by signal or Fax followed by ink signed copies by post.

9. The individuals earmarked for posting to tenure stations/Complexes as per seniority list will not be posted out at Zonal/CWE/Stations/complexes level under surplus/deficiency policy. The longest stayee/volunteer, however, may be turned over locally, if necessitated, not involving a change of stations/complexes. This however will not exempt such persons from posting to tenure stations/complexes as per their service or seniority. The persons posted on promotion to a different stations/complexes or posted to another peace stations/complexes will not be posted to tenure stations/complexes senior but due for tenure will not be posted to tenure stations/complexes till they complete minimum stay of three years in the new stations/complexes.

10. The individuals due for tenure will indicate their choice of three tenure stations/complexes in the order of preference for consideration. However, indication of choice stations/complexes does not confer automatic right on an individual to get posted to those tenure stations/complexes only, as it will depend upon vacancies available on placement of their seniors. Though the administration will make all out efforts to accommodate persons coming to tenure stations to their choice indicated, however those who cannot be accommodated in their choice stations/complexes due to non-availability of vacancies will be posted to other tenure stations/complexes as per requirement.

11. A certificate to the effect that "Particulars of persons figuring in the service seniority list have been checked and discrepancies noticed have been reported vide letter No _____ dated _____ or there are no discrepancies and no eligible individual for posting to tenure stations/complexes is left out" as the case may be, will be submitted to this HQ by 15 Feb every year under signature of the heads of the offices, after which it will be assumed as NIL.

12. Simultaneously, a circular will be issued by this HQ in the months of Dec/Jan and Jun/Jul every year calling for volunteers for tenure posting in respect of pers not due other wise. The names and written options of volunteers together with full service particulars will be submitted by all CEs Zone/Comds direct to the Command HQ to reach before 15 Feb and 15 Aug. Seniority of personnel in each categories will be prepared by this HQ and volunteer will be given preference. However, the volunteering for tenure does not in any way confer a right of posting to a tenure stn as the same will be decided at CE's Command level in accordance with overall requirement and constraints.

13. The following instructions will be followed while nominating subordinates to tenure duty stations/complexes :-

(a) In case the number of volunteers happens to be more than the actual requirement, the following criteria will be applied for selection :-

(i) They will be considered category wise for posting based on their seniority.

(ii) Those who have not done tenure earlier will get preference, followed by those who have done tenure according to their last dates of return from tenure.

(iii) The longest stayee in the stations/complexes would get the PRIORITY over the other individual based on seniority as above and no exception will be made.

(b) If sufficient volunteers are not available, service senior will be considered for tenure posting.

© Service seniors who volunteers for tenure postings will be first considered as volunteers only as per the provisions for posting of volunteers.

(d) Personnel posted to MES under adjustment of surplus/deficiencies scheme will reckon seniority for the purpose of promotion/ confirmation from the date they join duty in the MES. Their seniority for posting to tenure stations/complexes will reckon from the date of joining MES.

~~(e)~~ Every individual nominated for service in tenure station must complete his full tenure before being posted back to one of his choice stations. For the purpose of determining the period of stay in a tenure station, an individual must be physically present in that office for the full period of tenure excluding the period of absence of leave or otherwise. If for reasons, due to illness extreme compassionate grounds, an individual is repatriated prior to completion of his tenure, he may again be posted to tenure station after an expiry of 3 years of service. His tenure would start afresh and he is to complete the tenure of two or three years at one stretch and not for the left over period only. Unit will submit proforma particulars as per Appx 'B' attached in respect of individuals who have actually completed/will be completing their full physical tenure service up to 30 Jun and 31 Dec of the year. These facts should be checked thoroughly and certified by an officer under his signature just below the statement of nominal roll. The individuals who are completing their two/three yrs tenure by 30 Jun and 31 Dec of that year will fwd their three choice stations through their concerned unit/finn after completion of 1 year and 6 months/ 2 yrs and 6 months respectively in the tenure station.

(f) Nomination of persons who have already done tenure will be done strictly on the basis of their last date of return from tenure stations/complexes.

(g) The normal age limit for tenure stations/complexes posting is 52 years. Subordinates over 52 years may also be posted for a shorter tenure but none will be retained at a tenure stations/complexes beyond the age of 55 years. The age for such postings will be considered as on the date of issue of posting order. Hence, cases of tenure posting of individuals in the vicinity of the above age brackets must be implemented expeditiously to avoid later complications.

- (h) Those posted from one command to another on compassionate grounds will not be nominated until completion of three years service in the choice stations/complexes. This protection is not available to persons who have moved on mutual posting.
- (j) The group 'D' personnel promoted/reclassified to group 'C' posts will be considered for tenure posting and their date of joining in group 'C' posts will be treated as cut off date for deciding the seniority for the purpose of tenure posting.
- (k) The individuals who are posted to other commands due to non-availability of vacancies in the parent command, will be treated as tenure posting and will be repatriated to their choice stations/complexes after completion of tenure period of two or three years as applicable. Nominal Roll of such repatriates will be maintained by Army HQ. Such individuals will submit application for repatriation duly indicating three stations/complexes of choice immediately after completion of one or two years of stay in the other command as may be applicable with an advance copy of the same endorsed to Army HQ.
- (l) As per the above policy a new recruit should not be posted to a tenure station/complexes on first appointment, but in case he is a volunteer or he belongs to that area he can be posted there. In case he belongs to that area, this stay will not be counted towards his tenure posting, but if he is a volunteer that will be so counted.
- (m) A Tenure Station will not be treated as a tenure station for those employees of NE region who belong to that station. Remaining all other declared tenure stations will be the tenure stations for them.
14. Disabled persons will not be posted to a tenure stations/complexes if the disability prohibits his free movement/functioning. The case shall be decided on merits. However, if disabled individual is willing to go to a tenure stations/complexes, he will be allowed such posting. An employee whose child is suffering from hearing impairment or multiple disabilities will not be posted to a tenure stations/complexes.

15. Period of leave in excess of fifteen days per year will be excluded while counting the tenure period. However, CE/ACE (Pers) this HQ may extend the period in exceptional circumstances in exigencies of service or when the employee concerned is prepared to stay longer.

16. The individual serving in a tenure stations/complexes may submit his choice after completion of two and half or one and a half years as may be applicable, in any three stations/complexes, located in three distinct place/complexes separate by at least 20 Kms. Two out of three choice stations/complexes should be in different CEs Zone. Improper/ incomplete repatriation proforma will not be accepted. In case proper repatriation proforma with correct information is not received by due date, it will be assumed as nil and onus of not being able to avail the facility of offering choice station by the individual will lie with the individual/ head of the office where the individual is serving. The three stations so indicated by the individual on completion of his tenure service will be treated as Non-tenure station for him being his own choice stations irrespective of the location/station i.e. Tenure/Peace.

17. In case, an individual is required to be disturbed before completion of his tenure, due to promotion or other contingencies, he will be posted to another tenure station/complexes to complete his balance liability.

18. On completion of tenure, the individual will be adjusted at one of the three choice stations/complexes given by him in the Repatriation proforma. In case of non-availability of a vacancy in any of the three choice stations/complexes, the affected persons due for turnover may be allowed to remain in the tenure stations/complexes till a vacancy arises in one of his choice stations/complexes. Such employee may be given the benefit of deferment for his re-posting to tenure stations/complexes in his next turn for such posting. The exact period for which the benefit is to be given will be decided based on the following norms: -

- (a) Upto 6 months stay in excess of the tenure. No benefit to be given.
- (b) Excess stay of more than 6 months but upto 12 months. Deferment @ 50% of time (Months) spent in excess of the normal tenure of two or three years as applicable.
- (c) Excess stay of over 12 months and above. Deferment @ 75% of time (months) spent in excess of the normal tenure of two or three years as applicable.

19. The individuals who desire to stay longer in a tenure stations/complexes at their own accord will not be entitled for the deferment benefit.

20. In case tenure completed individual does not want to continue at the tenure stations/complexes, he will be repatriated to one of choice stations/complexes by moving out longest stayee, who should have completed minimum three years in such stations/complexes. For determining the longest stayees all the three choice stations/complexes will be clubbed together. The longest stayee moved from a peace stations/complexes for making room for adjustment of tenure completed individual will be brought back at Government expense, to the same stations/complexes after completion of three year in a new stations/complexes as may be applicable provided he/she is interested to come back and applied for the same.

21. Since tenure posting are mandatory, no representation against these postings will be entertained.

22. For individual serving in executive offices in tenure station, maximum one year extra will be given in two spells and if any one wants to extend another tenure, they will be shifted within the station/complex station/satellite station on staff appointment.

23. If an individual does not apply for turn over or extension on completion of tenure liability, the tenure station where he has been serving will be treated as his choice station and thereafter he will be posted to a tenure station as per seniority of that station/complex station.

24. The individual posted from peace station to tenure station will move first and similarly the individual posted from staff appt to executive appointment will move first for easy implementation of posting.

25. The individual who were declared North Bengal and North East Region recruitees based on their initial appointment but hail from other areas, will be considered for posting back from NB/NER. The individual so affected may submit their choice of posting strictly as per para 17 above. Since there are huge Nos of pers affected, as such for bringing them back the following procedure will be adopted :-

- (a) Keeping in view the huge deficiencies in each cadre, hard scale auth will be worked out to the extent of proportionate deficiency in the command.
- (b) For repatriation, hard scale auth will be considered for ascertaining the clear vacancies.
- © The individual will be brought back strictly as per their seniority in tenure station.
- (d) While submitting the choice for repatriation, the three choice stations should fall in three complexes and minimum in two Zones as per para 17.

Posting from Peace to Peace station

26. An individual who is to move from one peace station/complex to another peace station/complex to make room for a tenure completed will be posted to one of his/her three choice stations/complexes, as far as possible. This facility will not be available to other types of postings.

Compassionate posting

27. The guidelines for compassionate posting will be followed :-

- (a) Individuals may themselves apply for compassionate posting after completion of two years of physically stay in present stations/complexes through proper channel. Applications from relatives or those received directly will be rejected and attempts to bring outside pressure will be discouraged.
- (b) Applications on domestic grounds shall be verified, if required, in consultation with civil authorities, if the CWE/CE zone is not satisfied of the genuineness of cases on ground. All compassionate cases have to be recommended without replacement in the chain.
- © Applications on medical grounds need to be accompanied by appropriate medical certificates from Authorised Medical Attendant (where AMA is not available, from Register Medical Practitioner) including the nature of illness and justification for transfer of the individual.

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- (b) For repatriation, hard scale auth will be considered for ascertaining the clear vacancies.
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- 76
- (d) This HQ will order a Board of Officers to assemble every 6 months in Jan & Jul to screen the applications.
 - (e) To avoid grant of undue benefit, it will be ensured (before compassionate transfer are accepted and orders issued) that affected persons are not due for posting to tenure stations/complexes.
 - (f) All postings on compassionate grounds will normally be at the expense of the individual.
 - (g) Compassionate cases for posting out side command will be progressed only with replacement from the other Command. When a person applies for posting from one Command to another, the Command to which he belongs shall issue the posting order after ascertaining his acceptability from the Command to which he seeks transfer and the unit to which his posting order is to be issued. Thereafter the first Command will issue posting order. However, pers seeking posting out of Eastern Command to other Command will be offered with replacement only.
 - (h) In case on non-availability of clear vacancy the longest compassionate stayee in stations/complexes will be moved so as to accommodate the other compassionate case, provided such stayee has completed three years in a stations/complexes.
 - (j) Travelling allowance can be paid to the individuals posted on last leg compassionate grounds at the time of retirement only to his/her home town/selected place or residence, subject to approval of the transferring authority, who should record reasons for such postings.
 - (k) The compassionate postings will be ordered to a non-sensitive appointment as far as possible. In case individual waiting for compassionate posting on PRIORITY becomes due for tenure, the compassion will be kept in sight while considering such case.
 - (l) In the case of inter Command, postings of personnel seeking to go outside the command deficiency will be kept in sight while considering such cases.
 - (m) The period of posting on compassionate grounds will be restricted to 3 years so as to accommodate other compassionate postings.

- 76
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 - (l) In the case of inter Command, postings of personnel seeking to go outside the command deficiency will be kept in sight while considering such cases.
 - (m) The period of posting on compassionate grounds will be restricted to 3 years so as to accommodate other compassionate postings.

28. Validity of cases once approved by the compassionate board will remain for 1 year. In case the individual is not posted to his choice stations/complexes during this period he/she is required to forward an application for revival his/her claim on expiry of the validity of the board. If the revival application is not received, the names of the individuals waiting in CCB will be deleted from the list.

Command Manning Level Posting(CML)

29. The aspect of Command Manning Level (CML) postings has been introduced to ensure parity of manning level between various Commands as well as within Command.

30. Detailed statistical data regarding auth/holding and Defi/Surplus in each category and grade of Group 'C' & 'D' Basic/Non Basic, Industrial/Non Industrial persons showing position as on 31 Mar will be forwarded to E-in-Cs Branch by 30 Apr each year. Based on these info, E-in-C's Branch will work out %age satisfaction level and will issue inter Command figure postings giving details of dispatching/receiving Command.

31. On receipt of info from E-in-C's Branch, CE Zones will be asked to give particulars of volunteers and their choice in case the place of postings happens to be more than one. If numbers of volunteers are more than the vacancies available longer stayee will get the preference over the others. These moves will be completed by 30 Jun each year.

32. Since the postings will be inter command and in the interest of the Organisation for sharing shortages, to protect the interest of the individuals, such postings will be considered as tenure stations for the purpose of tenure and repatriations.

33. In order to maintain manning level in all the unit/Fmn evenly within the command, the longest stayee in the particulars post/grade will be transferred from one station/complex to another. For this purpose the stations/complexes and approx number of vacancies available, there at, will be published by this HQ to enable the longest stayee to opt three stations/complexes of choice from amongst such stations/complexes. If the number of optees of particulars stations/complexes is more than the number of vacancies available, posting will be considered in the order of seniority i.e longest stayee will get first opportunity to be adjusted as per option given. Those who could not be accommodated at the choice stations/complexes for want of vacancies will be posted as per job requirement.

34. In determining the longest stayee in stations/complex, all the units located in that stations/complexes including satellite stations will be taken into consideration

POSTING ON LOCAL TURN OVER (LTO)

35. To avoid indulgence of employees in undesirable activities, to prevent any undue benefit and to provide equal opportunity of training and experience to all of them, regular turn over from sensitive to non sensitive and vice versa will be carried out for those employees who have completed three year service at a seat. LTO may also be resorted to for rationalizing the staff so as to neutralize the imbalance caused by TTP and CML postings.

36. The LTO posting has already been decentralized vide this HQ letter No 131306/1/68/ Engrs/EIC(I) dated 16 Dec 92. Posting from one units/Fmn to another units/Fmn, where only one unit is functioning in a station and turn over within unit is not possible, will be done by this HQ. CE zone will forward the names of the persons who have completed their mandatory period of 3 years in such cases. Turn over within the unit however should be done every three years by unit commanders. List of stations/complexes and authorities empowered to carryout at different stations/complexes already circulated to all Zones vide our letter no 131306/1/57/Engrs/EIC(I) dated 11 Sep 2002, is enclosed as appendix 'C'.

37. LTO for Kolkata Complex will be carried out by a Board of Officers (with a member from Kolkata Zone) which will be ordered by this HQ.

38. The following categories of posts/appointments have been identified as sensitive appointment at different levels :-

- (a) JE (Civ) employed on executive appointment
- (b) JE (E/M) employed on executive appointment.
- © JE (QS&C) employed in GEs Division dealing with contractual matters.
- (d) Supr B/S Gde-I/II employed on procurement of stores/ furniture.

(e) SK- Gde-I/II employed on procurement and holding of furniture.

(f) OS employed in GEs division/CsWE office/CE Zones/CE Commands dealing with promotions, recruitment/appointments, postings/transfer, advances of all types, local purchase of stores, discipline/confidential matters and contractual matters.

(g) UDCs/LDCs employed on jobs relating to promotions, recruitment/appointments, postings/transfer, local purchase of stores, discipline/confidential matters, contractual matters, sub-division clerks and Cashiers in GE's division.

(h) JE (ASAC) in CSE div dealing with contractual matters.

JE "T" appointment will be considered as non executive appointment only if a PTO to that effect indicating the period of such duties has been published by the unit.

40. JEs (Engrs, Surveyors, and supvr B/S Gde-I/II) will be moved on turn over from executive/sensitive posts to staff and vice versa after every three years in division/ unit and after continuous 6 years service in sensitive appointment, they will be moved to CE/CsWE office. While computing period of tenure in sensitive appointment, entire service profile of individual will be considered irrespective of stay in the present unit/stations/complex. In case there is only one division/sub-division in station/complex, they will be transferred to another stations/complexes. Accordingly case will be projected to next higher authority well in time.

41. Clerks, Store keepers and other category of staff working in sensitive section will be transferred to another non-sensitive section within the division or another division or CE/CsWE office as far as possible within the station/complex.

42. While turning over executive staff it will be ensured that the individual is not posted to the same division after completion of tenure in another division staff appointment. He will, invariably, be considered for posting to another division where he has not served earlier.

43. For turning over the individuals serving at satellite station where only one GE/AGE (I) is located, OC unit will forward the list of affected individuals to this HQ through Zonal CEs if turn over within the unit is not possible, indicating their three choice stations by 31 Mar showing cut of date as 31 May every year on the format as per Appx 'B' for issue of postings.

44. Personnel employed on non-sensitive appointment will be moved first and those employed on sensitive appointment will be moved within 10 days on arrival of replacement. Dates will be indicated accordingly in the posting order which will be strictly followed.

45. Authority empowered to carry out LTO within unit/complex will ensure that the LTO of affected persons has been carried out every year and none is left out. Auth will render certificate to this effect to this HQ by 31 Jan of the following year under the signature of CE/CWE/GE/AGE.

POSTING ON PROMOTION

46. Staff on promotion will be adjusted in the same stations/complexes (not necessary in the same unit) provided vacancies are available. However, if no vacancies are available in the same stations/complexes, the promotees will be adjusted in one of the three choice stations/complexes as far as possible except for those due for tenure turnover postings. However the individuals who have been repatriated from tenure stations/complexes and have not completed three year stay in the stations/complexes, will not be moved on promotion and will be adjusted by posting out the other senior most stayee in the stations/complexes. If vacancy is not available at any of the choice stations/complexes, the individual will be posted as per job requirement.

47. The representations, if any should be submitted within 15 days of receipt of posting order with an advance copy endorsed to Command CE. The acceptance of refusal of promotion is subject to the exigencies of service and is not a matter of right.

48. The acceptance of refusal of promotion by the competent authority also does not confer a right of protection to the individual against a transfer, if due, on other grounds in his/her present rank, if due.

49. In case inter Command move is necessitated, junior must promotees will be moved out.

POSTING ON MUTUAL BASIS

50. The following guide lines for posting on mutual basis will be followed :-
- (a) Individuals may themselves apply for mutual posting after completion of two years of physical stay in present station/office through proper channel.
 - (b) Mutual posting shall be ordered subject to the condition that the individuals concerned are not due for tenure posting.
 - (c) All postings on mutual basis shall be at the expense of the individuals.
 - (d) Mutual transfer is not to be treated as compassionate posting and no protection against posting, when falls due, can be claimed by an individual arrived on mutual transfer.
 - (e) Mutual transfers will only be considered between non-tenure stations only.

POSTING ON ADMINISTRATIVE GROUNDS

51. No individual will normally be posted to tenure stations/complexes or other normal stations/complexes on administrative grounds. Where it is considered that such a step is absolutely essential, following points will be complied before recommending posting on administrative grounds :-

- (a) In the first instance, disciplinary action will be initiated against the employee for his/her misconduct/guilt under CCS(CCA) Rule 1965.
- (b) In Case posting out becomes inevitable due to repeated acts of indiscipline, prior approval of this HQ will be obtained alongwith a self contained statement of case justifying the necessity.

52. If the individual to be posted out on administrative grounds happens to be due for posting to a tenure stations/complexes, he/she will be posted out to such stations/complexes, even if this involves posting out of turn. The CE Command will keep DG (Pers)/E-in-C's Branch informed of such cases. In case of individual protected against transfer, prior approval of DG (Pers) will be obtained.

ON ADJUSTMENT OF SURPLUS/DEFICIENCIES

53. Where units/formations are closed down due to reduction in workload, the adjustment of surplus staff will be first done in the residual formations in the manner of filling of deficiencies within the Command Manning Level. The remaining staff will be informed of the stations/complexes and approximate number of vacancies available enabling them to opt for three choice stations/complexes amongst such stations/complexes. If the number of optees for a particular stations/complexes is more than the number of vacancies available, posting will be considered in the order of first opportunity to be adjusted as per the option given. Those who could not be accommodated at their stations/complexes of choice for want of vacancies will be posted as per job requirement. In all cases volunteers will be first preference.

54. In all cases where staff is rendered surplus, the re-adjustment will be carried out by posting out the longest stayees in the station/complex. In the case of postings involving inter-Command transfers, the junior-most person in the grade within the command will be moved. When the surplus staff is to be adjusted within the Command, the staff concerned will be informed of the stations/complexes and approximate number of vacancies available there to enable them to opt for three stations/complexes of choice from amongst such stations/complexes. If the number of optees for particular stations/complexes is more than the number of vacancies available, posting will be considered in the order of seniority i.e longest stayee will get first opportunity to be adjusted as per the option given. Those could not be accommodated at their stations/complexes of choice for want of vacancies will be posted as per job requirements.

55. In the exigencies of service, situation may arise when offices/Works units are asked to move in block to other locations. In such cases the personnel to be moved will be selected based on their length of service in the stations/complexes i.e. the longest stayee will move by making local adjustments.

TIMING OF TRANSFER

56. Care will be taken to ensure that transfers during the middle of the academic year are avoided as far as possible. Exceptions will only be to meet an emergent requirement in the exigencies of service. It will be desirable to give two months time in the posting order for completion of the move to enable an individual to sort out his personal administration. However, moves on administrative grounds may be ordered giving lesser time. General schedule for the bulk posting will be as under:-

- 25
- 72
- 92
- | | | | |
|-----|------------------------------------|---|---------------------|
| (a) | Tenure turnover posting | - | Mar/Apr and Sep/Oct |
| (b) | Compassionate postings | - | Jan/Feb & Jun/Jul |
| © | Command Manning level postings | - | Mar/Apr/May |
| (d) | Local Turn over/Satellite postings | - | May/Jun |

AGE FACTOR

57. All Group 'C' & 'D' employees will generally not be transferred preceding three years of their retirement except at their request to stations/complexes of their choice. However, if they have to move on promotion and if there is no clear vacancy in the stations/complexes where they are serving, they may still be moved irrespective of the consideration of age.

FEMALE EMPLOYEES

58. The female employees will be covered by the following policy norms :-

- (a) Woman employees are exempted from posting to the tenure station/complex.
- (b) They will not be posted to long -distance stations/complexes even in the case of their peace to peace station transfers unless female employees give her choice of a station at a distant place. Long distance, in case of each command, will depend upon its geographical diversity and linguistic multiplicity.
- © They will be transferred from one peace station to another peace station on tenure basis (within 600 Kms approx at the mil head/bus terminus) on the analogy of tenure system adopted for the male employees. Their stay will be for a minimum period of 3 years and these employees would have the privilege of exercising three choice for their posting on return from that station including the home station.

(d) Where both the husband and wife are Central Government employee, the present policy to keep both at the same stations/complexes as far as possible, will be maintained. However, there will be no exemption to the husband from tenure posting in his turn. On repatriation, the husband will as far as possible, be posted to a stations/complexes where his wife is employed subject to the availability of a suitable vacant post provided it does not tantamount to successive executive/sensitive appointment.

(e) Where one spouse belongs to one of the All India Services and the other spouse belongs to MES :-

(i) The cadre Controlling Auth of the MES may post the officer to the station or if there is no post in the station to the State where the other spouse belonging to the All India Service is posted.

(f) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service (MES) :-

(i) The spouse with the longer service at station may apply to the appropriate cadre controlling authority and the said authority may post the said officer to the station, or if there is no post in that station to the state where the other spouse belonging to the other Central Service is posted.

(g) Where one spouse belongs to MES All India Service and the other belongs to Public Sector Undertaking :-

(i) The spouse employed under the public Sector Undertaking may apply competent auth and said auth may post the said officer to the stn, or if there is no post under the PSU in that station, to the state where the other spouse is posted.

(h) Where one spouse belongs to a central Service (MES) and the other spouse belongs to PSU :-

- (i) The spouse employed under the PSU may apply to competent auth and the said auth may post the officer to the station or if there is no post under the PSU in the station, to the state where the other spouse is posted. If, however, the request can not be granted because the PSU has no post in the said station/state, then the request belonging to the Central Govt. for all officers apply to the appropriate central government authority and the said authority may post the said officer to the station or if there is no post in that station, to the state where the spouse is employed under PSU be posted.
- (j) Where, one spouse is employed under the Central Govt. (CML) and the other spouse is employed under PSU.

competent auth and the competent auth may post the said officer to the station or if there is no post in that station the state where the other spouse is posted.

- (k) In all the abovementioned cases there will be no exemption to the husband from tenure posting in his turn. On repatriation, the husband will as far as possible be posted to a station where his wife is employed subject to the availability of a suitable vacant post provided it does not tantamount to successive executive/sensitive appointment.

WIDOW/WIDOWERS

59. Widow/Widowers with dependent children will not be posted out on tenure/CML as far as possible. This protection will cease with re-marriage. Widow employ appointed on compassionate grounds and female employ who lost their husband while in service would also be exempted from the transfer from one peace station to another peace station.

VACANCY

60. CE Zone/Comdt will forward the names of volunteers for posting to tenure stations. The volunteers will be given preference Seniority of personnel in each category will be prepared by this HQ for posting to tenure stations.

REPRESENTATION

61. Representation of any against the posting order will be made by the affected individual within 21 days of the receipt of posting order in their concerned office. The representation shall be produced by the intermediate formation shall endorse CE Command office for consideration. Each intermediate formation shall endorse the following remarks' considered and Recommended 'or' considered and Not Recommended'. Once the CE Command rejects the appeal, the individual will be moved to his new duty station without further delay. Contingencies may arise when the individual is not satisfied with the decision of this HQ. In such a case, he may represent his case to DG (Pers)/E-in-C's Branch, Army HQ through proper channel. However the move of the individual will not be held up for decision from E-in-C's Branch. In case of the decision is pronounced in favour of the individual by E-in-C's Branch, Army HQ, the individual will be moved at the Govt Expense in the first available vacancy occurring at the station mentioned in the decision of E-in-C's Branch.

62. This HQ letter No 131306/1/9/Engrs/EIC(I) dt 20 Dec 2001 as amended from time to time stands superseded with the issue of this letter.

63. Please acknowledge.

(Mewa Ram)
CE
ACE (Pers)
For Chief Engineer

29-76-
Annexure - C
87
FAX

Tele : 2222-2525

OP IMMEDIATE
Mukhyalaya Purvi Kaman
HQ Eastern Command
Abhiyanta Shakha
Engineers Branch
Fort William
Kolkata - 21

131307/2/HB/29 /Engrs/EIC(I)

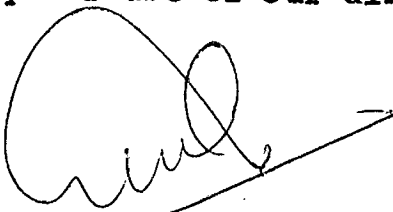
21 Feb 2005

CWE (AF) Borjar

OA NO. 13/04 SHRI HIRAM BHATTACHARJEE
VS UOI AND OTHERS

1. Posting Order in respect of MES/229603 Shri Hiram Bhattacharjee, JE(QS&C) of GE (AF) Borjar as issued vide this HQ No 131322/2/2003/JE(QS&C)/245/Engrs/EIC(I) dated 31 Dec 2003 is hereby cancelled. This may accordingly be intimated to the Hon'ble CAT for disposed of the case.

2. Please also ask for fresh choice of posting limited to Chief Engineer Office only from Shri Hiram Bhattacharjee. The indl's choice be taken forthwith and sent to this office. In case indl refuses to give a choice, the same be intimated within seven days from to-day for use of our discretion in posting indl.


(JS Mitra)
Col
Dir(Pers)
for Chief Engineer

Copy to:-

CE (AF) Shillong Zone

GE (AF) Borjar

INTERNAL

EI(Legal)Section : for information wrt their ION No
131309/13/04/43/Engrs/EI(Legal)
dated 04 Feb 2005.

2/13

77 - Annexure - D

30

88

To :
The Chief Engineer
Eastern Command
Kolkatta

(Through Garrison Engineer (A/F) Borjar)

Subject : CHOICE PLACE OF POSTING

Respected Sir,

1. Most humbly I beg to submit the following few lines in reference to GE (AF) Borjar letter No. 1147/50/E1E dated 22 Feb '2005 and your HQ CE EC Kolkata Fax dated 22 Feb '2005 for your kind and humble consideration.

That Sir, I was initially posted to CE SZ Shillong vide your HQ CE EC posting order No. 131322/2/2003/JE(QS&C)/02/Engrs/E1C(I) dated 03 May '2003 i.e. just after my two years stay at GE (AF) Borjar. As such it is revealed that your HQ CE EC Kolkata has considered my posting from GE (A/F) Borjar a tenure posting as I was posted after completion of two years. I could not submit my nominal roll of 03 choice stations to your HQ CE EC in time before my said posting due non receipt/holding of amendment to posting policy (i.e. 03 yrs to 02 years) order of your HQ CE EC Kolkata letter No. 131306/1/72/Engrs/E1C(I) dated 20 Nov '2002 by this Division (i.e. GE (A/F) Borjar). As such I appealed to your HQ CE EC Kolkata vide my application dated 14 May '2003 giving three choice stations to consider change of my posting to one of my choice stations, but my appeal was rejected by your HQ CE EC Kolkata letter No. 131322/2/2003/JE(QS&C)/53/Engrs/E1C(I) dated 26 Jun '2003 without any reason. After that I filed an original application 165/2003 before the Hon'ble CAT Guwahati bench. The impugn transfer order dated 03 May 2003 was stayed by the Hon'ble CAT. The matter was finally heard by the Hon'ble CAT on 14 Aug '2003 and was pleased to direct your HQ and other respondent to consider the representation of my choice posting and I was also directed to file fresh representation within 04 weeks from the date of receipt of the Hon'ble CAT order and your HQ and other respondent were directed to consider the same and pass appropriate order as expeditiously as possible preferably within two months from the date of receipt of the said Hon'ble CAT order. The interim stay order dated 18 Jul '2003 passed in OA No. 165/2003 shall remain in force till disposal of the representation. I submitted representation on 08 Sep '2003 before your HQ and other respondent. In the said representation I mentioned the following three place of choice posting :-

- (a) Narangi.
- (b) Silchar
- (c) Bagdora.

After a gap of 02 months i.e. on 01 Oct 2003 my posting was cancelled vide your HQ letter No. 131322/2/2003/JE(QS&C)/144/Engrs/E1C(1) dated 01 Oct '2003. But no action was taken against my representation dated 08 Sep 2003 regarding my choice posting. Surprisingly I was again posted in the same office i.e. CE.SZ Shillong Zone vide your HQ CE EC Kolkata Posting Order No. 131322/2/2003/JE(QS&C)/245/Engrs/E1C(1) dated 31 Dec '2003. I again approached before the Hon'ble CAT Guwahati bench against the said impugn posting order dated 31 Dec 2003 by filing OA No. 13/2004. Again the Hon'ble Tribunal stayed the impugn posting order dated 31 Dec 2003. The matter is still pending before the Hon'ble CAT for my choice place of posting. But now I have received a fax order dated 22 Feb '2004 issued by your HQ to choose place of posting limited to CE's office only.

2. In view of above, most humbly it is prayed that the following informations may kindly be given to me about posting policies for my information if feasible :-

(a) The policy No. and respective Para there of based on which my very 1st posting order No. 131322/2/2003/JE(QS&C)/02/Engrs/E1C(1) dated 03 May '2003 was issued.

(b) The policy No. and respective para thereof based on which my 2nd posting order No. 131322/2/2003/JE(QS&C)245/Engrs/E1C(1) dated 31 Dec '2003 was issued.

(c) The policy No. and respective paras thereof based on which my 3rd posting order is going to be issued.

(f) The policy No. and respective para thereof based on which my fresh choice of posting limited to only Chief Engineer office is ordered for.

4. In respect of your HQ FAX/letter cited above most humble it is prayed that I kindly be posted to any office in the state of Assam in the discretion of your HQ as I have already served two consecutive staff formations i.e. CWE Tezpur and CWE (P) Agartala before GE (A/F) Borjar.

5. Now I am once again praying for my choice posting to your goodself please.

Thanking you,

Yours faithfully,



(HIRAK BHATTACHARJEE)
JE (QS & C)
MES - 229603

Dated : 25 Feb '2005

Copy to :-

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

MOVEMENT ORDER

Tele: 356(A/F)

Garrison Engineer (AF)
Borjar, Guwahati Airport Post,
Guwahati - 15

1147/ 85 /E1E

19 Mar'05.

MES/229603

Shri Hiral Bhattacharjee, JE (QS&C)
(Through E-8 Section)POSTING/TRANSFER ON TENURE TURNOVER : JE(CIV)

1. You are hereby permanently transferred to HQ CE Siliguri Zone in the interest of state.
(Auth : HQ CE EC Kolkata letter No. 131322/2/2005/JE QS&C/03/Engrs/E1C(D)
dt 17 Mar'05.)
2. You will be relieved of your duties from this office on 02 Apr'05(A/N) and will report to your new formation after availing usual joining/journey period.
3. You will submit the following before leaving this office :
(a) Departure report (b) Clearance certificate
4. Please note that your pay & allowances for the month of Apr'05 onward will be claimed by your new duty station only after reporting your new duty station.
5. Your Identity Card will be surrender to your new formation for further disposal.
6. TADA may be claimed as admissible.

"Certified that the indl is not involved in any disciplinary/SPE./C of Cases as on date."

(AN Rafat)
Lt Col
Garrison Engineer (AF)

Contd. P/2

33 - 80
111
Annexure-F

The Garrison Engineer
Air Force, Borjar,
Guwahati - 781 015 (Assam)

Subject : DEPARTURE REPORT

Sir,

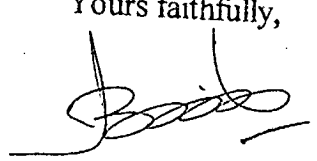
Reference HQ CE EC Kolkata Posting Order No. 131322/2/2005/JE(QS&C)/03/Engrs/E1C(I) dated 17 Mar '2005 and your Movement Order No. 1147/85/E1E dated 19 Mar '2005.

With due respect I do hereby submit my departure report today i.e. on the 02 Apr '2005 (AN) with reference to the above cited letters for my permanent posting to HQ CE Siliguri Zone.

In connection with Hon'ble CAT GUWAHATI order dated 23 Mar '2005 it is submitted that my 1st & 2nd posting orders of HQ CE EC Kolkata vide letter Nos. 131322/2/2003/JE (QS&C)/02/Engrs/E1C(1) dated 03 May '2003 and 131322/2/2003/JE (QS&C)/245/Engrs/E1C(I) dated 31 Dec '2003 respectively to HQ CE SZ Shillong were cancelled vide HQ CE EC Kolkata letter No. 131322/2/2003/JE(QS&C)/144/Engrs/E1C(1) dated 01 Oct '2003 and Fax dated 22 Feb '2005 respectively.

Thanking you,

Yours faithfully,


(HIRAK BHATTACHARJEE)
JE (QS & C), MES-229603

Dated : 02 Apr '2004. (A/R)

Station : Borjar, Guwahati -15

Encls : One copy of clearance certificate.

20.08.2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

O. A. No. 78 of 2005

Shri Hirak Bhattacharjee

... Applicant

- Versus -

The Union of India & Others

... Respondents

- AND -

IN THE MATTER OF :

Rejoinder submitted by the Applicant in the
above said Original Application against the
written statement filed by the Respondents.

The humble applicants submit this rejoinder
as follows:

1. That with regard to statements made in paragraph 1(a) of the written statement, the applicant has no comments to offer, beyond record nothing is admitted.
2. That with regard to the statements made in paragraph 1(b), 1(c) and 1(d) of the written statement, the applicant begs to state that these are not true and the same are denied by the applicant.
3. That with regard to the statements made in paragraph 2 of the written statement, the applicant has no comments and the same are matters of record.
4. That with regard to the statements made in paragraph 3 of the written statement, the applicant begs to state that as per paragraph 13(m) of posting policy letter No. 1313 06/1/95/Engrs/EIC(I) dated 30.08.2003, Borjar/Guwahati is a tenure station for the applicant because he does not belong to Borjar/Guwahati. The paragraph 13(m) of the posting policy dated 30.08.2003 states that "A tenure station will not be treated as a tenure station for those employees of NE region who belong to that station. Remaining all other declared stations will be the tenure for them" It is very clear from the said paragraph that the applicant is entitled for his choice place of posting as he does not

Hirak Bhattacharjee

Filed by
Shri Hirak Bhattacharjee
Applicant
Through
Chd. AHMED
Advocate

ab

belong to Borjar/Guwahati. The said contention can be further clarified from the paragraph 3(a) of HQ CEEC Kolkata letter No. 131300/TO/30/Engrs/EIC(I) dated 12.07.2003, wherein the said HQ has rejected the submitted choice stations for posting of one Sri Abdur Rahim, JE (QS & C) since he belongs to the Station Guwahati and he was serving in the same station, i.e., Office of the Garrison Engineer, Borjar Guwahati.

Further, the respondents have violated and disobeyed the order dated 23.03.2005 passed in this instant application by this Hon'ble Tribunal, wherein the Hon'ble Tribunal has stayed the applicant's impugned posting order to Siliguri Zone issued by the HQ Chief Engineer Eastern Command vide posting order No.12 dated 17.03.2005, the respondents by taking a false plea that applicant's substitute has already been posted at Borjar. But in real fact one Sri K. Ghosh, Junior Engineer as already been posted from STE, Kolkatta to Garrison Engineer, Borjar vide applicant's first posting order No. 18/2003 dated 03.05.2003. In the said posting order nowhere it was mentioned that applicant's substitute was Sri K. Ghosh. Further, the said posting order was cancelled by the HQ, Chief Engineer, Eastern Command, Kolkata vide letter No. 131322/2/2003/JE(QS & C)/144/Engrs/EIC(I) dated 01.10.2003. As such the said person, Sri K. Ghosh who may be posted as substitute of the applicant has been cancelled after issuance of said cancellation letter dated 01.10.2003.

5. That with regard to the statements made in paragraph 4 of the written statement, the applicant begs to state that as per paragraph 16 of policy letter No. 131306/1/95/Engrs/EIC(I) dated 30.08.2003 Borjar is a non tenure station for the applicant since the applicant had come from Teliamura to Borjar on his choice. But in the paragraph 13(m) of the same posting policy states "A tenure station will not be treated as a tenure station for those employees of NE region who belong to that station. Remaining all other declared stations will be the tenure from them". As such, Borjar is a tenure station for the applicant, since the applicant do not belong to Borjar/Guwahati as already stated in paragraph 2 of the instant rejoinder. Moreover, as per paragraph 10 of the same posting policy the applicant is supposed to get choice posting from Borjar on tenure basis subject to availability of vacancy otherwise the applicant may be posted to any station in the choice of the department in case of non-availability of vacancy. But in the applicant's case, he was deprived from his choice posting in spite of clear vacancy available in anywhere in Assam.

In view of the above, it is clear that the respondents are making contradictory posting policy in motivated way and also abiding/violating the posting policies made by the respondents as convenient to them in a motivated way.

Hirak Bhattacharjee

6. That with regard to the statements made in paragraph 5 of the written statement, the same is denied by the applicant, as the same is not true. The applicant is not making litigation but only sought for implementation of principle of natural justice and fundamental rights guaranteed under the Constitution of India. In this connection the Hon'ble Tribunal's orders dated 14.08.2003 and 01.03.2005 may be referred which were in favour of the applicant. If posting/transfer order of the department is always correct as per the department then the reason of canceling the applicant's posting order to CESZ Shillong may please be explained before the Hon'ble Tribunal.

7. That with regard to the statements made in paragraph 6 of the written statement the applicant begs to state that the same are not true and also misleading to this Hon'ble Tribunal. Because question of "staff/sensitive post" and "considering entire service profile" arises only in case of L.T.O. posting i.e., "Posting on Local Turn Over" and not in my case. i.e., "Turn over/Tenure Posting". This aspect can easily verified from paragraph 40 on page No. 13 of posting/policy No.131306/1/95/Engrs/EIC(I) dated 30.08.2003, which specifically comes under heading "POSTING ON LCAL TURN OVER (LTO)" on page No. 12. From above it is crystal clear that the Respondents are simply taking shelter of irrelevant paragraph of their posting policy to camouflage their mala fide intention and they are not at well conversant about the posting policy made by themselves only. Moreover, Shri B.C.N. Choudhury, JE (QS &C), presently posted in AGE(I) Purnia, Shri Shymal Ghosh, JE (QS&C), presently posted in GE Gangtok (and many more JE (Civil/E/M. and Clerical staff falls under the same posting policy of Group C & D) who are service senior to me have never been posted by the respondents in Zonal Chief Engineer Office considering their 'entire service profile' and always been given sensitive posting in bias way. The applicant has already given the examples of consecutive choice posting and consecutive sensitive posting given by the respondents to some individuals in instant original application.

8. That with regard to the statements made in paragraph 7 of the written statement, the applicant begs to state that as per paragraph 10 of the posting policy referred by the respondents the applicant is entitled to get choice posting. But in applicant's case he was deprived from his choice posting in spite of clear vacancy available in Assam but some other persons who are similarly situated with the applicant are getting their choice posting in whose existing vacancies.

Further, it may be stated that the respondents have violated the Hon'ble Tribunal order dated 23 March 2005. Because the applicant's first posting order No. 18/2003 dated 03 Mar 2003, he was posted to Chief Engineer Shillong Zone, Shillong from the

Hirak Bhattachajee

Office of the Garrison Engineer (A/F) Borjar and one Shri K. Ghosh was posted to Garrison Engineer E (A/F) Borjar from STE Kolkata but nowhere it was mentioned in the said posting order that he was applicant's substitute. Moreover in the said posting order to Chief Engineer Shillong Zone, Shillong was later cancelled by HQ CEEC Kolkata vide letter No. 131322/2/2003/JE (QS & C)/144/Engrs/EIC(I) dated 02 October 2003 as such the said person who was posted as substitute remains no more his substitute.

9. That with regard to the statements made in paragraph 8 of the written statement the applicant begs to state that with respect to his posting to Office of the Chief Engineer Siliguri, it is to be stated that he was compelled to join in Chief Engineer Siliguri by the respondents illegally and in malafide way by violating posting policy made by the respondents itself.

From the above it is clear that the respondents have made his posting with a malafide intention and further trying to camouflage their mistake by making wrong interpretation of policy, by using and referring wrong/irrelevant policy. The humble submission of the applicant that he is not in favour of prolonged litigation but every time the respondents with a malafide intention harassing him and also did not provide him the choice place of posting at any where in Assam as per the respondent's own transfer policy.

In view of the above, it is clear that the applicant's application is genuine, legal and to be considered. The written statement submitted by the respondents are wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of respondents to refute the contentions, averments, questions of law and grounds made by the applicant in the Original Application filed by the applicant deserve to be allowed by this Hon'ble Tribunal.

Hirak Bhattacharjee

VERIFICATION

I, Shri Hirak Bhattacharjee, MES No.229603 Junior Engineer, Office of the Chief Engineer, Siliguri Zone, Siliguri do hereby solemnly verify that the statements made in this rejoinder are true to my knowledge and belief. I have not suppressed any material facts.

And I sign this verification on this the 19th day of July, 2005 at Guwahati.

Hirak Bhattacharjee