

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 159/2005

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PLA. RUL. 42
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

159/05

Original Application No.

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s)

Joydip Datta

U. O. T. Sons

Respondents

Advocate(s) for the Applicant(s) J. L. Sankar, S. Nath

Advocate(s) for the Respondents CABC

Notes of the Registry	Date	Order of the Tribunal
<p>The application is in form is filed in F. for Rs. 50/- d.p. s.d. vade IPC/BD N: 206133891 Dated dt. 13.6.05 S. D. <i>gheeb</i> Dy. Registrar <i>Par.</i> <i>NS</i> <i>21/6/05</i></p> <p>Steps not taken</p> <p><i>Par.</i></p>	22.6.2005 mb	<p>Heard learned counsel for the parties. The application is disposed of at the admission stage itself.</p> <p><i>LCW, P.C.</i> Member</p> <p><i>gheeb</i> Vice-Chairman</p>
<p>28.6.05 Copy of the order has been sent to the D/see for issuing the same to the applicant as well as to the Addl. C.G. &c. for the responder.</p> <p><i>Par.</i> <i>R. D. Datta</i></p>		

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CENTRAL ADMINISTRATIVE TRIBUNAL ::GUWAHATI BENCH.

O.A. Nos. 159/2005

DATE OF DECISION: 22.06.2005

Sri Joydip Dutta

APPLICANT(S)

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

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U. O. I. & Ors.

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENT(S)

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

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Vice-Chairman.

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application Nos. 159/2005

Date of Order : This the 22nd day of June, 2005.

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Sri K.V. Prahladan, Administrative Member.

Sri Joydip Dutta
Working as Superintendent
Central Excise
Agartala.

... Applicant

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

- Versus -

1. Union of India,
Represented by the Secretary to the
Govt. of India, Ministry of Finance,
New Delhi.
2. The Chief Commissioner,
Customs & Central Excise,
North Eastern Region,
Shillong.

... Respondents.

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

ORDER (ORAL)SIVARAJAN. J. (V.C.)

The applicant is a Superintendent, Customs and Central Excise Department. He, being aggrieved by the transfer order dated 08.06.2005, made a representation dated 09.06.2005 (Annexure - E) before the Commissioner, Central Excise, Shillong who passed the transfer order. Mr. J.L. Sarkar, learned counsel for the applicant submits that the said authority has not so far passed any orders on the representation submitted by the applicant. He further submits that applicant has not so far been relieved from the present place.

2. Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that the respondents will consider the representation made by the applicant and further he submits that if the applicant has not so far been released, he will be allowed to continue in the same place until a decision is taken on the representation submitted by the applicant. Addl. C.G.S.C. made the said submissions on the basis of the earlier order of this Tribunal.

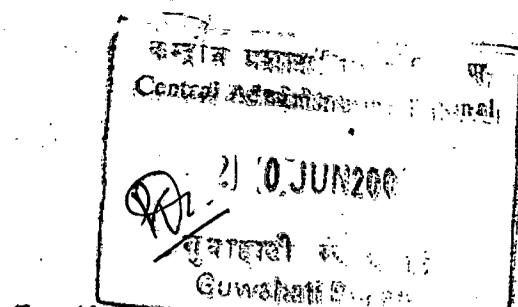
3. Considering the facts and circumstances of the case and in view of the previous order, we direct the applicant to make representation before the 2nd respondent herein within two weeks from today. If such representation is filed, the same will be disposed of by the 2nd respondent in accordance with law within a period of one month thereafter. If the applicant has not so far been released from his present place, he will be allowed to continue in the same place till the disposal of the representation.

The O.A. is disposed of at the admission stage itself. The applicant will produce this order along with representation.

KV Prahladan
(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER

G. Sivarajan
(G. SIVARAJAN)
VICE-CHAIRMAN

/mb/



In the Central Administrative Tribunal

Guwahati Bench:: Guwahati

O/A No. 159/2005

Sri Joydip Dutta

Versus
Union of India & Others.

SYNOPSIS OF THE APPLICATION

This Application is made against the impugned transfer Order dated 08/06/2005 whereby the applicant has been transferred to Shillong, Central Excise.

The said impugned transfer orders have been issued in violation to the circulated/published policy of transfer of the Respondent Department.

That the Applicant was posted to Central Excise, Agartala wef 25-11-2002. His tenure of minimum four years service at Agartala has not been completed till date. It is also stated that the children of the applicant are pursuing studies at Agartala and are in mid session. The transfer of the applicant shall cause immense hardship and loss to the Academics of the children. One of the children is reading in Bengali medium.

That the impugned transfer order in June is against the accepted policy and guidelines of transfer to be made and given effect by December/January, and has been issued to accommodate others before completion of their Tenure and such is discriminatory and not just and fair.

This Hon'ble Tribunal has disposed of no. of OA nos. 127/2005, 129/2005, 130/2005 131/2005 132/2005 136/2005, 142/2005 and 144/2005.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

(An application Under Section 19 of the Administrative Tribunal Act, 1985)

Filed by me
Subrata Nahai
Advocate
08/06/05

ORIGINAL APPLICATION NO.

/2005

Between

Sri Joydip Dutta
Working as Superintendent
Central Excise,
Agartala.

Applicant

Versus

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

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

Respondents

DETAILS OF THE APPLICATION.

1. Particulars of the Order against which this application is made.

This application is made against the impugned transfer order No. 75/2005 dt. 08-06-2005, in the mid academic session, violating published transfer & posting policy to accommodate others before completion of the tenure.

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

3. Limitation:

This applicant declares that the instant application has been filed within the limitation period prescribed under Section 21 of the Central Tribunal Act, 1985.

4. FACTS OF THE CASE

4.1 The applicant is a citizen of India and hence is entitled to the rights and privileges guaranteed under the Constitution of India.

4.2 The applicant is a Group-B Officer, working as Superintendent, Central Excise and posted at Agartala, Tripura, The applicant was transferred from Dharmanagar to Agartala as Superintendent in November, 2002 and working as Superintendent, Agartala Central Excise w.e.f 25-11-2002. Hence the Tenure of minimum four years service at Agartala, has not been completed till date.

4.3 That for the purpose of transfer and posting of Group B, Officers in North East, in the Respondent Department has made out a transfer policy vide C No. II(7)ET/ET III/88/1674 dt. 07.11.1996 taking into relevant consideration including consideration of welfare of the children and their education. The adopted policy is that transfer will be completed before 31st December on any year and as far as possible effected by 31st January of the following year.

Copy of the transfer policy dated 7th November, 1996 is enclosed as Annex. A

4.4 That the aforesaid transfer policy has explicitly made the tenure and posting of Group B Officer as under:

" 3. The general tenure in one station will be 4 to 6 years.
 4. Period of stay in any one station/section/office will not be more than 2 years.
 5. Since the officers belongs to common cadre of Central Excise mainly, no officer will remain posted in Customs for more than 4 years."

4.5 That by a letter dt 04.10.2004 option for annual general transfer of Superintendent for the year 2004 were called from the concerned officers who have completed tenure of the service as per accepted transfer policy. Option was directed to submit in the prescribed proforma enclosed with the letter on or before 31-10-2004. It is stated that the option for purported general transfer under this letter dt 04-10-2004 was called for as per para 2 of the aforesaid transfer policy. The applicant had not completed his tenure of minimum 4 years and did not exercise option.

Copy of the letter Dt. 10-04-2004 & Transfer Proforma is enclosed as Annexure B & C respectively.

4.6. That it is stated that the Commissioner of Central Excise, Shillong has issued order No. 75/2005 of transfer/rotation of the Officers in the ~~xxx~~ Grade of Superintendent Group B dt. 8-06-2005 by which 38

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Group B Officers including the applicant have been transferred from one station to another. The name of the applicant appears in the aforesaid transfer order Sl No. 7. This transfer order shows that the same has been issued without application of mind and it has been issued as routine exercise of power and administrative action has ~~not~~ not element of public interest. On the Contrary of the order dt. 08-06-2005 acts contrary to the interest of the children's education of the applicant. The Applicant has not received the order from office because of his absence from duty on the ground of family affairs.

Copy of the order dt. 08/06/2005 is enclosed as Annexure- D

4.7 That the applicant submitted a representation on 9th June to the Commissioner, Central Excise, Shillong, with copy to the Chief Commissioner, Customs & Central Excise, Shillong. He has not received any reply.

Copy of the representation dt
9th June 2005 is enclosed as
Annexure- E.

4.8. That the applicant begs to state that his normal tenure period at Agartala as per accept policy/guidelines of transfer has not expired. It is also stated that the children of the applicant are studying at different education institutions at Agartala. They are pursuing studies in Class-I & Class IX. The transfer of the applicant under such circumstances will also cause immense hardship and loss of the academics of the children and they will be ~~thus~~ deprived of their further studies in the new station. The applicant's Son Sri R R Dutta is reading in Class-X IX, in Assam Rifle School, Agartala and the course ~~is~~ differs in Shillong. Applicant's daughter Miss Y Dutta/reading in Class I in Bengali medium Shcool and there is no Bengali medium Shchool in Shillong.

4.9 That the said transfer dt. 08-06-2005 has been issued without regard to the prescribed and accepted norms of Transfer. The circulated/published policy stipulates that the general transfer shall be made in December of any year to be given effect by January next. But most surprisingly the said order has been issued in June in total negligence of the Departmental 's Own formulated policy. This has been done purportedly to accommodate some Officers.

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4.10 That the order of transfer dt 08-06-2005 manifests that the same has been issued hastily without waiting for December, which is the schedule time for issue of the order. A close perusal of the order dt. 08-06-2005 indicates that the same has been issued to accommodate a number of Officers for example Officers at Sl 11,13.22 23, 24,25 etc. on the basis of their representation. Such transfer at the behest of some Officers as indicated therein violating the prescribed time schedule of transfer causing undue and immense hardship to other including the applicant in not just and fair administrative action. Such action are discriminatory and arbitrary and applicant has become victim of such arbitrary action. Such administrative action is not justified and fair.

4.11 The mother[†] of the applicant is 70 years old and suffering from age old diseases and under treatment at Agartala.

4.12 That this Hon'ble Tribunal in a number of cases has disposed of Original applications involving^s similar questions of fact and law withⁱ individual fact differences. Examples are OA Nos. 127/2005 (Smt K M Das v/s UOI & oths. OA NO. 129/05, 130/05, 131/05, 136/05 (Sri G DAD & Others v/s. UOI & others) OA No. 142/05 (Mr G Panmei V/s. UOI & others) and OA No. 144/05 (Sri C Songate V/s. UOI and others)

Copies of the Orders in OA Nos. 127/05, 129/05 130/05, 131/05, 136/05, 142/05 & 144/05 Dt. 13/06/05, 14-06-05, & 15-06-05 are enclosed as Annex- F, G, H & I respectively.

4.13 That the applicant submits that if his transfer & posting as per aforesaid transfer orders dated 08-06-2005 is not cancelled he and his members of the family including the children shall suffer irreparable loss and injury.

4.14 That the applicant^s made monafide and for the cause of justice.

5. GROUND FOR RELIEFS WITH LEGAL PROVISION:

5.1 For that impugned orders of transfer and posting are illegal in as much as the same have been issued violating the prescribed and accepted norms, policy and guidelines of Transfer.

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

5.3 For that the transfer of the applicant at the mid session of his children's education is unwarranted and not just and fair. The problem of Bengali medium shall be insurmountable.

5.4 For that the transfer order ~~has~~ been issued to accommodate some officer which is discriminatory and ~~arbitrary~~ arbitrary and offends Article 14 of the Constitution of India.

5.5 For that laice in law and lalice in fact is explicit in the impugned orders

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

6. DETAILS OF THE REMEDIES EXHAUSTED

6.1 The Applicant has no other efficacious remedies under any rules. He has submitted Representation which is pending.

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The Applicant have not filed any other case/application in any other court/Tribunal regarding the present subject matter.

8. RELIEFS SOUGHT FOR

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

8.1 The name of the applicant be deleted from the impugned Transfer order dt. ~~08/06/2005~~ 08/06/2005

8.2 The~~s~~/ applicant be allowed to continue at his present at his present place of posting.

8.3 Any other relief or reliefs prayed for on the ground stated above in para 5 above as the Hon'ble Tribunal deems fit & Proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the applicant prays for the following interim reliefs:

9.2. The order dt. 08-06-2005 of transfer of the applicant be suspended and he may be allowed to continue at his present place of posting.

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21/2/1965

9.3. Any relief or reliefs and Hon'ble Tribunal deem fit and proper.

10 Particulars of Postal Order

Postal Order No. :

Date:

Issuing Office

Payable at: Gawahati

11. List of enclosures:

As per index.

VERIFICATION

I, Joydip Dutta Son of Late Paresh Ch Dutta, a resident of Agartala, do hereby verify that the statements made in the paragraphs 1, 4, 6, to 12 are true to my knowledge and statements in para 2,3 and 5 are true to my knowledge to my legal advice and that I have not suppressed any material fact.

and I, sign this verification on this 21st day of June, 2005.

Joydip Dutta.

Signature.

TRANSFER POLICY OF GROUP 'B' OFFICERS IN NORTH EAST.

After a detailed discussion between the CCP, CCE and AC(Hqrs) alongwith various instructions of the Ministry and the last of which is F.No. A-35017/28/92-Ad.III.B dated 30th June, 1994, minutes of various conferences and other discussions, it has been agreed to follow the following transfer policy among the Group 'B' officers in the North East.

1. Since the Commissionerate covers 7 (seven) North Eastern States with different ethnic background, Administration will follow as far as possible convenient zone and areas so that officers are not unduly put to difficulties. However, these will not include transfers on Administrative grounds.
2. Before any general transfer, Group 'B' officers will submit a representation for -
 - (a) Place of posting with reasons;
 - (b) Option for Customs/Central Excise;
 - (c) For any other deputation.

These representations will be received positively by 1st October of any year.
3. The general tenure in one station will be 4 to 6 years.
4. Period of stay in any one station/section/office will not be more than 2 years.
5. Since the officers belong to a common cadre of Central Excise mainly, no officer will remain posted in Customs for more than 4 years.
6. The rotation in every 3 years will be from difficult to soft areas and from sensitive to hard areas.
7. Compassionate postings will be considered mutually between the CCP and CCE and after satisfying the genuineness of the compassion cases, transfer will be made if needs be. Such transfers on compassionate grounds must be addressed to DC/AC(PAY) and endorsed to both the Commissioners.

*After 20
for Advocate*

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

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

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

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

Umashankar

(ULLUNGUNEMA) 7/11
COMMISSIONER

CUSTOMS (PREV) NER: SHILLONG

(C.R. MIRAN)
COMMISSIONER

CENTRAL EXCISE: SHILLONG

C.N.I.I(7)5/ST.III/86/1674

Dated : 7/11/96

Copy to :-

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

(H. Bhattacharya)
7/11/96

(H. BHATTACHARYA)
ASSISTANT COMMISSIONER(HOS.)
CUSTOMS AND CENTRAL EXCISE : SHILLONG

Copy to Tenzin Samdang (all) for information

B: Dharan (Sri) & Gopal (Sri) Samdang



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

Tel. 91-0364-2224751 / 2223030.

Fax. 91-0364-2223428 / 2226215.

E-Mail: cexshill@exchse.nic.in

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

Dated:

To

29/10/04

04 OCT 2004

The Deputy/Assistant Commissioner
Central Excise Division

GUWAHATI

The Superintendent ()
Central Excise Hqrs. Office
Shillong.

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

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

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

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

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

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

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

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

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

Please acknowledge receipt.

10.10.04
B. TH/MAIL
ADDITIONAL COMMISSIONER (P&IV)

After
for
reference

TRANSFER PROFORMA

1. Name of the Officer (In Block Letters):

2. (a) Date of App'tt. In the Deptt. and grade: _____
 (b) Date of App'tt. In the present grade: _____
 (c) Date of Birth: _____

3. Name of the Home town & State: _____

4. HISTORY OR POSTING SINCE ENTRY

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5. Please indicate choice of posting in order of preferences:

1 to 3 for Central Excise and 4 to 6 for Customs with brief reasons:

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

STATION:

DATE:

SIGNATURE OF OFFICIAL AND DESIGNATION

Forwarding Officer's Comments:

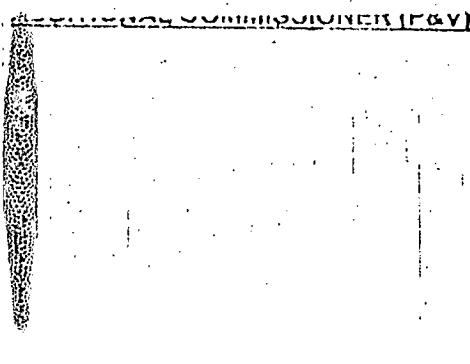
(i) The particulars given above are verified and found to be correct.

STATION:

DATE:

SIGNATURE, NAME AND DESIGNATION
OF THE FORWARDING AUTHORITY

*M. S. J. S.
Advocate*



02-10-2005 REC'D 07-06-05 10:00 A.M. CUSTOMS & CENTRAL EXCISE & H.S. TEL: 0364-211509

F:01



GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
MORELLO COMPOUND, M.G. ROAD, SHILLONG

Tel. 91-0364-2224751 / 2223030, Fax. 91-0364-2223428 / 2226215, E-Mail: cexshill@excise.nic.in

ESTABLISHMENT ORDER NO 75/2005
DATED SHILLONG, THE 8th JUNE 2005

Subject: - Transfer and posting in the grade of Superintendent, Group 'B' officers of Shillong Central Excise Commissionerate - order reg.

Consequent upon Inter - Commissionerate transfer Order No.72/2005 issued under even no. 55091 - 56190 dated 3rd June 2005, the following transfer and posting in the grade of Superintendent, Group 'B' officers of Central Excise Shillong Commissionerate is hereby ordered with immediate effect and until further orders.

S. No.	NAME OF THE OFFICER	FROM	TO
1.	Shri Sukanta Das	Statistics Br. Shillong.	Appeal Br., Shillong.
2.	Shri Abhijit Dey	CC's Office, Shillong.	Anti-Evasion, Shillong.
3.	Shri P.K. Bhattacharjee	Audit Br., Shillong.	Statistics Br., Shillong.
4.	Shri D.K. Dab	Tech. Br. Dibrugarh	Audit Br., Shillong.
5.	Shri T.K. Kar	Dhubri Division	Audit Br., Shillong.
6.	Shri N.K. Das	Silchar Division	Audit Br., Shillong.
7.	Shri Joydeep Dutta	Silchar Division	Audit Br., Shillong.
8.	Smti. Z.K. Shadap	Shillong Division.	CC's Office, Shillong.
9.	Smti. L. Saito	Shillong Division.	Insp. Cell, Shillong.
10.	Shri A. Chakraborty	Law Br., Shillong.	Training School, Shillong.
11.	Shri N. Singha	Tech Br., Jorhat Division	CIU-VIG Br., Shillong.
12.	Shri M.K. Dutta	DRI, Guwahati	CIU-VIG Br., Shillong.
13.	Shri G. K. Bhuyan	Tech. Br. Dibrugarh	Law Br., Shillong.
14.	Shri C. Shullai	Shillong Cus. (Disposal).	PRO, Shillong.
15.	Shri C. Hauzal	Audit Br, Shillong.	Shillong Division
16.	Shri K. Thapa	Audit Br. Shillong.	Shillong Division.
17.	Shri Ashish Roy	Appeal Br., Shillong	Shillong Division.
18.	Shri K.K. Malakar	CC's Office, Shillong.	Shillong Division.
19.	Shri K.C. Deka	Hqrs. Audit, Guwahati.	Guwahati Division
20.	Shri D.K. Sharma	Hqrs. Audit, Guwahati.	Guwahati Division.
21.	Shri D.R. Saha	Guwahati Customs	Guwahati Division.
22.	Shri N.R. Das	Aizawl Customs	Guwahati Division.
23.	Shri L.S. Das	Audit Br., Dibrugarh	Guwahati Division.
24.	Shri R.K. Borah.	Tezpur Division	Hqrs. Audit, Guwahati
25.	Shri H.C. Kalita	Computer Ctr., Dibrugarh	Hqrs. Audit, Guwahati.
26.	Smti. R.R. Bhowmik	Agartala Customs	Silchar Division.
27.	Shri S.K. Nandi	Karimganj Customs	Silchar Division.
28.	Shri T.K. Singh	Karimganj Customs	Silchar Division.
29.	Shri S. Chakraborty	Tezpur	Silchar Division.

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30.	Shri G.C. Paul	Aizawl Customs.	Silchar Division.
31.	Shri H.P. Roy	Law Br., Dibrugarh	Silchar Division
32.	Shri N.M. Baisnya	Hqrs. Audit, Guwahati	Dhubri Division.
33.	Shri P.R. Das	Audit Br., Dibrugarh	Dhubri Division.
34.	Shri G.C. Mandal	CIU-VIG Br., Dibrugarh	Dhubri Division
35.	Md. M. F. Islam	Audit Br., Dibrugarh	Dhubri Division
36.	Shri S. Dov	Tezpur Division.	Nagaon Division.
37.	Shri L.H. Fahriem	Aizawl Customs	Nagaon Division.
38.	Shri N.C. Kataki	Tezpur Division.	Nagaon Division

The Officer at Sl. Nos. 11, 13, 22, 23, 24, 25, 29, 30, 33, 34, 35, 36, 38, will not be entitled TTA as they have been transferred on the basis of their representations before completion of normal tenure in the Commissionerate.

This order disposes off all the representations received in the grade of Superintendents in the Commissionerate.

(KARNAIL SINGH)
COMMISSIONER

C.No.II(3)7/ET-III/2005/90 - 160

Dated : 08/06/2005

Copy forwarded for information & necessary action to:-

1. The Chief Commissioner, Customs & Central Excise, Shillong Zone, 'CRESCENS' Building, M.G. Road, Shillong.
2. The Commissioner, Customs (Preventive), NER, Shillong.
3. The Commissioner, Central Excise, Dibrugarh.
4. The Commissioner (Appeals), Central Excise, Guwahati.
5. The Additional Commissioner (P&V), Central Excise, Shillong/Dibrugarh.
6. The Additional Commissioner (Tech.), Central Excise Hqrs. Office, Shillong.
7. The Additional Commissioner, Customs (Preventive), 'NER', Shillong.
8. The Joint Commissioner (A/E), Central Excise Hqrs. Office, Shillong/The Joint Commissioner, Central Excise, Dibrugarh.
9. The Deputy/ Assistant Commissioner, Central Excise/Customs, _____ Division, Shillong/Dibrugarh Commissionerate. Copy(s) meant for the concerned officer(s) is/are enclosed.
10. The CAO, Central Excise Customs, Shillong/Dibrugarh Commissionerate.
11. The PAO, Customs & Central Excise, Shillong.
12. Accounts I & II/C Confidential Branch/CIU - Vigilance Branch, Central Excise Hqrs. Office, Shillong.
13. Shri/Smti. _____, Superintendent for compliance.
14. The General Secretary Group 'B' Superintendents Association, Customs & Central Excise, Shillong/Dibrugarh.
15. Guard File.

(S. NUNTHUK)
ADDITIONAL COMMISSIONER (P&V)

To
The Commissioner,
Central Excise Commissionarate,
Shillong...793 001.

(Through proper channel)

Sir,

With due respect, I beg to draw your kind attention to the followings:

1. That Sir, I got Promotion in the Grade of Superintendent on 23-09-2002 and transferred from Dharmanagar to Agartala Range vide Order No 163/2002 DT. 11-11-2002 and accordingly I joined at Agartala Range on 25th November, 2002.
2. That Sir, now I am transferred to Shillong vide your Order No. 75/2005 dt. 08-06-2005. I have not completed normal tenure in a particular posting as per Transfer guideline.
3. That Sir, I am afraid my family welfare will be badly disrupted as I have been affected in the middle of the year. My child who is studying under Tripura Board of Secondary Education, in the mid-year shift of the child will also jeopardise the academic carrier.
4. That Sir, I am not afraid of my transfer and as duty bound sub-ordinate I have always complied the transfer orders and this is my first representation simply for retaining me at my present place of posting at Agartala, only to safe guard my family welfare, specially the education of my child.

*Atul D
Advocate*

Under the above circumstances my representation may be sympathetically considered and retain me at present place of posting unto *March, 2006*.

Yours faithfully

Post 09/06/2005
(Joydip Dutta)
Superintendent
Central Excise: Agartala Range

Copy to:

1. The Chief Commissioner,
Customs & Central Excise,
Shillong.793 001. For favour of his necessary action.
2. The Assistant Commissioner,
Central Excise Division,
Silchar....788 001. For information and he is
also requested not to relieve me till the dispose off my
present representation by the Commissioner.

Post 09/06/2005
JOYDIP DUTTA
Superintendent
Central Excise Range
Agartala.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 127/2005

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

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

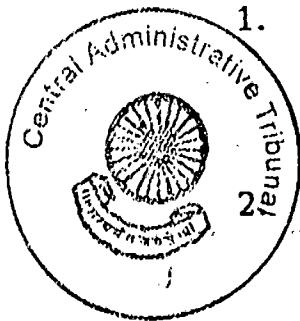
The Hon'ble Sri K.V. Prahladan, Administrative Member.

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

... Applicant

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

Versus -



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

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

... Respondents

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

ORDER (ORAL)

SIVARAJAN. J. (V.C.)

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

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

*Abhijit
Jit
Amit*

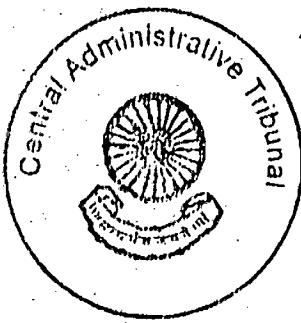
17-

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

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

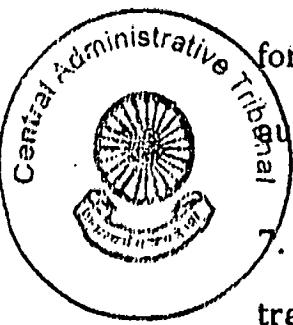
4. It is stated that the transfer orders made in June 2005 is against all the accepted norms for transfer contained in Annexure - A and B of the application and are made only to oblige certain Superintendents out of turn and against the norms as could be seen from Annexure - D order itself. According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

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



GPY

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



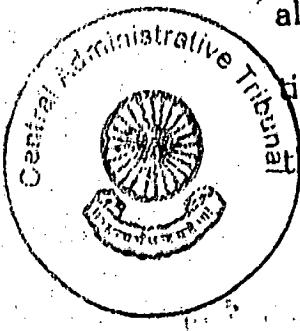
7. In the instant case the transfer orders shows that these transfers are not made in public interest or in the exigencies of Administration. Annexure - D order shows that the said order was the result of representations made by certain Superintendents. It is not clear whether any representations were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

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

SPW

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

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



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

sd/ VICE CHAIRMAN

sd/ MEMBER (A)

TRUE COPY

stamped

Narayan
14.6.05
Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

stamped
14/6/05

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

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

136/2005.

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

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

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

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

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

Versus -

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

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

ORDER (ORAL)

SIVARAJAN J.(V.C)

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

*Affidavit
for
Petition*

Open

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

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

Gp/

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

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

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

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

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

The O.As are disposed of accordingly.

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

Sd/VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 142 of 2005

Date of Order: This the 15th day of June 2005.

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

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

Shri Gaigongdin Panmel
Additional Commissioner,
Customs Preventive Commissionerate,
N.E.R., Shillong.

....Applicant

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

• versus •

1. Union of India, represented by the Secretary (Revenue), Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Central Board of Excise & Customs (through its Chairman) North Block, New Delhi.
3. Chief Commissioner, Customs & Central Excise Shillong Zone, Crescens Building, M.G. Road, Shillong-1.
4. Commissioner of Customs (P) North Eastern Region, Customs House, 110-MG Road, Shillong.
...Respondents

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

*Advocate
Mr. A.K. Chaudhuri*

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ORDER

SIVARAJAN. J. (V.C.)

The applicant is working as Additional Commissioner, Customs Preventive Commissionerate, N.E.R., Shillong since 18.3.2002. After completing three years of service in the North Eastern Region, pursuant to option called for by the Central Board of Excise and Customs, the applicant submitted option on 27.4.2005 (Annexure-C) for retention in the same station, i.e. Shillong for at least one year since his son is in the middle of the academic year. It is the grievance of the applicant that ignoring the said option, the applicant has now been transferred to Kolkata Commissionerate.

2. Mr J.L. Sarkar, learned counsel for the applicant, submits

that since the applicant's son is studying at Shillong and is in the middle of the academic year he requested for his retention at Shillong itself at least for one year and without considering the said request the impugned order was passed.

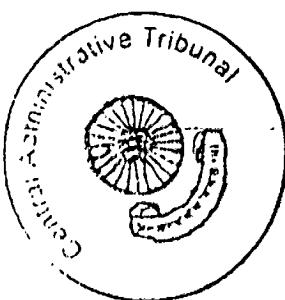
3. We have also heard Mr A.K. Chaudhuri, learned Addl.

C.G.S.C. for the respondents.

4. Since the option exercised by the applicant in Annexure-C is not seen considered and since the impugned order was passed by considering the representations of various other persons, we are of the view that the respondents are to be directed to consider the case of the applicant also. For the said purpose, we direct the applicant to make a representation with reference to Annexure-C option within a period of ten days from today before the respondent No.1. If such a representation is filed the respondent No.1 will consider the same and pass appropriate orders within a period of six weeks thereafter. The

Ans.

applicant will produce this order alongwith the representation before the respondent No.1 for compliance. If the application is filed within the time specified above, the respondents will retain the applicant in the present place till the disposal of the representation directed to be filed hereinabove.



The O.A. is accordingly disposed of.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

Appended to be true Copy
Exhibit 5/15/2005

16/6/05
Section Officer (A)
C.A.T. GUWAHATI BRANCH
(Guwahati, 16/6/05)

16/6/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.144 of 2005

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

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

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

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

.....Applicant

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

- Versus -

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

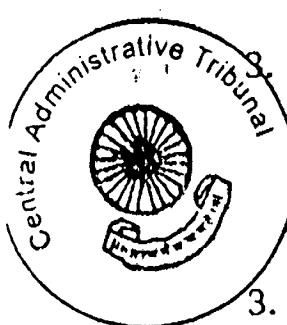
2. The Chairman
CBEC,
Department of Revenue
North Block, New Delhi.

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

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

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

*After
Signature*



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ORDER

SIVARAJAN. J. (V.C.)

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

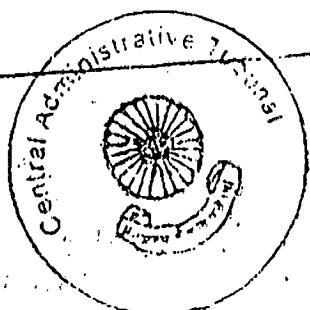
2. We have heard Mr J.L. Sarkar, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents. It is not clear as to whether the respondents had offered an opportunity to make representation to all the officers in the post of Joint Commissioner. However, it is seen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

Appt/

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

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

The application is accordingly disposed of.



certified to be true copy
initials affixed

sd/ VICE CHAIRMAN
sd/ MEMBER (A)

N. Sengupta
16-6-05
Section Officer (S)
C.A.T. GUWAHATI BRANCH
Guwahati, Assam

N. Sengupta
16-6-05