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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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O.A/T.A No. 242/2007

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Kalb
09.10.19

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:
ORDERS SHEET

1. Original Application No. 242/07
2. Mise Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(S) K.B. Bhujel -VS- Union of India & Ors

Advocate for the Applicants:- M. Chanda, S. Nath, S.K. Joshi, H. de Banta

Advocate for the Respondants:- case.

Notes of the Registry	Date	Order of the Tribunal
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This application is in form
is filed, C.F. No. 15-10-
deposited with IP/MD
No. 326, C40885-
Dated 22.8.07

Registrar

Chanda

Petitioner's copies for issue
notices are received
with envelopes.

P.A.

13.9.2007

When the matter came up for
consideration, Mr.M.Chanda, learned
counsel for the Applicant submitted that
he does not want to press the O.A. and
therefore prays for withdrawal of the O.A.
with a liberty to approach appropriate
forum if necessary.

The O.A. is allowed to be withdrawn
with such liberty and therefore, dismissed
as withdrawn.

L
Vice-Chairman

/bb/

25.9.07

Copy of the order handed
over to the L/Adv. for the
applicant.

HS

10 SEP

গুৱাহাটী বেন্চ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 242/2007

Shri Krishna Bahadur Bhujel

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 01.02.2007 Applicant is now posted at Dhubri w.e.f 01.02.2007 as Deputy Commissioner, Central Excise.
- 01.02.2010 Applicant has only few days left to retire from service and his wife is living alone at Shillong with his school going Gra^di Daughter.
- 22.06.2007 Applicant submitted his representation to respondent no. 2 for his transfer from Dhubri to Shillong or at Aizawl Customs Division under Shillong Zone to get the help from his own relatives.
(Annexure-I)
- 31.07.2007 The then Chief Commissioner being satisfied with the genuine problems of the applicant was pleased to consider the applicant and transferred the applicant from Dhubri Central Excise to Aizawl Customs Division. But more than a month has elapsed, applicant is not being relieved from Dhubri Central Excise. After that he made an inquiry at Shillong Commissionerate and found that New Chief Commissioner ^{trying to} modify and change the transfer order dated 31.07.2007 and accommodate some other person in his place.
(Annexure-II)

Hence this original application.

PRAYER

1. That the respondents be directed to release the applicant forthwith from Dhubri Central Excise and enable him to join at Aizawl Customs Division immediately in terms of transfer order dated 31.07.2007 (Annexure-II).

Krishna Bahadur Bhujel

2. Costs of the application.

3. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for

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

1. That the Hon'ble Tribunal be pleased to direct the respondents not to modify or change the transfer order dated 31.07.2007 in so far as the applicant is concerned and not to issue any order otherwise which would be prejudicial to the interest of the applicant.
2. That the respondents be directed that pendency of this application shall not be bar to the respondents for releasing the applicant from Dhubri Central Excise as prayed for, so as to facilitate his joining at Aizawl.

Krishna Bahadur Bhargava

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A. No. _____/2007

Shri Krishna Bahadur Bhujel. : Applicant.

-Versus-

Union of India & Ors. : Respondents.

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Date:- 3/09/2007.

Filed By:
Savjit Choudhary
Advocate

Krishna Bahadur Bhujel

Filed by: - *Neelish Kumar*
Through: - *S. Choudhury*
Advocate
on 3/9/2007.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. 242/2007

BETWEEN:

Shri Krishna Bahadur Bhujel,
S/o- Late Ranbir Bhujel,
Deputy Commissioner, Central Excise,
Central Excise office,
Dhubri.

---Applicant.

-AND-

1. The Union of India,
Represented by the Secretary
To the Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.
2. The Chief Commissioner,
Central Excise & Customs,
Shillong Zone,
3rd Floor, Crescens Building,
M.G.Road, Shillong-79300.
3. The Commissioner,
Central Excise,
Morello Compound,
M.G.Road,
Shillong-793001.

..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the order (s) against which this application is made:

This application is made not against any particular order but against non-release of the applicant from Central Excise office, Dhubri and preventing

Krishna Bahadur Bhujel

him from joining at his new place of posting at Aizawl in terms of the transfer order no. DC/160/2007 dated 31.07.2007, which was issued after due consideration of representation submitted by the applicant for his said posting at Aizawl as one of his choice station.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the applicant has now been working as Deputy Commissioner, Central Excise and posted at Dhubri. He has earlier served at different places like Ghazipur (UP), Shillong, Jorhat and has eventually been posted at Central Excise, Dhubri w.e.f 01.02.2007.
- 4.3 That the applicant is due to retire from services on 01.02.2010 and as such, he is left with only about two and a half years of service at his credit. His son and daughters are all staying abroad and his wife is living at his home in Shillong, who is unable to accompany him since her school going grand daughter is staying with her in Shillong. As such he has been staying alone in his place of posting at Dhubri and there is none to attend him even in case of his sickness.

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- 4.4 That being situated as stated above and being at the fag end of his service career, the applicant submitted one representation on 22.06.2007 through proper channel to the respondent no. 2 stating his domestic problems and prayed for his transfer from Dhubri and posting at his home place Shillong or at Aizawl Customs under Shillong zone, where he has got his own relatives to help him.

(Copy of representation dated 22.06.2007 is annexed hereto and marked as Annexure-I).

- 4.5 That being satisfied regarding the genuine problems of the applicant, the then Chief Commissioner, Central Excise and customs was pleased to consider the prayer of the applicant and vide his transfer order issued under no. DOPM/AC-DC/160/2007 dated 31.07.2007 transferred the applicant from Dhubri Central Excise and posted him at Aizawl Customs Division.

(Copy of transfer order dated 31.07.2007 is is annexed hereto as Annexure- II).

- 4.6 That although more than a month time has since elapsed, the applicant is not being relieved from Dhubri Central Excise and as such he is unable to join his new place of posting at Aizawl. He has persuaded the matter but even inspite of that no action has been taken to release him and his joining at Aizawl has become a matter of concern for him. It is relevant to mention that a new incumbent has joined as Chief Commissioner in the meantime.

- 4.7 That the applicant most respectfully begs to state that being anxious, he made enquires in the Commissionerate at Shillong and he could understand that after the joining of the New Chief ommissioner, there is a move to accommodate some one else at Aizawl Customs Division and actions are afoot to modify and change the transfer order dated 31.07.2007 issued by the then Chief Commissioner. From the information's gathered, the applicant has got genuine and reasonable apprehensions that the

Krishna Bahadur Bhuyal

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aforesaid transfer order may be modified/changed to the prejudice of the applicant and he may be deprived by his posting at Aizawl, which is conspicuous from the stunned silence of the respondents regarding release of the applicant.

- 4.8 That the applicant most humbly and respectfully begs to state that his transfer and posting to Aizawl has been granted after conscious consideration of his representation and proper examination of the facts by the then Chief Commissioner and any decision subsequent thereto to the disadvantage of the applicant if any will be malafide, illegal, unfair and violative of the principles of natural justice.
- 4.9 That the proposed move to accommodate some one else at Aizawl in place of the applicant and to modify the transfer order dated 31.07.2007 to the disadvantage of the applicant is being attempted on extraneous considerations and as bad in law.
- 4.10 That the applicant most respectfully begs to state that utter inaction of the respondents to release the applicant from Dhubri Central Excise has stood as a bar to the applicant for his joining at Aizawl in terms of the valid transfer order dated 31.07.2007, which has been adversely affecting the applicant. As such finding no other alternative, the applicant is now approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interest of the applicant by directing the respondents to release the applicant from Dhubri Central Excise and to facilitate his joining at Aizawl.
- 4.11 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

Krishna Bahadur Bhujel

- 5.1 For that, the transfer and posting of the applicant from Dhubri to Aizawl vide order dated 31.07.2007 (Annexure-II) was made by the Authority after due and conscious consideration of the representation submitted by the applicant.
- 5.2 For that, the transfer order dated 31.07.2007 is a valid transfer order, issued by the Competent authority which cannot be left unattended and the respondents are vested with the responsibility of releasing the applicant in order to facilitate his joining at his new place of posting i.e Aizawl.
- 5.3 For that, the applicant has acquired a valuable right for his release from Dhubri and joining at Aizawl in terms of the order dated 31.07.2007.
- 5.4 For that, non release of the applicant from Dhubri Central Excise and preventing him from joining at his new place of posting at Aizawl is malafide, arbitrary, unfair and amounts to defiance of the Govt. order.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on

Krishna Bahadur Bhujel

perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the respondents be directed to release the applicant forthwith from Dhubri Central Excise and enable him to join at Aizawl Customs Division immediately in terms of transfer order dated 31.07.2007 (Annexure-II).

8.2 Costs of the application.

8.3 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for

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

9.1 That the Hon'ble Tribunal be pleased to direct the respondents not to modify or change the transfer order dated 31.07.2007 in so far as the applicant is concerned and not to issue any order otherwise which would be prejudicial to the interest of the applicant

9.2 That the respondents be directed that pendency of this application shall not be bar to the respondents for releasing the applicant from Dhubri Central Excise as prayed for, so as to facilitate his joining at Aizawl.

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11. Particulars of the L.P.O

i)	LP.O No.	: 32G 040 885 .
ii)	Date of issue	: 22. 8. 07 .
iii)	Issued from	: G.P.O., Guwahati.
iv)	Payable at	: G.P.O., Guwahati.

12. List of enclosures:

As given in the index.

Krishna Bahadur Bhujel

VERIFICATION

I Shri Krishna Bahadur Bhujel S/o- late Ranbir Bhujel, aged about 58 years, working as Deputy Commissioner, Central Excise, Dhubri, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 3rd day of September 2007.

Krishna Bahadur Bhujel

To,

The Chief Commissioner
Customs & Central Excise, NER,
Shillong
(Through proper channel)

Sub: Prayer for transfer to Aizawl Customs Division - Reg

Sir,

With most humbly and respectfully, I beg to lay down the following facts for favour of your perusal and sympathetic order

That Sir, since my promotion to the grade of Assistant Commissioner, I have all along been posted in Central Excise and the particulars of my posting are given below for favour of your perusal.

Sl. No	Place of posting	Commissionerate	From	To
1	Govt. Opium & Alkaloid Works, Ghazipur (U.P.)	Chief Controller of Factories, New Delhi	29.06.1998	02.02.2000
2	C.E.(T) Hqrs, Shillong	Shillong Commissionerate	03.02.2000	02.11.2000
3	C.E. Jorhat	Dibrugarh Commissionerate	03.11.2000	04.09.2005
4	C.E. Hqrs (Audit)	Shillong Commissionerate	05.06.2005	31.01.2007
5	C.E. Dhubri	-do-	01.02.2007	Till date

That Sir, I, therefore, in the month of March 2006, represented praying for posting either at Shillong or at Guwahati as because of nearness to my home town Shillong.

That Sir, I have about two and half years of service left and desire for posting in such places where there are near relatives to look after me for food and lodging purpose and also in the event of self sickness.

That Sir, I am blessed with two daughters and one son. My daughters are married and staying with their husbands outside India and my only son has also gone to Sydney (Australia) and my wife alone is at home in Shillong, staying with one school going grand-daughter, hence she is unable to accompany me.

That Sir, presently there exist a vacancy at Aizawl Customs Division and at Aizawl I have my uncle's entire family, so if my prayer for posting at Aizawl is considered, my uncle's family will not only provide me food and lodging but will be an additional help in case of any sickness.

Certified to be true copy
Surajit Choudhury
Advocate
on 3/9/07.

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I, therefore, pray you to kindly consider my posting at Aizawl Customs Division so that I may get chance to work in Customs before my retirement.

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For which act of this kindness, I shall remain under the deep debt of gratitude

Yours' faithfully.


(R.B. BHUJEL)
Central Excise,
Dhubri.

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ANNEXURE-II

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

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

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

ORDER

DOPM/AC - DC/160/2007
ORDER NO. 50/2007

Dated : 31st July, 2007.

Dated : 31st July, 2007.

The following Transfer and Posting in the grade of Deputy Commissioner and Assistant Commissioner under Shillong Zone is ordered with immediate effect and until further order.

SL. NO.	NAME OF THE OFFICER	DESIGNATION	FROM	TO
1.	Shri K.B. Bhujel	Deputy Commissioner	Dhubri Central Excise	Aizawl Customs Division to hold additional charge of Karimganj Customs Division
2.	Shri Gopinath Dutta	Deputy Commissioner	Karimganj Customs	Dhubri Central Excise Division
3.	Shri Bijoy Kumar Tiru	Assistant Commissioner	On transfer to Shillong Zone	Nagaon Central Excise Division
4.	Shri P.K. Das	Assistant Commissioner	On transfer to Shillong	Chief Commissioner's Unit, Shillong.

Sd/-

(A.S. R. NAIR)

CHIEF COMMISSIONER.

C. No. II(3)24/CCO/SH/2007/ 6135-49

Dated :- 31st July, 2007.

Copy forwarded for information and necessary action to :-

- 1 AUG 2007

1. The Joint Secretary (ADMN.). Central Board of Excise and Customs, North Block, New Delhi - 110 001.
2. The Commissioner (DOPM). Customs and Central Excise, 412 - A, Deep Shikha Building, Rajendra Place, New Delhi - 110 008.
3. The Commissioner, Central Excise, Shillong.
4. The Commissioner, Central Excise, Dibrugarh.
5. The Commissioner, Customs (P), N.E.R., Shillong.
6. The Commissioner (Appeals), Customs and Central Excise, Guwahati.
7. The Chief Accounts Officer, Customs and Central Excise, Shillong.
8. The Pay and Accounts Officer, Customs and Central Excise, Shillong.
9. Shri K.B. Bhujel, Deputy/ Assistant Commissioner.

Attested

B. Sanyal
9/8/07

Inspector General (Tech)
Central Excise Division
N H I B R I.

certified to be true copy
Surajit Choudhury
on 2/9/07.

(SWATANTRA KUMAR)

ADDITIONAL COMMISSIONER.