

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

(1) MP/15/2008 under pg-1 to 2 of INDEX

O.A/T.A No. 302/2007

10.9.08

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R.A/C.P No.....

(3) MP 16/09 under sheet not found

E.P/M.A No. 15 & 32/2008

a.M.P 16/2008

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SECTION OFFICER (Judl.)

Shabnam
11.10.17

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:**

1. Original Application No. 302/07

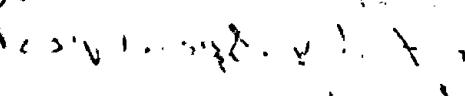
2. Miss Petition No. /

3. Contempt Petition No. /

4. Review Application No. /

Applicant(s) Shri. Dilipda Shengpilamg vs Union of India & Ors

Advocate for the Applicants... M. Chanda, S. Nath.....
Mrs. U. Datta.....

Notes of the Registry	Date	Order of the Tribunal
This application is in form is Sua C.P. for Rs. 50/- and is filed under IPO/BD No. 326042582 Date 12.9.07	10.12.07	On being mentioned by Mr M.Chanda, learned counsel appearing for the applicant this matter is taken up. Heard Mr M.Chanda, learned counsel for the applicant and Mr G.Baishya, learned Senior Standing counsel for Union of India, on whom a copy of this O.A has been served.
Petitioners epis for one notices are received with reliefs. Copy shared		Call this matter on 12.12.2007, when the learned Sr. C.G.S.C to obtain instruction on the matter. On 12.12.07, matters relating to admission and interim prayer shall be taken up.
Par 10/12/07		 (G. Ray) Member(A)
		 (M. R. Mohanty) Vice-Chairman
	pg	

pg

12.12.2007

Heard Mr.M.Chanda, learned

counsel appearing for the Applicant and Mr.G.Baishya, learned Sr. Standing counsel for the Union of India.

Issue notice to the Respondents requiring them to file their written statement before 19.12.2007.

Mr.G.Baishya, learned Sr. Standing counsel for the Union of India, takes notices ^{all} on behalf of the Respondents. 7 (seven) extra copies of this Original Application be supplied to him immediately in course of today.Call this matter on 19.12.2007. No coercive action against the Applicant shall be taken by the Respondents in the meantime.

7 copies of applications with order
dt. 12.12.07 handed over
to Mr. G. Baishya, Sr. C. C. S. C.
Gautam Ray
S. C. S. C.

7 copies of applications with
order dt. 12.12.07 handed over
to Mr. G. Baishya, Sr. C. C. S. C.

7 copies of this order be supplied to Mr. G. Baishya, for onward transmission to all the Respondents.

Gautam Ray
Member (A)

M.R. Mohanty
Vice-Chairman

Mr.G.Baishya, learned Sr. Standing counsel for the Union of India, files written statement after serving a copy thereof on learned counsel for the Applicant. Mr.M.Chanda, learned counsel appearing for the Applicant, seeks some time to file rejoinder. Prayer is allowed.

Call this matter on 08.01.2008
awaiting rejoinder from the Applicant.

W/S submitted to
the Respondents. Copy served.
Rejoinder not filed.

BB

M.R. Mohanty
Vice-Chairman

08.01.2008 No rejoinder has yet been filed in this case. Mr.M.Chanda, learned counsel for the Applicant, undertakes to file the rejoinder by tomorrow.

Dt. 8.1.08.
Pl. supply free copies
to the order to both the
parties.

Order dt. 8/01/08
issuing to learned
advocate, for both
the parties.

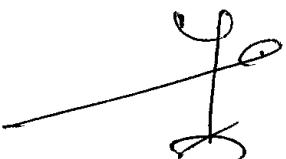
Con
8/1/08. D/N^o - 90, 91
Dt = 8/1/08.

Call this matter on 29.01.2008.

In the meantime, without prejudice to the rival claims to be adjudicated in this case, the Applicant should be allowed to resume duties at Shillong headquarter.

Free copies of this order be supplied to the learned counsel appearing for both the parties.

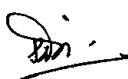

(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

/bb/

15.1.08

Rejoinder submitted
by the Applicant.
undertaking given
for service.



24
O.A.302 of 07

29.01.2008

In this case rejoinder has been filed by the Applicant, ~~on whom~~ copy thereof has already been served on Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents.

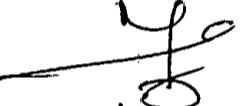
On the prayer of learned counsel appearing for the Applicant, the M.P. No. 15/08 and M.P. 16 of 2008 (filed by the Applicant) ^{are} to be called for consideration on 8th February, by which time the Respondents may file their objection, if any, to the prayer made in the M.P.s.

Call this matter on 08.02.2008.

33
7.2.08

objection not filed.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

14.3.08
Lm

An objection
billed in O.A.302/07
by the Respondents.
Copy served.

08.02.2008

In this case written statement and rejoinder have already been filed by the parties. Subject to the legal pleas to be examined at the time of final hearing, the case is admitted.

No objection has been filed as yet by the Respondents in M.P. Nos. 15 and 16 of 2008.

Call this matter on 13.2.2008.


(Khushiram)
Member(A)

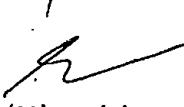

(M.R. Mohanty)
Vice-Chairman

Lm

13.02.2008

On the prayer of Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India, this case stands adjourned as he intends to file objection to Misc. Petition Nos. 15 & 16 of 2008.

Call this matter on 12th March, 2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

14.3.08

12.03.2008

Call this matter on 19.03.2008 alongwith M.P. 15, 16 and 32 of 2008.

An objection
filed in connection
with O.A 302/07
Copy served.


(M.R. Mohanty)
Vice-Chairman

19.3.08

On the prayer of Mr. M. Chanda, learned counsel appearing for the Applicant, call this matter on 8th May, 2008.

The case is ready
for hearing.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

15.5.08

Addl. Rejoinder
filed by the applicant.

07.05.08

10-6
O.A.302/07 with M.P.15/08, 16/08 & 32/08

08.05.2008

Heard Mr M.Chanda, learned counsel appearing for the Applicant and Mr G.Baishya, learned Sr.Standing counsel representing the Respondents department.

2. M.P.15/08 has been filed by the Applicant to call for certain records from the custody of the Respondents. Objections to the said M.P.15/08 has already been filed. Heard. Learned Sr. Standing counsel is directed to keep the records (specified in M.P.15/08) ready with him by the next date for perusal of the Bench.

3. The Applicant has also filed M.P.16/08 to implead an Officer of the Respondents organization by name and by filing M.P.32/08 the Applicant intends to bring on records (of the O.A) certain new grounds. Separate objections to both the M.Ps 16/08 and 32/08 have already been filed by the Respondents.

4. Having heard the learned counsel for the parties M.P.16/08 and 32/08 are allowed.

5. New Respondent No.8 is added to the O.A. Registry to issue notice to the newly added Respondent requiring him to file reply by the next date.

6. The Applicant is permitted to file consolidated copy of the O.A. incorporating the amendments(sought in M.P.32/08) by 12.05.2008. He should serve 7 extra copies of the consolidated O.A. on Mr G.Baishya, learned Sr. Standing counsel by 12.5.2008.

17
Dt. 8.5.08.PL- issue notice to the new
Respondent.

Baishya

copy of order dt
8.5.08 received on
behalf of Mr. G. Baishya
(Sr. C.S SC) Apurba Das on
19.5.08

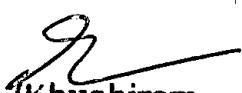
As per order dt. 8/5/08, learned
counsel of the applicant deposited
Rs. 35/- only vide receipt No 2683
(dt. 19/5/08) for issuing notice R.No-8.
Notice & order dt- 8/5/08
Send to D/Section for issuing
to newly added respondent
no- 8 by regd. A/D post.

Case No- 2367 pg
19/5/08. Dt= 21/5/08.

20.06.2008

Call this matter on 8th August, 2008.19.5.08An amended petition
filed by the Applicant.

Copy served.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

Addl. Wks not filed.

21
19.6.08.

Mrs. U. Dutta, learned counsel
appearing for the Applicant is present. Mr. G.
Baishya, learned Sr. Standing Counsel
appearing for the Respondents is on
accommodation.

Call this matter on 28.08.2008 for
hearing.

24. 7. 08
Reply to the Rejoinder
filed by the Respondents.
Copy not served.

1m
PTT

(M.R. Mohanty)
Vice-Chairman

24. 7. 08
Wks filed to the
Respondents. Undertaking given

8
OA 302/07

The case is ready
for hearing.

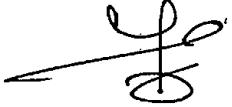
28.08.2008

On the prayer of the learned Counsel
for the Parties, call this matter on
10.09.2008 for hearing.

27.08.08.

nkm

(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

10.09.2008

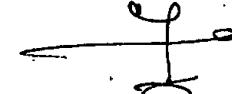
Heard Mr. M.Chanda, learned
counsel appearing for the Applicant and
Mr. G.Baishya, learned Sr. Standing
counsel appearing for the Union of India.
Perused the materials placed on record.

For the reasons recorded separately
this O.A. stands dismissed with cost.

Received copy of Judgment
for respondent No. 3
Debbie Jeffrey
16/9/08.
A. J. Symmey
Inspector (Law)
Government (Custom)

pg


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

copy received
for respondent
No. 3
Debbie Jeffrey

Mr. G. Baishya
16/9/08
16/9/08

8000.80.80 ac

(M.R. Mohanty)
Ex-Chairman

Received
Debbie
16/9/08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application Nos. 302 of 2007.

DATE OF DECISION: 10-09-2008.

Smti Lilyda Shangliang

.....Applicant/s

Mr M. Chanda

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mr. G. Baishya, Sr. C.G.S.C.

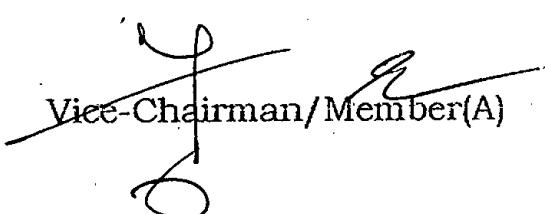
.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No.


Vice-Chairman/Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 302/2007.

Date of Order : This the 10th Day of September, 2008.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Smti Lilyda Shangliang
Superintendent, Customs
Dawki LCS, Customs Division,
P.O. Dawki, Meghalaya.

... Applicant

By Advocate Mr M. Chanda.

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. Central Board of Excise and Customs,
Government of India,
Through it's Chairman, North Block,
New Delhi-110001.
3. The Chief Commissioner,
Central Excise and Customs,
Shillong Zone,
3rd Floor, Crescens Building,
M.G.Road, Shillong-793001.
4. The Commissioner,
Customs (Preventive)
110, Mahatma Gandhi Road, Shillong-793001.
5. Joint Commissioner,
Office of the Commissioner, Customs (Preventive),
110, Mahatma Gandhi Road, Shillong-793001.
6. Shri A. Madhavan,
Joint Commissioner,
Office of the Commissioner, Customs (Preventive),
110, Mahatma Gandhi Road, Shillong-793001.
7. Shri B.P. Jaishi,
Superintendent,
Dawki LCS, Customs Division,
Dawki, Shillong.



8. Shri M.M.Marbaniany,
 Asstt. Commissioner, Customs,
 Office of the Chief Commissioner,
 Central Excise and Customs, Shillong,
 3rd Floor, Crescens Building,
 M.G.Road, Shillong-793001.Respondents

By Advocate Shri G. Baishya, Sr.C.G.S.C.

O R D E R (ORAL)

KHUSHIRAM (MEMBER-A)

The Applicant, who was serving as Superintendent of Dawki Land Custom Station, was transferred from Dawki to Shillong Headquarter, on 15.12.2007, allegedly in violation of the transfer policy 2006. Aggrieved by this transfer order, she filed this Original Application under Section 19 of the Administrative Tribunal Act, 1985 before this Tribunal seeking the following reliefs :-

- i) To set aside and quash the impugned transfer and posting order No.44/2007 issued vide letter bearing No.C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure-4).
- ii) To direct the Respondents to allow the applicant to continue at Dawki LCS, Customs Division, Shillong as Superintendent, Customs till completion of her fixed tenure of 2 years of posting.

The Applicant also prayed for an interim order as under :-

- a) To stay operation of the impugned transfer and posting Order No. C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure-4).
- b) To direct the Respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

On 12.12.2007 this Tribunal passed an interim order as under :-

"No coercive action against the Applicant shall be taken by the Respondents in the meantime."

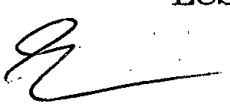
Again on 08.01.2008 the following order was passed:-



"In the meantime, without prejudice to the rival claims to be adjudicated in this case, the Applicant should be allowed to resume duties at Shillong headquarter."

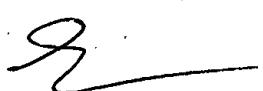
2. The Respondents have filed their written statement disclosing therein that the transfer of the Applicant was necessitated because of "unauthorized release of consignments" by certain officers posted at Dawki LCS who were reporting directly to the Applicant as Superintendent of Customs. The consignment that had been detained on the ground that it was to be illegally exported (in contravention of the provisions of the Customs Act, 1962) to Bangladesh. The event took place in mid September, 2007 and that the Assistant Commissioner came to know the matter only on 30.11.2007 when the Applicant's back dated letter dated 28.09.2007 was received by him. The claim of the Applicant (that she promptly brought the matter to notice of her immediate higher authority; who failed to take any action) is absolutely untrue and misleading. In the written statement it is also stated that Applicant's letter dated 28.09.2007 was actually a back dated letter as the letter shows that she had enclosed there with a complaint "dated 08.10.2007" which clearly established that the letter was back dated. Even the dispatch number of the same letter is misleading as the dispatch register show running number and the suffixing of the letter 'A' to the dispatch number" is a clear indication that it was inserted with malafide intention on a later date. The Respondents also contended that the transfer policy does not confer any legal right for continuance in any post, nor does it bar the administration from making transfers as and when the need arises on account of administrative exigencies. The inept handling of an extremely sensitive matter involving Government revenue, which was to be dealt with a sense of urgency and despatch by the Applicant. On learning of the action of the two inspectors regarding the seizure and subsequent release of the consignment in contravention to the

provisions of Customs Act, 1962 was kept under wraps for reasons best known to her, but the fact remains that the matter was brought to the notice of the higher authorities only on 30.11.2007 by a back dated letter (dated 28.09.2007) by the Applicant. The Applicant committed grave supervisory lapse contrary to her claims that she had informed the Assistant Commissioner regarding unauthorized release of consignments by a (back dated) letter dated 30.11.2007. It was felt that her continuance at this sensitive posting was not desirable because she took no remedial action in such a serious matter and delayed the matter inordinately for reasons best known to her. The Applicant was relieved of her charge with immediate effect because of the gravity of the case and the serious remification involved. Her continuance at LCS Dawki would have hampered an extremely sensitive investigation that has been launched to fix responsibility in case of fraud and loss of Government revenue. There was no mala fide of the transfer of the Applicant. When she was asked to hand over charge to her reliever, she proceeded on leave and subsequently produced a medical certificate to cover up her absence from duty. The Applicant was in the habit of neglecting her official duties and spent more times in Shillong rather than at Dawki LCS- her place of posting. The serious dereliction of duty on the part of the Applicant left the Respondents with no option but to transfer her with immediate effect from Dawki LCS on account of public interest and administrative exigencies of the case. By approaching this Tribunal the Applicant attempted to subvert the departmental process. The Applicant was fully aware of the events of Dawki LCS but failed to take any corrective steps and informed her superiors "after more than two and half months" of the incidents. This raises serious question about her motives. The Respondents therefore, were compelled to take immediate action to remove the Applicant from LCS, Dawki for her incompetence of questionable integrity.



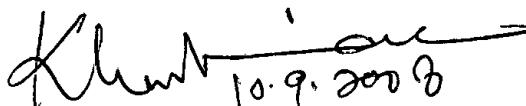
3. We have heard Mr M.Chanda, learned counsel appearing for the Applicant and Mr G. Baishya, learned Sr. Standing counsel appearing for the Respondents and perused the materials placed on record. During argument, the learned counsel appearing for the Applicant tried to make out a case in favour of the Applicant as she was transferred within a very short time from Dawki LCS to Shillong headquarter in violation of the transfer policy. Learned Sr. Standing counsel argued that transfer policy does not confer any legal right of continuance in any post, nor does it bar the department from making any transfer when public interest is involved and administrative exigency demand it. He contended that two trucks containing bags of ladies suit piece of Indian origin were concealed inside the jungle for illegal attempt to export them to Bangladesh. Learned Sr. Standing counsel has also invited attention to the letter dated 28.09.2007 purported to have been written to the Commissioner stating that on tips of the information, the customs officers detected a case of 20 (twenty) bags of ladies suits piece (each bags containing 100 pcs) of Indian origin concealed inside the jungle area near Kharlamin village with only 3 Km from the Bangladesh Border. These good were purposely kept inside the jungle for illegal attempt of Export them to Bangladesh. The Applicant was on leave on that day and Shri K.N.Sharma, Inspector was directed to look after the station work during her absence. The articles after seizure were released on 13.09.2007 night in between 21.00 hrs to 22.00 hrs. to the owner one Shri Raju Pal after taking a fine of Rs.2.5 lakhs only against the actual value of Rs.12 to 13 lakhs of the seized goods.

4. We have considered the rival contentions of both the parties and perused the materials placed before us. The Applicant was posted at Dawki LCS for a short while and during her posting she was found incapable to run the sensitive land customs station. It has been clearly established by her back dated



letter dated 28.09.2007 (enclosing a copy of the complaint dated 08.10.2007) that the matter could have been reported to the superior officers well in time as soon as she came to know of the incident. (How could a letter of September enclose therewith a letter of October of the same year ?) By remaining silent for a long time with a view to shift responsibility on her junior colleagues and to prove her innocence she prepared/manufactured back dated letter and sent it to her superiors. Obviously either she was not aware of as to what was going on at LCS which proves her incompetence or absence from duty and lack of sincerity or her direct involvement with the illegal activities (at the LCS Dawki) to the detriment of Government revenue and national interest with her other subordinate colleagues proving her complicity and questionable conduct. Obviously the plea of innocence by the Applicant cannot be accepted. By filing this case before this Tribunal she has tried to cover up her lapses and misused the process of the Court with a view to avoid departmental action against her.

5. In the above premises, the case, being devoid of any merit, is hereby dismissed with a cost of Rs.5000/- levied on the Applicant.


 10.9.2008
 (KHUSHIRAM)
 ADMINISTRATIVE MEMBER


 10.9.08
 (MANORANJAN MOHANTY)
 VICE CHAIRMAN

1/pg/

19 MAY /

गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

AMENDED ORIGINAL APPLICATION

O. A. No. 302 /2007

Smti Lilyda Shangpliang

-Vs-

Union of India and Others.

SYNOPSIS OF THE APPLICATION

Applicant while serving as Superintendent, Dawki Land Custom Station, she is sought to be transferred and posted from Dawki LCS Customs Division to Customs Headquarter, Shillong vide impugned order dated 05.12.07 just after completion of 1 year 3 months at Dawki LCS in violation of transfer policy 2006. In the impugned transfer order dated 05.12.07 it has been directed to the respondent No. 7 to assume charge by 06.12.07 with a malafide intention in order to accommodate respondent No. 7 at Dawki LCS without providing any opportunity to the applicant to handover charge. The impugned transfer order 05.12.07 is issued neither in public interest nor in the interest of administrative exigency rather it has been issued in order to accommodate respondent No. 7 at Dawki L.C.S.

LIST OF DATES

11/14.08.2006- Applicant was transferred and posted to Dawki L.C.S as Superintendent. (Annexure- 1)

16.08.2006- Applicant joined at Dawki LCS. (Annexure- 2)

20/21.11.06- Transfer policy 2006 issued by the respondent No. 3. In terms of the said transfer policy applicant is entitled to be posted at Dawki LCS till completion of her fixed tenure of 2 years. (Annexure- 3)

17.01.2007- Chief Commissioner, NER Shillong issued routine transfer order in the cadre of Superintendent Gr. 'B'. (Annexure- 5)

13.09.2007- Applicant was on casual leave.

14.09.2007- Applicant was on casual leave.

15.09.2007 and 16.09.2007- Saturday and Sunday.

17.09.2007- Applicant resumed duty at Dawki LCS. Applicant came to learn from Gr. D staffs (Sri K.K. Singh, Havildar and Sri Ramanand Roy, Sepoy) that two of the Inspectors posted at Dawki LCS seized

*found
Guwahati
Smti
19.05.08*

19 MAY 2008

ii

गुवाहाटी न्यायर्पाठ
Guwahati Bench

consignment and subsequently released the same on 13.09.2007 in between 21 hrs and 22 hrs (after office hours) when the applicant was on casual leave and did not report the seizure and subsequent release of the same to the applicant.

17.09.2007 to 21.09.2007- Applicant of her own investigated the matter and got satisfied herself about the seizure of consignment and subsequent release of the same by two Inspectors.

22.09.2007- Applicant personally meet her immediate controlling officer i.e. Asstt. Commissioner, Customs, Shri M.M. Marbaniang at Shillong and appraised him in details about the incident to the Asstt. Commissioner, Customs.

28.09.2007- Applicant prepared a complain and handed over it to the Asstt. Commissioner, Customs Shri M.M. Marbaniang, who is her immediate controlling officer.

02.10.2007- Applicant talked to the Commissioner over his mobile phone. But before the applicant could appraise the Commissioner about the seizure of consignment and unauthorised release of the same by two Inspectors at Dawki LCS, the Commissioner directed her to come through proper channel and to discuss with Asstt. Commissioner, Customs being her immediate controlling officer.

03.12.2007- Asstt. Commissioner, Customs, Shillong went to Dawki for an inquiry (i.e. after lapse of about 2 months) and submitted his inquiry report.

05.12.2007- Respondent No. 5 issued impugned transfer and posting order of the applicant from Dawki LCS, Customs Division to Customs Headquarter, Shillong with the direction to the respondent No. 7 to assume charge to Dawki LCS by 06.12.07 without providing any opportunity to the applicant to hand over charge.

(Annexure- 4)

06.12.2007- In the impugned transfer order dated 05.12.07 the Respondent No. 7 is directed to assume charge to Dawki LCS by 06.12.07.

10.12.2007- Applicant approached this Hon'ble Tribunal through the instant original application against the impugned order of transfer dated 05.12.07.

13.12.2007- Asstt. Commissioner, Shri M.M. Marbaniang transferred from the office of Customs Division, Shillong to the office of Chief Commissioner, Shillong.

15.12.2007- Applicant came to learn that one Superintendent, Customs went to Dawki for investigation.

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04.09.2001- Hon'ble Supreme Court in SLP (C) No. 2523 of 2001 observed that transfer of officers is required to be effected on the basis of set norms or guidelines. (Annexure- 6)

Hence this Original Application.

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.NO.II (3) 3/CC/Hqrs.Ett/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).
2. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue at Dawki LCS, Customs Division Shillong as Superintendent, Customs till completion of her fixed tenure of 2 years of posting.
3. Costs of the application.
4. 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 stay operation of the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.NO.II (3) 3/CC/Hqrs.Ett/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).
2. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

19 MAY 2008

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

AMENDED ORIGINAL APPLICATIONTitle of the case : O.A. No. 302/2007

Smti Lilyda Shangpliang. Applicant.

-Versus-

Union of India & Ors. : Respondents.

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Filed By:


 Advocate

Date: 19.05.08

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

AMENDED ORIGINAL APPLICATION

In O.A. No. 302 /2007

BETWEEN:

Smti Lilyda Shangpliang
Superintendent, Customs,
Dawki LCS, Customs Division,
P.O- Dawki, Meghalaya.

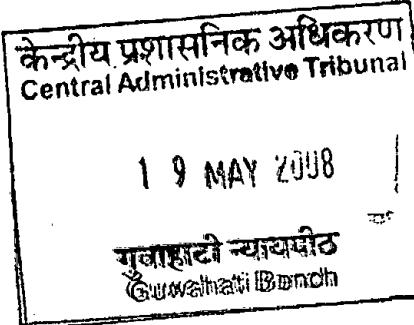
Applicant.

-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. Central Board of Excise and Customs,
Govt. of India,
Through it's Chairman, North Block,
New Delhi-110001.
3. The Chief Commissioner
Central Excise and Customs,
Shillong Zone,
3rd Floor, Crescens Building,
M.G. Road, Shillong- 793001.
4. The Commissioner,
Customs (Preventive),
110, Mahatma Gandhi Road, Shillong - 793001.
5. Joint Commissioner,
Office of the Commissioner, Customs (Preventive),
110, Mahatma Gandhi Road, Shillong - 793001.
6. Shri A. Madhavan,
Joint Commissioner,
Office of the Commissioner, Customs (Preventive),
110, Mahatma Gandhi Road, Shillong - 793001.
7. Shri B.P. Jaishi,
Superintendent,
Dawki L.C.S, Customs Division,
Dawki, Shillong.

Filed by the applicant
through U. Smti, Advocate
on 19.05.08

Lilyda Shangpliang



3. Shri M.M. Marbaniang,
Asstt. Commissioner, Customs,
Office of Chief Commissioner,
Customs and Central Excise, Shillong
3rd Floor, Crescens Building,
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 against the impugned order of transfer and posting issued vide order No. 44/2007 bearing letter No. C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4) whereby the applicant is sought to be transferred from Dawki, L.C.S. Customs Division to Customs Headquarter Office, Shillong long before completion of her fixed tenure of 2 years in total violation of "Transfer Policy 2006" issued by the Office of the Chief Commissioner Central Excise and Customs, Shillong Zone, NER with a malafide intention to accommodate respondent No. 7 and also praying for a direction upon the respondents to allow the applicant to continue at the present place of posting till completion of the tenure.

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 she is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

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Guwahati Admin

4.2 That your applicant was initially appointed as LDC on 02.03.1974 under the Commissionerate of Central Excise and Customs, Shillong. Thereafter she was promoted to the cadre of U.D.C in the year 1977. She was again promoted to the cadre of Inspector in the year 1982 and further promoted to the cadre of Superintendent Cr. 'B' in the year 2002 and posted in the Headquarter Office, Central Excise, Shillong. However, she was transfer to Shillong Customs Division in the year 2005.

4.3 That the applicant while working as Superintendent Cr. 'B' in the Divisional Office, Shillong Division, she was transferred and posted to Dawki Land Customs Station under Shillong Division vide order No. 29/2006 dated 11.08.2006 issued under letter No. C.No. 11 (3) 3/CC/Hqrs. Estt/2004/8106-19 (K) dated 14.08.2006. In compliance of the said order, the applicant joined at Dawki Land Customs Station on 16.08.2006. She took over charge from the outgoing Officer, Shri R.M. Chync after observing all required formalities in the prescribed format i.e. Form CFR 33 in terms of the relevant provisions of General Financial Rules 1963.

Copy of the transfer order dated 11/14.08.06 and certificate of transfer of charge are enclosed herewith and marked as Annexure-1 and 2 respectively.

4.4 That your applicant thereafter continuously working as Superintendent Cr. 'B' in the Dawki Land Customs Station under the supervision of Asstt. Commissioner, Shillong Customs Division, Shillong.

4.5 That it is stated that office of the Chief Commissioner, Central Excise and Customs, Shillong Zone, NER circulated the New Transfer Policy in respect of Cr. 'B', 'C' and 'D' officer of the Office of the Shillong Commissionerate vide letter No. C. No. II (3) 16/CCU/SH/2006/588 dated 20/21.11.06. In terms of the New Transfer Policy 2006 a Cr. 'B' Officer is liable to be transferred on

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completion of 2 years of tenure while posted in a sensitive station. It is stated that Dawki L.C.S is treated as a sensitive posting in terms of the norms settled by the Central Excise and Customs department. In view of the New Transfer Policy 2006, the applicant has acquired a valuable legal right for continuation in the said Land Custom Station at Dawki till completion of her 2 years tenure. Since the applicant has joined the present place of posting at Dawki only on 16.08.06, as such she is entitled to continue in the same station till 15.08.2008. The relevant provision laid down in Clause 7 of the guideline for transfer and posting in respect of Cr. 'B' officers of Customs and Central Excise, NER 2006 is quoted below:

“7. Tenure in sensitive posting shall not exceed two years and one year for hard posting. Officers in non sensitive posting shall also be rotated on completion of two years. Except for reasons to be recorded in writing no officer shall be rotated from one sensitive to another sensitive posting.”

Moreover, the 'Transfer Policy' and guidelines has been framed with the view of intention to provide equal opportunity to all officers in Customs and Central Excise department which would be evident from para 2 of the Transfer Policy of Superintendent 2006. The relevant portion is further quoted below for perusal of the Hon'ble Court:

“2. The guidelines aims to:

- a. Ensure minimum dislocation of officers in lines with the recent Department of Expenditure instruction for reducing expenditure on transfer.
- b. Give equal opportunity to all officers in Customs, Central Excise and Service Tax.
- c. Effective and proportionate distribution of available human resources in all the formations with a view to bring out the potential of the

Lilyda Shangphang

officers to the highest level in performing their duties."

On a mere reading of the guidelines, it appears that the guidelines of transfer and posting has been formulated also with a view of intention to bring out the potential of the officers to the highest level in performing their duties.

Copy of the New transfer policy 2006 is enclosed herewith as for perusal of Hon'ble Tribunal
Annexure- 3.

4.6 That most surprisingly the impugned transfer order has been issued by the Joint Commissioner, office of the Commissioner of Customs (Preventive, NER, Shillong) vide order No. 44/2007 dated 05.12.2007 bearing letter No. C.NO. II (3) 3/CC/Hqrs.Estt./2004/7506-14 (A) whereby the applicant is now sought to be transferred from Dawki L.C.S Customs Division, Shillong to Customs Headquarters, Shillong just after completion of about 1 year 3 months in order to accommodate respondent No. 7, Sri B.P. Jaishi at Dawki L.C.S. under Customs Division, Shillong. The impugned transfer and posting order dated 05.12.2007 has been issued by Sri A. Madhavan, Joint Commissioner on extraneous consideration and also with a malafide intention even before completion of the fixed tenure of 2 years by the applicant at Dawki L.C.S. It is also learnt by the applicant that Sri A. Madhavan, respondent No. 6, has initiated the proposal for transfer and posting of the applicant with the sole intention to accommodate respondent No. 7, Sri B.P. Jaishi, Superintendent Disposal Unit, Customs Headquarter Office, Shillong. The malafide intention of the Joint Commissioner Sri A. Madhavan is further evident from the order reliving the applicant instantly on the same day on 05.12.2007 itself without providing even the opportunity to handover the charge to the reliving officer as envisage in the C.F.R. The relevant portion of the order of transfer and reliving the applicant is quoted below:

Lilyda Shangphey

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प्रशासनिक आधिकारण

"The following transfer and posting in the grade of Superintendent, Group 'B' (Caz. Exe.) officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

Sl. No.	Name of Officers	Place of Posting	
		From	To
1.	Smt L. Shangpliang	Dawki LCS, Customs, Division, Shillong	Customs Hqrs Office, Shillong
2.	Shri B.P. Jaishi	Disposal Unit, Customs Hqrs Office, Shillong	Dawki LCS, Customs Division Shillong.

The Officer at S.L. No 1 stands relieved with immediate effect.

Sd/-

(A. Madhavan)
Joint Commissioner"

It is also to be noted here at this stage, that respondent No. 7 has been directed to assume charge to Dawki LCS by 06.12.2007 positively and further directed to continue to hold the charge of disposal unit until further order while forwarding the copy of the transfer order to respondent No. 7. The relevant portion is quoted hereunder for perusal of the Hon'ble Court.

"6. Shri B.P. Jaishi, Superintendent for compliance. He is directed to assume charge of Dawki LCS by 6th Dec, 2007, positively. He will continue to hold addl charge of Disp Unit until further order."

It is quite clear from the instruction contained in the impugned order of transfer dated 05.12.2007 that the same has been issued with undue haste, which smacks malafide.

Copy of the impugned order of transfer dated 05.12.07 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 4.

Lilyda Shangpliang

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Guwahati Bench

4.7 That it is stated that the applicant is suffering from illness since last few days and accordingly she proceeded for a medical check up at Shillong after due intimation to the authority but after reaching at Shillong, she came to learn that she has been transferred back to Shillong by the impugned order dated 05.12.07 and in her place one Shri Beda Prasad Jaishi, Superintendent Cr. 'B' is sought to be transferred at Dawki L.C.S. On receipt of such news she went to Headquarter Office and collected a copy of the impugned transfer order dated 05.12.07. It is relevant to mention here that no copy of the impugned transfer order has been formally served upon the applicant till filing of this application. Therefore it appears that on 05.12.07 impugned order of transfer and posting has been issued by the Joint Commissioner and by the same order respondent No. 7 has been directed to assume charge of the Dawki L.C.S by 06.12.07, such action and instruction which has been issued by Sri A. Madhavan, Joint Commissioner with an undue haste directing the respondent No. 7 to assume charge by 06.12.2007 makes it abundantly clear that the impugned transfer order has been issued with a malafide intention with an ulterior motive to accommodate respondent No. 7 at Dawki L.C.S in total violation of the guidelines and set norms and on that score alone the impugned order dated 05.12.07 is liable to be set aside and quashed.

4.8 That it is stated that in terms of relevant provision of the C.F.R 1963 applicant is required to hand over charge through prescribed format. But in the instant case although the Joint Commissioner, Sri A. Madhavan is well aware of such provision of C.F.R. 1963 even then he has issued the order relieving the applicant on the same day i.e. on 05.12.2007 in total violation of the provision laid down by the Govt. of India. It would be evident from similar order of transfer and posting dated 17.01.07 whereby a series of transfer order has been issued by transferring the officers working in the grade of Superintendent in the Central Excise and Customs department but no such order indicating their release of the individual officers

Lilyda Shangphiang

mentioned therein. As such the impugned order of transfer dated 05.12.07 is unprecedented one and it smacks malafide. It is also learnt that there is no such administrative exigency for transferring the applicant all of a sudden before completion of her 2 years of tenure in the present place of posting at Dawki. It is also relevant to mention here that since her posting at L.C.S, Dawki she never received any memo or warning or show cause notice indicating any deficiency in her work in the cadre of Superintendent Gr. 'B'. The routine transfer and posting order in the cadre of Superintendent Gr. 'B' has been issued only on 17.01.07 by the Chief Commissioner, NER, Shillong. It is categorically stated that when there is no administrative exigency the present applicant is entitled to continue in the present place of posting at Dawki L.C.S till completion of fixed tenure of 2 years. It is further learnt by the applicant that Sri A. Madhavan, Joint Commissioner has influenced the Commissioner and could able to obtain his approval for issuing the impugned transfer and posting order dated 05.12.2007 in order to accommodate respondent No. 7 in Dawki, LCS for undisclosed reasons and on that score alone the impugned order of transfer and posting is liable to be set aside and quashed.

Copy of the transfer order dated 17.01.07 is enclosed herewith as Annexure- 5.

4.9 That it is stated that in the matter of transfer and posting competent authority is vested with the discretionary power for passing appropriate order transferring the subordinate officers in the public interest or for administrative exigency but in the instant case of the applicant the impugned transfer and posting order dated 05.12.07 neither passed in public interest or nor for any administrative exigency. The manner in which the impugned order of transfer dated 05.12.07 is issued would go to demonstrate that there is lack of bonafide in issuance of the impugned transfer order rather the same is issued at whims of Sri A. Madhavan, Joint Commissioner, respondent No. 6, as such the order of transfer and posting dated

Lilyda Shangpliai

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Guwahati Bench

05.12.07 is glaringly in violation of the professed policy of the respondent department in as much as the same has been issued before completion of fixed tenure of 2 years posting at a particular place and on that score alone the impugned order of transfer dated 05.12.07 is liable to be set aside and quashed.

The judgment of Hon'ble Supreme Court passed in the case of Sarvesh Kumar Awasthi - Versus- U.P. Jal Nigam and others, reported in (2003) 11 SCC 746 supports the case of the present applicant.

Copy of the judgment and order dated 04.09.2001 passed in SLP (C) No. 2523 of 2001 is enclosed herewith for perusal of Hon'ble Court as Annexure- 6.

4.10 That it is stated that the applicant presently under medical treatment at Shillong and she is now availing medical leave. However, the manner in which she is now sought to be removed from her present place of posting from Dawki LCS is nothing but humiliating and in fact in a disgraceful manner and that too with a malafide intention only to accommodate respondent No. 7. As such, the applicant finding no other alternative approaching this Hon'ble Tribunal for setting aside the impugned transfer and posting order dated 05.12.2007 and further be pleased to pass appropriate order directing the respondents to allow the applicant to continue in the present place of posting till completion of her tenure. It is categorically submitted that the applicant has not handed over the charge of Superintendent, Dawki L.C.S Customs Division till filing of this application, therefore applicant is deemed to be continuing as Superintendent Gr. 'B' at Dawki L.C.S Customs Division till date.

4.11 That the applicant begs to state that she has a good *prima facie* case and the balance of convenience is in her favour, as such it is a fit case for the Hon'ble Tribunal to interfere with to protect the right

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19 May 2008

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and interest of the applicant by passing an appropriate order granting the adequate relief to the applicant.

4.11A. That it is alleged in the written statement by the respondents that the applicant has been transferred from Dawki LCS to Customs Headquarter office, Shillong on the ground of serious supervisory lapse on the part of the applicant. In this connection applicant begs to state that she has been transferred on the alleged ground of unauthorised clearance of a consignment in contravention of the provisions of Customs Act 1962. Such wild allegation which is brought against the applicant is contrary to the factual position but in order to defend the case of the applicant before the learned Tribunal such a statement is made by the respondents. In para 5 it is alleged that on a preliminary investigation it has revealed that a serious supervisory lapse has occurred on the part of the applicant on the alleged ground that the incident has occurred in the middle of September 2007 whereas the applicant has brought it to the notice of the higher authority by her back dated letter dated 28.09.2007. In this connection applicant states that on 13th and 14th of September 2007 applicant was on casual leave, and on 15th and 16th September 2007 was Saturday and Sunday, she resumed duty at Dawki LCS on 17.09.2007 and came to learn from Cr. D staffs (Sri K.K. Singh, Havildar and Sri Ramanand Roy, Sepoy) that two of the Inspectors posted at Dawki LCS seized consignment and subsequently released the same on 13.09.2007 in between 21 hrs and 22 hrs (after office hours) when the applicant was on casual leave and did not report the seizure and subsequent release of the same to the applicant. Applicant of her own investigated the matter and got satisfied herself about the seizure of consignment and subsequent release of the same by two Inspectors. On 22.09.2007 applicant personally meet her immediate controlling officer i.e. Asstt. Commissioner, Customs, Shri M.M. Marbaniang at Shillong and appraised him in details about the incident to the Asstt. Commissioner, Customs. On 28.09.2007 applicant prepared a



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complain and handed over it to the Asstt. Commissioner, Customs

Shri M.M. Marbaniang, who is her immediate controlling officer.

In between 22.09.2007 to 02.12.2007, the Asstt. Commissioner, Customs, the immediate controlling officer of the applicant did not make any inquiry about the seizure of the consignment and unauthorised release of the same. As such it is very much clear that the applicant appraised the unauthorised clearance of a consignment in contravention of the provisions of Customs Act 1962 to her immediate controlling officer i.e. Assistant Commissioner of Customs, Shillong and there is no supervisory laps on the part of the applicant.

4.11 B That it is stated that applicant immediate after came to learn about the unauthorised clearance of a consignment in contravention of provisions of Customs Act 1962 at Dawki LCS by the two Inspectors appraised the matter to her immediate controlling officer i.e. Asstt. Commissioner, Customs, Shri M.M. Marbaniang at Shillong but Shri M.M. Marbaniang did not conduct any inquiry till 02.12.2007. As such it is necessary to implead Shri M.M. Marbaniang, Asstt. Commissioner, Customs, posted at the office of Chief Commissioner, Shillong as party respondent No. 8 in the O.A. No. 302/2007 for proper adjudication of the Original Application.

4.12 That this application is made bona fide and for the cause of justice.

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

5.1 For that the impugned order of transfer and posting dated 05.12.07 has been issued transferring the applicant from Dawki LCS to Shillong Headquarter in total violation of the professed norms laid down by the respondents through their transfer policy 2006 as because the applicant has completed only 1 year 3 months in the present place of posting whereas as per transfer policy she is entitled to continue in the present place of posting till completion of

Lilyda Shangphang

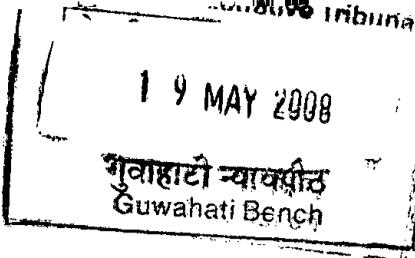
19 MAY 2008

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2 years fixed tenure. As such the impugned order of transfer dated 05.12.07 is liable to be interfered with and be set aside and quashed.

- 5.2 For that, the impugned transfer and posting order dated 05.12.07 passed by the respondent No. 5 in order to accommodate respondent No. 7 with an ulterior motive, with the approval of the respondent No. 4.
- 5.3 For that, the impugned transfer and posting order dated 05.12.07 has been issued with a malafide intention at the whims of the Joint Commissioner, Sri A. Madhavan, respondent No. 5, in order to accommodate respondent No. 7.
- 5.4 For that, the impugned order of transfer and posting dated 05.12.07 has not been issued in public interest nor in the interest of administrative exigency but for certain undisclosed reason.
- 5.5 For that, the impugned transfer and posting dated 05.12.07 has been issued with undue haste which smacks malafide and on that score alone the impugned order dated 05.12.07 is liable to be set aside and quashed.
- 5.6 For that, in absence of any statutory rules the various instructions issued by the Government regulating the policy of transfer and posting are governing the field and the respondents are bound to follow those various guidelines meticulously.
- 5.7 For that since the applicant has reported the matter immediately to her immediate controlling officer, as such the allegation of serious supervisory lapses on the part of the applicant is not sustainable in the facts and circumstances of the case.
- 5.8 For that the applicant being the Superintendent of Dawki LCS has taken immediate steps and appraised the entire incident of unauthorised clearance of consignment to the notice of her higher

Lilyda Shangpheiing



authority by her letter dated 28.09.2007 in course of her discharge of duties and responsibilities.

6. Details of remedies exhausted.

That the applicant declares that she has received the impugned order dated 05.12.07 on 06.12.07 and since she has been shown as stand relieved, as such she has 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 she 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 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 Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue at Dawki LCS, Customs Division Shillong as Superintendent, Customs till completion of her fixed tenure of 2 years of posting.
- 8.3 Costs of the application.

Lilyda Shangphang

3.4 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 stay operation of the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).

9.2 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

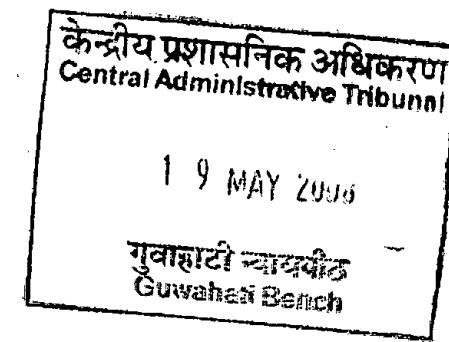
10.

11. Particulars of the I.P.O

i) I.P.O No. :
ii) Date of issue :
iii) Issued from : C.P.O, Guwahati.
iv) Payable at : G.P.O, Guwahati.

12. List of enclosures :
As given in the index.

Rilyda Shangphay



VERIFICATION

I Smti Lilyda Shangpliang, aged about 55 years, working as Superintendent, Customs, Dawki LCS, Customs Division, Dawki Meghalaya, applicant in the instant Original Application, 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 17th day of May 2008.

Lilyda Shangpliang



- - - - 16 - ANNEXURE - 1

OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG

110 Mahatma Gandhi Road, Shillong – 793001, Meghalaya
Phone: 0364-2222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cusshg@sancharne

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

ORDER NO. 29 /2006

Dated, Shillong, the 11th August 2006.

Subject: - Estt. Promotion, transfers and posting in the grade of Group 'B' (Gazetted) Superintendent - Order regarding.

19 MAY 2006

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Guwahati Bench

The following transfer and posting in the grade of Superintendent, Group 'B' officers of Customs (Preventive), Commissionate, North Eastern Region, Shillong are hereby ordered with immediate effect until further orders.

Sl. No.	Name of Officers	Place of Posting	
		From	To
1.	Shri. R M. Chyne	Dawki LCS, Shillong Division	Hqrs. Preventive Unit, Customs Hqrs. Office, Shillong
2.	Smti. L. Shangliang	Divisional Office, Shillong Division	Dawki LCS, Shillong Division

Sd/-
(R.D. NEGI)
Commissioner

C.NO.II (3) 3/CC/Hqrs.Estt/2004/8106 - 19 (A)

Dated:- 14.08.06

Copy forwarded for information and necessary action to:-

1. The Chief Commissioner, Customs & Central Excise Shillong Zone, Shillong.
2. The Commissioner of Central Excise, Shillong.
3. The Joint Commissioner (P&V), Customs & Central Excise, Shillong.
4. The Asst Commissioner, Shillong Customs Divn. Copy meant for the concerned officers are enclosed.
5. The Chief Accounts Officer, Customs (Preventive), N.E.R., Shillong.
6. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
7. The Branch-in-charge, ET /Accts./ Confl / CIU -VIG of Customs & C. Excise, Shillong.
8. The Superintendent, SIU-VIG, Customs Hqrs. Office, Shillong.
9. Smti. L. Shangliang, Superintendent for compliance.
10. The General Secretary, Group 'B' Executive Officers' Association, Customs & Central Excise, Shillong.
11. Guard File.

(C. SONGATE)
Joint Commissioner

Attested
Dwanta
Advocate

FORM G.F.R. 33.

(See Rule 78)

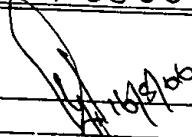
केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

19 MAY 2008

CERTIFICATE OF TRANSFER OF CHARGES.

Certified that we have in the afternoon of this day respectively made over and received of the charge
 of the Superintendent of Customs, DAWKI LAND CUSTOMS STATION, DAWKI Guwahati Bench
 in pursuance of the Order No. 29/06 Dated 11.08.06 communicated vide C. No.
11(3)3/ec/Hgt.884/2004/8106-19 (A) Dated 16.08.06

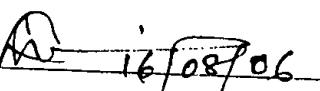
For use of Audit Offices only
 Noted in A/R at page _____

Relieved Officer.
 Signature: 

(Name in Block Letters)
 R. Martin Chyne

Designation: Superintendent of Customs
 Proceeding on Transfer/Leave, S.

Noted A/C at page _____

Relieving Officer.
 Signature: 

(Name in Block Letters)

Designation: _____
 Station: _____

Leave Salary Certificate/Service Statement
 issued on _____

Auditor Supdt. A.A.O.
 A.A.O.

Dated: _____

Noted in A/R at page _____
 Noted in Leave A/C at page _____

Pay slip issued on _____

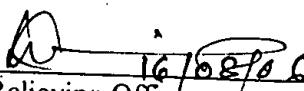
Auditor Supdr. A.A.O.
 A.A.O.

Name of the balances for which responsibility is accepted by the Officer receiving charge.

Cash Rs. NIL

Payment Advance Rs. NIL

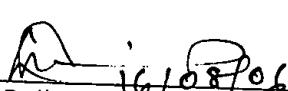
Where transfer of charge proceeds the relieved Officer issue of formal Orders by the competent authority, a suitable indication to that effect may be given.


 Relieving Officer.

C.No. 11(3)3/ET/LCS/DK/2008/1252-55 Dated: 16.8.06

Copy forwarded for information and necessary action to :-

01. The Commissioner of Customs, N.E.R., Shillong.
02. The Addl. Commissioner of Customs, N.E.R., Shillong.
03. The C.A.O., Customs Hqrs. Office, Shillong.
04. The P.A.O., Customs & Central Excise, Shillong.
05. The A.O.(Estt. Branch), Customs Hqrs. Office, Shillong.
06. S/Shri. _____


 (Relieving Officer)

*Attested
Dulha
Advocate*

ANNEXURE-3



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: - ceshillo@excise.nic.in EDECS :- (zone18)

C.No. II (3) 16/ CCU/SH/2006 / S 88

Dated: - 20th November 2006

To,

The Commissioner,
Central Excise,
Shillong/ Dibrugarh.

The Commissioner,
Customs (Preventive),
N.E.R., Shillong

The Commissioner(Appeals)
Central Excise
Guwahati.

The General Secretary,
Group "B" "C" & "D" Ministerial
Executive Association.

Sir/Madam,

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

19 MAY 2008

गुवाहाटी न्यायदाठ
Guwahati Bench

Subject: - New Transfer Policy from Group "B" to "D" Officers.
Regarding.

I am directed to enclose herewith New Transfer Policy 2006 as the same
has been finalized for information and necessary action.

Yours faithfully,

Enclo :- as above.

(J.R.H. DIENGDOH)
ASSISTANT COMMISSIONER

*Attested
Dutta
Advocate*

19 MAY 2008

GUIDELINES FOR TRANSFER AND POSTING IN RESPECT OF GROUP -B (EXECUTIVE & MINISTRIAL) GROUP-C (EXECUTIVE & MINISTRIAL) AND GROUP-D OFFICERS OF CUSTOMS AND CENTRAL EXCISE IN THE NORTH EASTERN REGION.

गुवाहाटी न्यायालय
Guwahati Bench

1. This may be called general guidelines for posting of Executive Officers in the grade of Superintendents and Inspectors working in the North Eastern Region.
2. The Guidelines aims to:
 - a. Ensure minimum dislocation of officers in lines with the recent Department of Expenditure instruction for reducing expenditure on transfer.
 - b. Give equal opportunity to all officers in Customs, Central Excise and Service Tax.
 - c. Effective and proportionate distribution of available human resources in all the formations with a view to bring out the potential of the officers to the highest level in performing their duties.
3. Inter Commissionerate placement shall be done by the Chief Commissioner of Customs and Central Excise, North Eastern Region. The posting of the officers within the Commissionerate up to the Range/ CPF/LCS level shall be done by the respective commissioners within 5(five) working days of the A.G.T. This has been decided considering the geographical constraints which includes two tiers or three tier transfer orders.
4. Option for posting is to be exercised by the 31st October and posting order shall be issued by the 15th December. All officers are to be released, latest by 31st January or on completion of the officers' children's academic sessions; if their ward is within class 12 standard - which ever is later.
5. All postings may be graded as, (1) sensitive, (2) Non-sensitive, (3) Hard Posting. List of classification of all the posts is enclosed. This list may be re-looked once a year.
6. While considering an officer for transfer, S/he shall be transferred to the nearest possible station while keeping in mind the overall guidelines.
7. Tenure in sensitive posting shall not exceed two years and one year for hard posting. Officers in non sensitive posting shall also be rotated on completion of two years. Except for reasons to be recorded in writing no officer shall be rotated from one sensitive to another sensitive posting.
8. A person shall not be posted to a place where he has worked earlier unless there are no optees for that Station.
9. The Normal tenure in Customs and Central Excise formations may be minimum six years. This period may be extended or reduced on administrative grounds. On completion of two years in Dibrugarh Commissionerate, an officer is to be transferred out if a request is made to that effect.
10. For posting to Dibrugarh and other places where no optees are available, the vacancies shall be filled up by taking officers from the following categories in that order :
 1. Newly recruited officers.
 2. Officers promoted from one rank to another.
 3. Officers returning from deputation.
 4. Officers who have their hometown in and around that particular station.
 5. Officers who have completed maximum tenure in any particular station.
 6. It has also been decided to give as far as possible posting at a place of choice to the officers who have completed their tenure at Dibrugarh.

19 MAY 2008

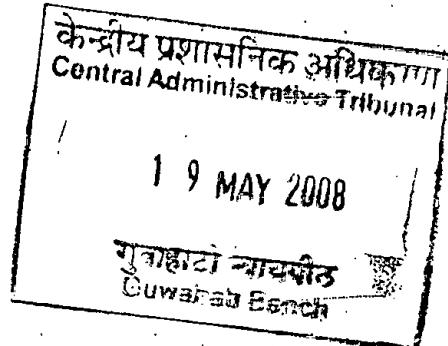
गुवाहाटी अधिकारी
Guwahati Branch

-2-

11. Transfer from one place to another shall be made on the basis of station seniority and after completion of tenure of posting..
12. In places where an officer is willing to continue and if no option is exercised by other officers, the incumbent may be allowed to continue provided there are no administrative grounds for s/he to discontinue.
13. (i) During AGT the case of representation is to be considered first. If an officer is to be transferred as the result of representation by the other officer s/he should be rotated as per his option or to the nearby station.
 (ii) All representations shall be submitted through proper channel with a copy to the respective Associations.
 (iii) Representation shall be considered only for choice of station or place and not for specific posting.
 (iv) If representations are considered on compassionate ground, the officer/s shall be given non-sensitive posting for the extended period of stay for which representation has been considered.
14. Guidelines on posting of husband and wife and officers with only two years for retirement shall be as per the policy issued by the Department of Personnel and Training from time to time.
15. Officers repatriated from deputation shall report to the Chief Commissioner's Office and postings of such officer/s shall be decided by the Chief Commissioner. Except for exceptional cases, posting on loan basis shall be avoided as far as practicable.
16. Posting on promotion shall be as per exigency of the administration.
17. In exceptional cases for which reasons is to be recorded in writing administration may deviate from the above guidelines while considering an officer for transfer.
18. Due to uneven distribution of posting in customs, central excise and service tax in different areas it is not found feasible to have zones within the Chief Commissioner's Zone, as this will defeat the aim of equal opportunity to work in the three formations.

GROUP 'B' AND 'C' MINISTERIAL OFFICERS ASSOCIATION

1. All ministerial officers are liable to be transferred within the Zone. Routine transfer of Ministerial Officers from one station to another shall be avoided. However on administrative ground or on promotion/vacancy and representations, Gr. 'B' & 'C' Ministerial officers are liable for transfer from one station to another station.
2. Gr. 'B' and 'C' Ministerial officers shall be rotated from Customs to Central Excise and vice versa after every 5 to 6 years.
3. All ministerial officers shall be rotated from one charge to another within the same station after every 3 years.



GROUP 'D' OFFICERS

1. Though Gr. 'D' staff are also liable to be transferred anywhere within the Zone, frequent transfer of Gr. 'D' staff shall be avoided.
2. Transfer and Posting of Gr. 'D' within the Commissionerate shall be done from the respective Head Quarters of the three Commissionerates.
3. Tenure of posting in border area/ field position shall be for two years extendable by another one year. while considering the options for border area posting preference will be given to those who have never been posted to such areas on Seniority .
- 4 Except for posting to sensitive/ border areas, Gr. 'D' Officers will normally be posted nearest to their Hometown.
- 5 .If a situation arises where there are no options for a particular area, administration will take its own decision as is convenient for Administration.

GR. 'C' DRIVERS ASSOCIATION

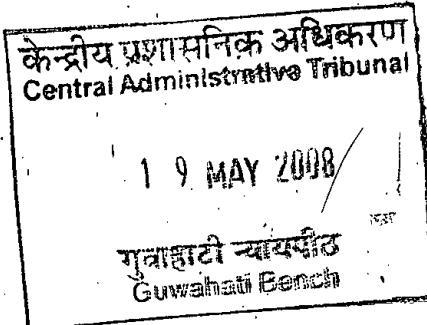
1. Gr. 'C' Drivers are liable to be transferred within the zone, however routine transfer from one Station to another shall be avoided as far as practicable.
2. Tenure of posting for Gr. 'C' Drivers in a particular Station other then Borders/Sensitive areas will be for 4-6 years.
3. Tenure of posting to Border/sensitive posts will be for a period of 2 years.
4. Gr. 'C' Drivers will be rotated from Customs to Central Excise and vice versa after every 4 to 6 years depending on administrative convenience.

VI. SENSITIVE, NON-SENSITIVE AND HARD POSTING

Central Excise Commissionerate:-

1. Sensitive Posts :-

- a) Bynihal Range -I
- b) Bynihal Range -II
- c) Guwahali Range -I
- d) Gueahali Range -II
- e) Guwahali Range - III
- f) Guwahali Range - IV
- g) Guwahali Range - V
- h) Guwahali Range - VII
- i) Hqrs. Anti-Evasion Branch
- j) Anti-Evasion Branch (Division)
- k) Audit Branch
- l) EOUS
- m) Personnel Section
- n) Vigilance Section



2. Hard Posts :-

- a) Diphu Range
- b) Imphal Range
- c) Aizawl Range

3. Non-Sensitive Posts :-

All the remaining posts in the Commissionerate/All Divisional Hqrs. And Ranges:

B. Shillong Customs (Preventive) Commissionerate:-

1. Sensitive Stations:-

i. Agartala :-

- a) Agartala-LCS and Dhaka Bus Service
- b) Bishalgarh CPF
- c) Srimantapur LCS
- d) Sonamura CPF

ii. Aizawl :-

- a) Seily PP
- b) Champaia-Zokhawlia LCS/CPF

iii. Dhubri :-

- a) Ghasuapara LCS
- b) Mahendraganj LCS

iv. Dimapur :-

v. Guwahati Division:-

- a) ICD Amlingaon
- b) LGBI Airport

vi. Imphal :-

- a) Pallel CPF
- b) Moreh LCS
- c) Moreh CPF

vii. Karimganj :-

- a) Silchar CPF
- b) K.S.F.S LCS
- c) Sularkandi LCS

viii. Shillong :-

- a) Dawki LCS
- b) Borsora LCS
- c) Pynuisla CPF

2. Sensitive Post:-

i. Hqrs. Office, Shillong

Hqrs. Preventive Unit

ii. Divisions :-

All Divisional Preventive Force.

2. Hardship Post:-

i. Agartala :-

- a) Sabroom CPF
- b) Khowaighat LCS & PP
- c) Dholaiyhat LCS

ii. Aizawl :-

Delinghat LCS

iii. Dibruri :-

- a) Ullapani LCS
- b) Halisar LCS

iv. Dibrugarh :-

Wampong LCS

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribuna

19 MAY 2008

गुवाहाटी न्यायालय
G. J. A. T. B. C.

19 MAY 2008

गुवाहाटी न्यायालय
Guwahati Bench



ANNEXURE-4

OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG

110 Mahatma Gandhi Road, Shillong - 793001, Meghalaya
Phone: 0364-2222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cusshg@sancharne

ORDER No 44/2007

Dated, Shillong, the 05th December 2007

Subject: -Transfers and posting in the grade of Group 'B' (Exe.) Superintendent - Order
regarding.

The following transfer and posting in the grade of Superintendent, Group 'B' (Gaz.Exe.) officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

Sl. No.	Name of Officers	Place of Posting	
		From	To
1.	Smt L. Shangpliang	Dawki LCS, Customs Division, Shillong	Customs Hqrs Office, Shillong
2.	Shri B.P. Jaishi	Disposal Unit, Customs Hqrs Office, Shillong	Dawki LCS, Customs Division, Shillong.

The officer at S.L. No 1 stands relieved with immediate effect.

Sd/-

(A. Madhavan)
Joint Commissioner

Dated: Dt. 5.12.07

C.NO.II (3) 3/CC/Hqrs.Estt/2004/TS06-14(A)

Copy forwarded for information and necessary action to:-

1. The Chief Commissioner, Customs & Central Excise Shillong Zone, Shillong.
2. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
3. The Asstt. Chief Accounts Officer, Customs Hqrs. Office, Shillong.
4. The Superintendent, SIU-VIG, Customs Hqrs. Office, Shillong.
5. Smt L. Shangpliang, Superintendent for compliance.
6. Shri B.P. Jaishi, Superintendent for compliance. He is directed to assume charge of Dawki LCS by 6th Dec, 2007, positively. He will continue to hold ^{ad interim} charge of Disp Unit until further order.
7. The General Secretary, Group 'B' Executive Officers' Association, Customs & Central Excise, Shillong.
8. Guard File.

*Attested
Bulka
Advocate*

A. Madhavan
(A. Madhavan)
Joint Commissioner

5.12.07



-25-

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

ANNEXURE-5

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

3rd Floor, Crescens Building, MG Road, Shillong - 793001,

Phone: 0364-2500131. Fax: 0364-2224747.

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

9 MAY 2007

गवाहाटी न्यायालय
Guwahati Bench

ORDER No. 7/2007

Dated Shillong the 17th January 2007

The Inter-Commissionerate transfer Order in the Grade of Superintendent is as follows. The following Officers are transferred with immediate effect and are placed at the disposal of the concerned Commissioner. The Commissioners shall order the postings subsequently.

Sl.No.	NAME OF THE OFFICER	FROM	TO
1.	2.	3.	4.
1.	Shri N.C. Talukdar	CE. Dibrugarh	CE Shillong
2.	Shri J.M. Borah	CE Dibrugarh	Customs(P) Shillong
3.	Shri T.K. Sen	CE. Dibrugarh	Customs (P) Shillong
4.	Shri Madhurjya Mohan Neog	CE. Dibrugarh	Customs(P) Shillong
5.	Shri Pallav Lochan Saikia	CE. Dibrugarh	C.C. Unit
6.	Shri Bijoy Bhutan Barua	CE. Dibrugarh	Customs (P) Shillong
7.	Shri B. Majumdar	CE Dibrugarh	CE Shillong
8.	Shri Manoj Kumar Brahma	CE Shillong	CC Unit
9.	Shri Sukanta Das	CE. Shillong	Customs (P) Shillong
10.	Shri A.K. Choudhury	CE Shillong	Customs (P) Shillong
11.	Shri Johar Dey	CE. Shillong	Customs (P) Shillong
12.	Shri Raneshwar Bhattacharjee	CE Shillong	CE. Dibrugarh
13.	Shri Ninamunni Phukan	CE Shillong	Customs (P) Shillong
14.	Smti Melicia Synnah	CE Shillong	Customs (P) Shillong
15.	Smti L. Sailo	CE Shillong	Customs (P) Shillong
16.	Shri S.K. Kundi	CE Shillong	Customs (P) Shillong
17.	Shri N.C. Patra	CCUnit	CE. Shillong
18.	Smti Z.K. Shadap	CCUnit	Customs (P) Shillong
19.	Shri Jambu Lama	Customs(P) Shillong	CE Shillong
20.	Shri T.C. Gayan	Customs (P) Shillong	CE Shillong
21.	Shri I.K. Kalita	Customs (P) Shillong	CE Dibrugarh
22.	Shri S. Ganguly	Customs (P) Shillong	CE Dibrugarh
23.	Shri Shital Chandra Das	Customs (P) Shillong	CE Shillong
24.	Shri Bijoy Krishna Deb	Customs (P) Shillong	CE Shillong
25.	Shri Biswajit Bhattacharjee	Customs (P) Shillong	CE Dibrugarh
26.	Shri Pallav Kumar Sinha Choudhury	Customs (P) Shillong	CE Shillong
27.	Shri J.C. Das -II	Customs (P) Shillong	CE Shillong
28.	Shri S.R. Dhar	Customs(P) Shillong	CE Dibrugarh

Sd/
(A.S.R. NAIR)
CHIEF COMMISSIONER

Attested
Abulbari
Advocate

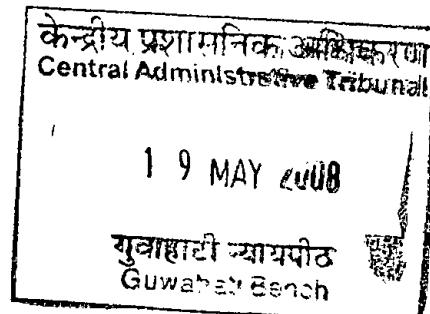
C.No. II (3)13/CCO/SH/2006/
2139-48

Dated :- 25th January, 2008

25 JAN

Copy forwarded for information and necessary action to:

1. The Commissioner, Central Excise, Shillong
2. The Commissioner, Central Excise, Dibrugarh.
3. The Commissioner, Customs (Preventive), N.E.R. Shillong
4. The Joint Commissioner (P&V), Central Excise, Shillong.
5. The Joint Commissioner (P&V), Customs (P), N.E.R., Shillong.
6. The Joint Commissioner (P&V), Central Excise, Dibrugarh.
7. The General Secretary, Group "B" Executive Officers Association, Customs and Central Excise, Shillong.
8. The Administrative Officer (ET), Central Excise' Customs (P), Shillong' Dibrugarh with a request to inform the individual Officer concerned at their place of posting.




(N.C. PATRA)
SUPERINTENDENT

(2003) 11 Supreme Court Cases 740
(BEFORE M.B. SHAH AND R.P. SETHI, JJ.)
(Record of Proceedings)

SARVESH KUMAR AWASTHI

a

Petitioner;

Versus

U.P. JAL NIGAM AND OTHERS

Respondents.

SLP (C) No. 2523 of 2001[†], decided on September 4, 2001

Service Law — Transfer of employee — Transfer of an officer at the behest of politicians without following any guidelines provided therefor — Held, an arbitrary or mala fide transfer of an efficient and independent officer is not in favour of good administration — Transfer of officers is required to be effected on the basis of set norms or guidelines without allowing any political interference in regard thereto — Chief Secretary of U.P. directed to file an affidavit pointing out the rules and regulations for effecting transfers of officers including higher officers like District Magistrates — Government Servant Conduct Rules, 1956, R. 27 (Para 3)

W-M/24868/S

Advocates who appeared in this case :

P.P. Rao, Senior Advocate (Anish Kumar Gupta and Shrish Kumar Misra, Advocates, with him, for the Petitioner)

Harish N. Salve, Solicitor General (Ajay K. Agarwal, Advocate, with him), for the Respondents.

ORDER

1. Heard learned counsel for the parties.

2. It is the contention of the petitioner that his transfer is mala fide and without following any guidelines for transferring the officers. As against this, it has been pointed out that the petitioner is transferred because certain complaints were received against him. Learned counsel for the petitioner has drawn our attention to Annexure A-2, the additional affidavit filed by the petitioner, which is in the form of noting and order (C&DS, dated 27-8-2000) which indicates that transfers are effected at the recommendations of either Ministers or MLAs/MPs/MLCs.

3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

4: In this set of circumstances, the Chief Secretary, State of U.P. is directed to file necessary affidavit within six weeks from today pointing out rules and regulations for effecting transfers of officers including higher

[†] From the Judgment and Order dated 12-1-2001 in WP No. 1557 of 2000 of the High Court of Allahabad at Lucknow

b

officers such as District Magistrates. A copy of Annexure A-2 (p. 124 of the paper-book) be also sent to the Chief Secretary, State of U.P. along with this order by which the transfers of the officers are effected. Stand over for six weeks.

Court Masters

(2003) 11 Supreme Court Cases 741

b (BEFORE G.B. PATTANAIK AND B.N. AGRAWAL, JJ.)
CHANDRA VILASH RAI

Appellant:

Versus
STATE OF BIHAR AND OTHERS

Respondents.

c Civil Appeal No. 1994 of 1998 with No. 1998 of 1998,
decided on February 1, 2001

A. Service Law — Departmental enquiry — Penalty/Punishment — Mitigating factors — Contravention of Rules and Regulations of Cooperative Bank and disobedience of orders of Managing Director by Secretary of the Bank — Committing of such action not at his own but at the behest of Board of Directors, held, would not exonerate the delinquent of the liabilities which he would incur for such illegalities and irregularities

d — However, in view of that factor and also in view of the long period of more than 20 years of service put in by him, punishment of dismissal altered to that of premature retirement which also was a major punishment under the Staff Regulations of the Bank — Retiral benefits, if any permissible on such premature retirement, directed to be given — Misconduct — Committing acts of misconduct at the behest of superiors — Effect of, if any, on legal consequences

e (Para 3)
B. Service Law — Dismissal from service — Validity — Question that dismissal order passed against Secretary of Cooperative Bank without obtaining prior approval of Registrar stood vitiated, raised before Supreme Court without raising the same before High Court — In such circumstances, the said question left unexamined

(Para 2)
H-M/CFLNST/24753/SL

ORDER

1. These two appeals raise a common question and were therefore heard together and are disposed of by this common judgment. Both these appellants had served as Secretary in the same cooperative society called Bihar State Cooperative Bank Limited. For certain dereliction on their part, regular disciplinary proceedings had been initiated and a set of charges had been levelled. In the enquiry the charges stood established and ultimately the appropriate authority passed the order of dismissal from service. Assailing the order of dismissal from service, writ petitions were filed in the Patna High Court, which were heard by a Division Bench. One of the Judges was persuaded to take the view that the alleged delinquency and negligence on the part of the delinquents would not amount to misconduct since those acts and

h

After the
Petitioner
should be
admitted

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI.

In OA No. 302 / 2007

IN THE MATTER OF:-

O.A. No.302 / 2007

SMTI LILYDA SHANG PLIANG

.....APPLICANT

- VERSUS -

UNION OF INDIA & ORS.

.....RESPONDENTS

The objection filed by the respondents against the Rejoinder filed by the applicant:

THE OBJECTION FILED BY THE RESPONDENTS AGAINST THE REJOINDER FILED BY THE APPLICANT:

MOST RESPECTFULLY SHEWETH: -

1. That the respondents begs to state that with regards to the statement made in Para 1 of the Misc. Petition No.15/2008 the respondent begs to reiterate that the allegation made therein that she was transferred in order to accommodate Respondent No.7 is totally baseless and imaginary and is strongly denied by the answering respondent.

Contd.../-

Superintendent (L.A.)
Guwahati Customs Division
Guwahati-5
through
Guwahati
12-03-08

Received
Date
12/03/08

12/10/2010

गुवाहाटी विभाग
Guwahati Bench

-2-

2. That the respondents begs to state that with regards to the statement made in Para 2 made by the applicant that she has been transferred with malafide intentions of accommodating respondent No.7 at Dawki LCS is utterly mischievous and misleading. In the process she is trying to downplay her role in the entire episode and her complete failure to handle the matter with integrity and competence. Her claim that she had promptly brought the matter to the notice of her immediate higher authority, who in turn failed to take further appropriate action on the matter is absolutely untrue and misleading. It is once again an attempt by the applicant to deflect the attention of the Hon'ble Tribunal from her inept handling of an extremely sensitive matter involving Govt. revenue. What immediate action was taken by the applicant on learning of the action of the two inspectors regarding the seizure and subsequent release of the consignment in contravention to the provisions of Customs Act, 1962 is best known to her, but the fact remains that the matter was brought to the notice of the higher authorities only on 30-11-2007 by a back date letter dated 28-09-2007 by the applicant. Contrary to the applicant's claim that she had informed the Assistant Commissioner regarding the unauthorized release of the consignments, it is reiterated that the Assistant Commissioner came to know of the matter only on 30-11-2007 hence the claim is categorically denied.

Jayanta Barik

Contd.../-

Expedient (Law)
Guwahati Bench Division
C. 100

12 May 2007

गुवाहाटी न्यायालय
Guwahati Bench

-3-

3. That the respondents begs to state that with regard to the statements made in Para 3 of the rejoinder filed by the applicant, alleging that the transfer of the Assistant Commissioner was an eyewash it is stated that the decision to transfer the Assistant Commissioner was taken by the Commissioner at the time of the transfer of the applicant. And the same as per protocol was conveyed to the Chief Commissioner who is stationed in Kolkata and therefore for logical reasons of his working from Kolkata the actual order was issued at a later date. Therefore it was never done as an afterthought and much before the filing of the OA. In other words the filing of the OA had no bearing on the transfer of the Assistant Commissioner.
4. That the respondents beg to submits that the statements which are not specifically admitted are deemed to be denied.

Jayanta Baruik

Contd.../.

Superintendent (Law,
Guwahati Customs Division
Guwahati-5

12/3/2008

गुवाहाटी न्यायपीठ
Guwahati Bench

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VERIFICATION

I, Shri Jayanta Baruah, Son of Late Benudal Baruah aged about 47 years, resident of Lachit Nagar, Guwahati and competent officer of the answering respondents, do hereby verify that the statements made in paragraph 1, 2, 3 & 4 of the application are true to my knowledge and rest are my humble prayer before the Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this verification on this the 12th day of March 2008 at Guwahati.

Jayanta Baruah
Clerk, Division

SIGNATURE

File in Court on.....
Court Officer.

CAT Matter
Immediate Action



OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG

110 Mahatma Gandhi Road, Shillong - 793001, Meghalaya
Phone: 0364-2222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cueshg@sanchar.net

C.No. II (39) 4/Hqrs Estt/SH/2007/9674(4)

Dated: 10.12.2007

To

The Assistant Commissioner
Customs Division
Guwahati

Subject: OA filed by Ms Lilyda Shangpiang, Superintendent.

Shri Gautam Baishya, Departmental Counsel at Guwahati had spoken with me that Ms Lilyda Shangpiang, Supdt, has filed an OA in CAT in view of her transfer from Dawkui L.C.S. the Tribunal has desired to know the reason for the hasty transfer of the officer.

I am sending a background note about the circumstances leading to the transfer of the said officer. You may approach our standing counsel and file an affidavit in consultation with him.

Also enclosed are copies of the transfer order and the joining report of Shri B.P. Jaishi, Supdt. The matter is coming up for hearing on 12.12.2007 so immediate action may be taken.

Address of Dept Counsel

Shri Gautam Baishya,
Senior C.G.S.C, (M. No. 94351 18177)
CAT, Guwahati

C.No. II (39) 4/Hqrs Estt/SH/2007/9675(4)

Dated: 10.12.2007

Copy forwarded to Superintendent (Law), Customs Division, Guwahati, for information and immediate necessary action. Shri Gautam Baishya, Senior C.G.S.C, CAT, Guwahati

(Arvind Madhavan)
Joint Commissioner

Dated: 10.12.2007

(Arvind Madhavan)
Joint Commissioner



6'

OFFICE OF COMMISSIONER OF CUSTOMS (PREVENTIVE)
North Eastern Region, Shillong.

110 Mahatma Gandhi Road, Shillong - 793001, Meghalaya.
Tel: 0364-2222597/225325/2229005. Fax: 0364-2223440/2229007. E-mail: cusshc@sancharnet.in

Background note about the events leading to immediate transfer and relieving of Ms. Lilyda Shangpliang Superintendent.

Ms. Lilyda Shangpliang, Superintendent was holding charge of Superintendent LCS Dawki and was transferred and relieved from charge with immediate effect vide office order No. 44/2007 dated 5th December 2007 with the approval of Commissioner of Customs (P) Shillong.

The circumstances leading to this action are as follows :-

It came to light that certain officers posted at Dawki LCS and who were reporting directly to Ms. Lilyda Shangpliang Superintendent had unauthorisedly cleared a consignment that had been detained on the ground that it was to be illegally exported in contravention of the provisions of the Customs Act, 1962. Preliminary investigations point to supervisory lapses on the part of Ms. Lilyda Shangpliang. The event occurred in mid-September, 2007 whereas Ms. Shangpliang brought this to the notice of the senior officers only on 30th November 2007 vide her backdated letter dated 28th September 2007. It was felt that her continuance at this sensitive posting was not desirable because she took no remedial action in such a serious matter and delayed the matter inordinately for reasons best known to her. Therefore she was transferred with immediate effect on administrative grounds and pending further investigation in the matter. Shri. B P Jaishi Superintendent has since taken over charge of Superintendent Dawki LCS. The present whereabouts of Ms. Lilyda Shangpliang are not known and it is presumed that she is availing of her leave time. It may also be pointed out that the Assistant Commissioner of the concerned division (to whom Lilyda Shangpliang, Superintendent reported) has also been transferred along with the errant officers in the light of the events mentioned above.

Arvind Madhavan
10.12.07
(Arvind Madhavan)
Joint Commissioner



OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG

110 Mahatma Gandhi Road, Shillong - 793001, Meghalaya
 Phone: 0364-2222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cusshg@sancharne

ORDER No 44/2007

Dated, Shillong, the 05th December 2007

Subject: -Transfers and posting in the grade of Group 'B' (Exe.) Superintendent - Order regarding.

The following transfer and posting in the grade of Superintendent, Group 'B' (Gaz.Exe.) officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

Sl. No.	Name of Officers	Place of Posting	
		From	To
1.	Smt L. Shangliang	Dawki LCS, Customs Division, Shillong	Customs Hqrs Office, Shillong
2.	Shri B.P. Jaishi	Disposal Unit, Customs Hqrs Office, Shillong	Dawki LCS, Customs Division, Shillong.

The officer at S.L. No 1 stands relieved with immediate effect.

Sd/-

(A. Madhavan)
 Joint Commissioner

C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14(A)

Dated:- Dt. 5.12.07

Copy forwarded for information and necessary action to:-

1. The Chief Commissioner, Customs & Central Excise Shillong Zone, Shillong.
2. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
3. The Ass'tt. Chief Accounts Officer, Customs Hqrs. Office, Shillong.
4. The Superintendent, SIU-VIG, Customs Hqrs. Office, Shillong.
5. Smt L. Shangliang, Superintendent for compliance.
6. Shri B.P. Jaishi, Superintendent for compliance. He is directed to assume charge of Dawki LCS by 6th Dec, 2007, positively. *He will continue to hold charge of Disposal Unit until further order.*
7. The General Secretary, Group 'B' Executive Officers' Association, Customs & Central Excise, Shillong.
8. Guard File.

A. Madhavan
 (A. Madhavan)
 Joint Commissioner

(12.07)

To

The Assistant Commissioner
Shillong Customs Division
Shillong

Sir,

Subject: - Joining report.

In pursuance of Office Order No.44/2007 dated 5th of Sept,2007, communicated vide C.No.II(3)3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 issued by the Joint Commissioner, I do hereby report myself for duties today the 6th December, 2007 (FAN) at Dawki L.C.S. & assumed charge

Dated: Dawki the 6th December 2007.

Yours faithfully,

saf (B.P.JAISHI)
Superintendent, L.C.S.,
Dawki.

C.No. II (33)1/ESTT/LCS/ DK/ 2001-7507-2/

Dated: 06.12.2007

Copy forwarded for information and necessary action to:

- ✓1. The Commissioner of Customs NER Shillong.
- 2. The A.C.A.O., Customs Hqrs., North Eastern Region, Shillong.
- 3. The P.A.O. Customs & Central Excise, Shillong

copy 2/12/07
(B.P.JAISHI)
Superintendent, L.C.S.,
Dawki.

7 DEC 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 302 /2007

Smti Lilyda Shangpliang

-Vs-

Union of India and Others.

SYNOPSIS OF THE APPLICATION

Applicant is serving as Superintendent, Dawki Land Custom Station, she is sought to be transferred and posted from Dawki LCS Customs Division to Customs Headquarter, Shillong vide impugned order dated 05.12.07 just after completion of 1 year 3 months at Dawki LCS in violation of transfer policy 2006. In the impugned transfer order dated 05.12.07 it has been directed to the respondent No. 7 to assume charge by 06.12.07 with a malafide intention in order to accommodate respondent No. 7 at Dawki LCS without providing any opportunity to the applicant to handover charge. The impugned transfer order 05.12.07 is issued neither in public interest nor in the interest of administrative exigency rather the impugned order dated 05.12.07 has been issued in order to accommodate respondent No. 7 at Dawki LCS.

LIST OF DATES

11/14.08.2006- Applicant was transferred and posted to Dawki L.C.S. (Annexure- 1)

16.08.2006- Applicant joined at Dawki LCS. (Annexure- 2)

20/21.11.06- Transfer policy 2006 issued by the respondent No. 3. In terms of the said transfer policy applicant is entitled to be posted at Dawki LCS till completion of her fixed tenure of 2 years. (Annexure- 3)

17.01.2007- Chief Commissioner, NER, Shillong issued routine transfer order in the cadre of Superintendent Gr. 'B'. (Annexure- 5)

05.12.2007- Respondent No. 5 issued impugned transfer and posting order of the applicant from Dawki LCS, Customs Division to Customs Headquarter, Shillong with the direction to the respondent No. 7 to

Lilyda Shangpliang

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গুৱাহাটী বিধায়কী
Guwahati Bench

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assume charge to Dawki LCS by 06.12.07 without providing any opportunity to the applicant to hand over charge. (Annexure- 4)

06.12.2007- In the impugned transfer order dated 05.12.07 the Respondent No. 7 is directed to assume charge to Dawki LCS by 06.12.07.

04.09.2001- Hon'ble Supreme Court in SLP (C) No. 2523 of 2001 observed that transfer of officers is required to be effected on the basis of set norms or guidelines. (Annexure- 6)

Hence this Original Application.

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).
2. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue at Dawki LCS, Customs Division Shillong as Superintendent Customs till completion of her fixed tenure of 2 years of posting.
3. Costs of the application.
4. 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 stay operation of the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).
2. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

Lilyda Shangpeling

7 DEC 2007

गुवाहाटी न्यायालय
Guwahati Bench

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. 302/2007

Smil Lilyda Shangpliang. : Applicant.

-Versus-

Union of India & Ors. : Respondents.

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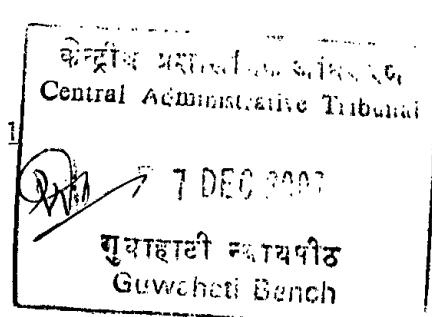
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Filed By:

S.N.C.
Advocate

Date:- 10.12.07

Lilyda Shangpliang



filed by the applicant
through S. Nabi
16/12/2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 302 /2007

BETWEEN:

Smti Lilyda Shangpliang
Superintendent, Customs,
Dawki L.C.S. Customs Division,
P.O- Dawki, Meghalaya.

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. Central Board of Excise and Customs,
Govt. of India,
Through its Chairman, North Block,
New Delhi-110001.
3. The Chief Commissioner
Central Excise and Customs,
Shillong Zone,
3rd Floor, Crescens Building,
M.G. Road, Shillong- 793001.
4. The Commissioner,
Customs (Preventive),
110, Mahatma Gandhi Road, Shillong - 793001.
5. Joint Commissioner,
Office of the Commissioner, Customs (Preventive),
110, Mahatma Gandhi Road, Shillong - 793001.
6. Shri A. Madhavan,
Joint Commissioner,
Office of the Commissioner, Customs (Preventive),
110, Mahatma Gandhi Road, Shillong - 793001.
7. Shri B.P. Jaishi,
Superintendent,
Dawki L.C.S. Customs Division,
Dawki, Shillong.

Lilyda Shangpliang

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Guwahati Bench

Respondents

DETAILS OF THE APPLICATION

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

This application is made against the impugned order of transfer and posting issued vide order No. 44/2007 bearing letter No. C.NO.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4) whereby the applicant is sought to be transferred from Dawki, L.C.S. Customs Division to Customs Headquarter Office, Shillong long before completion of her fixed tenure of 2 years in total violation of "Transfer Policy 2006" issued by the Office of the Chief Commissioner Central Excise and Customs, Shillong Zone, NER with a malafide intention to accommodate respondent No. 7 and also praying for a direction upon the respondents to allow the applicant to continue at the present place of posting till completion of the tenure.

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 she is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That your applicant was initially appointed as LDC on 02.03.1974 under the Commissionerate of Central Excise and Customs, Shillong. Thereafter she was promoted to the cadre of U.D.C in the year 1977. She was again promoted to the cadre of Inspector in the year 1982 and further promoted to the cadre of Superintendent Gr. 'B' in the year 2002 and posted in the

Lilyda Shangpialang

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Gauhati Bench

Headquarter Office, Central Excise, Shillong. However, she was transfer to Shillong Customs Division in the year 2005.

4.3 That the applicant while working as Superintendent Gr. 'B' in the Divisional Office, Shillong Division, she was transferred and posted to Dawki Land Customs Station under Shillong Division vide order No. 29/2006 dated 11.08.2006 issued under letter No. C.No. 11 (3) 3/CC/Hqrs. Esu/2004/8106-19 (K) dated 14.08.2006. In compliance of the said order, the applicant joined at Dawki Land Customs Station on 16.08.2006. She took over charge from the outgoing Officer, Shri R.M. Chyne after observing all required formalities in the prescribed format i.e. Form GFR 33 in terms of the relevant provisions of General Financial Rules 1963.

Copy of the transfer order dated 11/14.08.06 and certificate of transfer of charge are enclosed herewith and marked as Annexure-1 and 2 respectively.

4.4 That your applicant thereafter continuously working as Superintendent Gr. 'B' in the Dawki Land Customs Station under the supervision of Asstt. Commissioner, Shillong Customs Division, Shillong.

4.5 That it is stated that office of the Chief Commissioner, Central Excise and Customs, Shillong Zone, NER circulated the New Transfer Policy in respect of Gr. 'B', 'C' and 'D' officer of the Office of the Shillong Commissionerate vide letter No. C. No. II (3) 16/CCU/SH/2006/588 dated 20/21.11.06. In terms of the New Transfer Policy 2006 a Gr. 'B' Officer is liable to be transferred on completion of 2 years of tenure while posted in a sensitive station. It is stated that Dawki LCS is treated as a sensitive posting in terms of the norms settled by the Central Excise and Customs department. In view of the New Transfer Policy 2006, the applicant has acquired a valuable legal right for continuation in the said Land Custom Station at Dawki till completion of her 2 years tenure. Since the applicant has joined the present place of posting at Dawki only on 16.08.06, as such she is entitled to continue in the same station till 15.08.2008. The relevant provision laid down in Clause 7 of the guideline for transfer and posting in

Lilyda Shangpui

- DEC '07

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Gewachati Bench

respect of Gr. 'B' officers of Customs and Central Excise, NER 2006 is quoted below:

"7. Tenure in sensitive posting shall not exceed two years and one year for hard posting. Officers in non sensitive posting shall also be rotated on completion of two years. Except for reasons to be recorded in writing no officer shall be rotated from one sensitive to another sensitive posting."

Moreover, the 'Transfer Policy' and guidelines has been framed with the view of intention to provide equal opportunity to all officers in Customs and Central Excise department which would be evident from para 2 of the Transfer Policy of Superintendent 2006. The relevant portion is further quoted below for perusal of the Hon'ble Court:

"2. The guidelines aims to:

- a. Ensure minimum dislocation of officers in lines with the recent Department of Expenditure instruction for reducing expenditure on transfer.
- b. Give equal opportunity to all officers in Customs, Central Excise and Service Tax.
- c. Effective and proportionate distribution of available human resources in all the formations with a view to bring out the potential of the officers to the highest level in performing their duties."

On a mere reading of the guidelines, it appears that the guidelines of transfer and posting has been formulated also with a view of intention to bring out the potential of the officers to the highest level in performing their duties.

Copy of the New transfer policy 2006 is enclosed herewith as for perusal of Hon'ble Tribunal Annexure- 3.

4.6 That most surprisingly the impugned transfer order has been issued by the Joint Commissioner, office of the Commissioner of Customs (Preventive, NER, Shillong) vide order No. 44/2007 dated 05.12.2007 bearing letter No.

Lilyda Shangpheang

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ગુજરાતી પત્રાબીઠ
Guj. - English

C.NO. II (3) 3/CC/Hqrs.Ett./2004/7506-14 (A) whereby the applicant is now sought to be transferred from Dawki L.C.S Customs Division, Shillong to Customs Headquarters, Shillong just after completion of about 1 year 3 months in order to accommodate respondent No. 7, Sri B.P. Jaishi at Dawki L.C.S. under Customs Division, Shillong. The impugned transfer and posting order dated 05.12.2007 has been issued by Sri A. Madhavan, Joint Commissioner on extraneous consideration and also with a malafide intention even before completion of the fixed tenure of 2 years by the applicant at Dawki L.C.S. It is also learnt by the applicant that Sri A. Madhavan, respondent No. 6, has initiated the proposal for transfer and posting of the applicant with the sole intention to accommodate respondent No. 7, Sri B.P. Jaishi, Superintendent Disposal Unit, Customs Headquarter Office, Shillong. The malafide intention of the Joint Commissioner Sri A. Madhavan is further evident from the order relieving the applicant instantly on the same day on 05.12.2007 itself without providing even the opportunity to handover the charge to the relieving officer as envisaged in the G.F.R. The relevant portion of the order of transfer and relieving the applicant is quoted below:

"The following transfer and posting in the grade of Superintendent, Group 'B' (Gaz. Exe.) officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

SL No.	Name of Officers	Place of Posting	
		From	To
1.	Smt L. Shangphiang	Dawki LCS, Customs, Division, Shillong	Customs Hqrs Office, Shillong
2.	Sri B.P. Jaishi	Disposal Unit, Customs Hqrs Office, Shillong	Dawki LCS, Customs Division Shillong.

The Officer at S.L. No 1 stands relieved with immediate effect.

Sd/-
(A. Madhavan)
Joint Commissioner"

Lilyda Shangphiang

It is also to be noted here at this stage, that respondent No. 7 has been directed to assume charge to Dawki LCS by 06.12.2007 positively and further directed to continue to hold the charge of disposal unit until further order while forwarding the copy of the transfer order to respondent No. 7: The relevant portion is quoted hereunder for perusal of the Hon'ble Court.

"6. Shri B.P. Jaishi, Superintendent for compliance. He is directed to assume charge of Dawki LCS by 6th Dec. 2007, positively. He will continue to hold addl charge of Disp Unit until further order."

It is quite clear from the instruction contained in the impugned order of transfer dated 05.12.2007 that the same has been issued with undue haste, which smacks malafide.

Copy of the impugned order of transfer dated 05.12.07 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 4.

4.7 That it is stated that the applicant is suffering from illness since last few days and accordingly she proceeded for a medical check up at Shillong after due intimation to the authority but after reaching at Shillong, she came to learn that she has been transferred back to Shillong by the impugned order dated 05.12.07 and in her place one Shri Beda Prasad Jaishi, Superintendent Gr. 'B' is sought to be transferred at Dawki L.C.S. On receipt of such news she went to Headquarter Office and collected a copy of the impugned transfer order dated 05.12.07. It is relevant to mention here that no copy of the impugned transfer order has been formally served upon the applicant till filing of this application. Therefore it appears that on 05.12.07 impugned order of transfer and posting has been issued by the Joint Commissioner and by the same order respondent No. 7 has been directed to assume charge of the Dawki L.C.S by 06.12.07, such action and instruction which has been issued by Sri A. Madhavan, Joint Commissioner with an undue haste directing the respondent No. 7 to assume charge by 06.12.2007 makes it abundantly clear that the impugned transfer order has been issued with a malafide intention with an ulterior motive to

Lilyda Shengphang

accommodate respondent No. 7 at Dawki LCS in total violation of the guidelines and set norms and on that score alone the impugned order dated 05.12.07 is liable to be set aside and quashed.

4.8 That it is stated that in terms of relevant provision of the G.E.R. 1963 applicant is required to hand over charge through prescribed format. But in the instant case although the Joint Commissioner, Sri A. Madhavan is well aware of such provision of G.E.R. 1963 even then he has issued the order relieving the applicant on the same day i.e. on 05.12.2007 in total violation of the provision laid down by the Govt. of India. It would be evident from similar order of transfer and posting dated 17.01.07 whereby a series of transfer order has been issued by transferring the officers working in the grade of Superintendent in the Central Excise and Customs department but no such order indicating their release of the individual officers mentioned therein. As such the impugned order of transfer dated 05.12.07 is unprecedented one and it smacks malafide. It is also learnt that there is no such administrative exigency for transferring the applicant all of a sudden before completion of her 2 years of tenure in the present place of posting at Dawki. It is also relevant to mention here that since her posting at L.C.S. Dawki she never received any memo or warning or show cause notice indicating any deficiency in her work in the cadre of Superintendent Gr. 'B'. The routine transfer and posting order in the cadre of Superintendent Gr. 'B' has been issued only on 17.01.07 by the Chief Commissioner, NER, Shillong. It is categorically stated that when there is no administrative exigency the present applicant is entitled to continue in the present place of posting at Dawki L.C.S. till completion of fixed tenure of 2 years. It is further learnt by the applicant that Sri A. Madhavan, Joint Commissioner has influenced the Commissioner and could able to obtain his approval for issuing the impugned transfer and posting order dated 05.12.2007 in order to accommodate respondent No. 7 in Dawki, LCS for undisclosed reasons and on that score alone the impugned order of transfer and posting is liable to be set aside and quashed.

Copy of the transfer order dated 17.01.07 is enclosed herewith as Annexure-5.

Lilyda Shangphlang

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गुरु नानक देव बैठक
Guru Nanak Dev Bench

4.9 That it is stated that in the matter of transfer and posting competent authority is vested with the discretionary power for passing appropriate order transferring the subordinate officers in the public interest or for administrative exigency but in the instant case of the applicant the impugned transfer and posting order dated 05.12.07 neither passed in public interest or nor for any administrative exigency. The manner in which the impugned order of transfer dated 05.12.07 is issued would go to demonstrate that there is lack of bonafide in issuance of the impugned transfer order rather the same is issued at whims of Sri A. Madhavan, Joint Commissioner, respondent No. 6, as such the order of transfer and posting dated 05.12.07 is glaringly in violation of the professed policy of the respondent department in as much as the same has been issued before completion of fixed tenure of 2 years posting at a particular place and on that score alone the impugned order of transfer dated 05.12.07 is liable to be set aside and quashed.

The judgment of Hon'ble Supreme Court passed in the case of Sarvesh Kumar Awasthi - Versus- U.P. Jal Nigam and others, reported in (2003) 11 SCC 746 supports the case of the present applicant.

Copy of the judgment and order dated 04.09.2001 passed in SLP (C) No. 2523 of 2001 is enclosed herewith for perusal of Hon'ble Court as Annexure- 6.

4.10 That it is stated that the applicant presently under medical treatment at Shillong and she is now availing medical leave. However, the manner in which she is now sought to be removed from her present place of posting from Dawki LCS is nothing but humiliating and in fact in a disgraceful manner and that too with a malafide intention only to accommodate respondent No. 7. As such, the applicant finding no other alternative approaching this Hon'ble Tribunal for setting aside the impugned transfer and posting order dated 05.12.2007 and further be pleased to pass appropriate order directing the respondents to allow the applicant to continue in the present place of posting till completion of her tenure. It is categorically submitted that the applicant has not handed over the charge

Lily da Shangphey

7 DEC 2007

गुवाहाटी न्यायपीठ
Gauhati Bench

of Superintendent, Dawki L.C.S Customs Division till filing of this application therefore applicant is deemed to be continuing as Superintendent Gr. 'B' at Dawki L.C.S Customs Division till date.

- 4.11 That the applicant begs to state that she has a good *prima facie* case and the balance of convenience is in her favour, as such it is a fit case for the Hon'ble Tribunal to interfere with to protect the right and interest of the applicant by passing an appropriate order granting the adequate relief to the applicant.
- 4.12 That this application is made bona fide and for the cause of justice.

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

- 5.1 For that the impugned order of transfer and posting dated 05.12.07 has been issued transferring the applicant from Dawki LCS to Shillong Headquarter in total violation of the professed norms laid down by the respondents through their transfer policy 2006 as because the applicant has completed only 1 year 3 months in the present place of posting whereas as per transfer policy she is entitled to continue in the present place of posting till completion of 2 years fixed tenure. As such the impugned order of transfer dated 05.12.07 is liable to be interfered with and be set aside and quashed.
- 5.2 For that, the impugned transfer and posting order dated 05.12.07 passed by the respondent No. 5 in order to accommodate respondent No. 7 with an ulterior motive, with the approval of the respondent No. 4.
- 5.3 For that, the impugned transfer and posting order dated 05.12.07 has been issued with a *mala fide* intention at the whims of the Joint Commissioner, Sri A. Madhavan, respondent No. 5, in order to accommodate respondent No. 7.
- 5.4 For that, the impugned order of transfer and posting dated 05.12.07 has not been issued in public interest nor in the interest of administrative exigency but for certain undisclosed reason.

Lilyda Shangpui

7 DEC

गुवाहाटी न्यायालय
Guwahati Bench

5.5 For that, the impugned transfer and posting dated 05.12.07 has been issued with undue haste which smacks mala fide and on that score alone the impugned order dated 05.12.07 is liable to be set aside and quashed.

5.6 For that, in absence of any statutory rules the various instructions issued by the Government regulating the policy of transfer and posting are governing the field and the respondents are bound to follow those various guidelines meticulously.

6. Details of remedies exhausted.

That the applicant declares that she has received the impugned order dated 05.12.07 on 06.12.07 and since she has been shown as stand relieved, as such she has no other alternative remedy than to file this application.

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

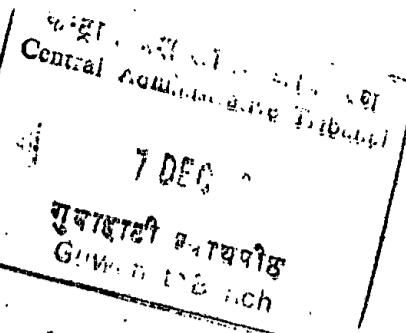
The applicant further declares that she had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of 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 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 Hon'ble Tribunal be pleased to set aside and quash the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.NO.II (3) 3/CC/Hqs.Esl/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).

Lilyda Shangpliang



8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue at Dawki LCS, Customs Division Shillong as Superintendent, Customs till completion of her fixed tenure of 2 years of posting.

8.3 Costs of the application.

8.4 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 stay operation of the impugned transfer and posting order No. 44/2007 issued vide letter bearing No. C.N.O.II (3) 3/CC/Hqrs.Estt/2004/7506-14 (A) dated 05.12.2007 (Annexure- 4).

9.2 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.

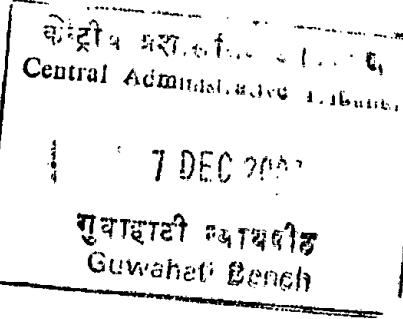
10.

11. Particulars of the I.P.O

i) I.P.O No. : 32 G 042582
 ii) Date of issue : 17.09.07
 iii) Issued from : G.P.O, Guwahati.
 iv) Payable at : G.P.O, Guwahati.

12. List of enclosures :
 As given in the index.

Lilyda Shangpang



VERIFICATION

I, Smil Lilyda Shangpliang, aged about 55 years, working as Superintendent, Customs, Dawki LCS, Customs Division, Dawki, Meghalaya, applicant in the instant Original Application, 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 9th day of December 2007.

Lilyda Shangpliang



OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG

110 Mahatma Gandhi Road, Shillong - 793001, Meghalaya
Phone: 0364-2222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cusshg@sancharne

ORDER NO. 29 /2006

Dated, Shillong, the 11th August 2006.

Subject: - Estt. Promotion, transfers and posting in the grade of Group 'B' (Gazetted)
Superintendent - Order regarding.

The following transfer and posting in the grade of Superintendent, Group 'B' officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong are hereby ordered with immediate effect until further orders.

Sl. No.	Name of Officers	Place of Posting	
		From	To
1.	Shri. R M. Chyne	Dawki LCS, Shillong Division	Hqrs. Preventive Unit, Customs Hqrs. Office, Shillong
2.	Smti. L. Shangliang	Divisional Office, Shillong Division	Dawki LCS, Shillong Division

Applicant

Sd/-
(R.D. NEGI)
Commissioner

C.NO.II (3) 3/CC/Hqrs.Estt/2004/8106 - 17 (A)

Dated:- 14. 08. 06

Copy forwarded for information and necessary action to:-

1. The Chief Commissioner, Customs & Central Excise Shillong Zone, Shillong.
2. The Commissioner of Central Excise, Shillong.
3. The Joint Commissioner (P&V), Customs & Central Excise, Shillong.
4. The Asst Commissioner, Shillong Customs Divn. Copy meant for the concerned officers are enclosed.
5. The Chief Accounts Officer, Customs (Preventive), N.E.R., Shillong.
6. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
7. The Branch-in-charge, ET /Accts./ Confl / CIU -VIG of Customs & C. Excise, Shillong.
8. The Superintendent, SIU-VIG, Customs Hqrs. Office, Shillong.
9. Smti. L. Shangliang, Superintendent for compliance.
10. The General Secretary, Group 'B' Executive Officers' Association, Customs & Central Excise, Shillong.
11. Guard File.


(C. SONGATE)
Joint Commissioner

*Attest
for
reference*

FORM G.F.R. 33.

(See Rule 78)

CERTIFICATE OF TRANSFER OF CHARGES.

Certified that we have in the afternoon of this day respectively made over and received of the charge of the Superintendent of Customs, Dainki, Land Customs Station, Dainki in pursuance of the Order No. 29/06 Dated 11.08.06 communicated vide C. No. 11(3)3/ee/Hqrs. Scn/2004/8105-19 (A) Dated 14.08.06.

For use of Audit Offices only
Noted in A/R at page _____

Relieved Officer.
Signature: 16/8/06

Noted A/C at page _____

(Name in Block Letters)
R. Martin Chyne

Leave Salary Certificate/Service Statement
issued on _____

Designation: S. Superintendent of Customs
Proceeding on Transfer/Leave, S.

Auditor Supdt. A.A.O.
A.A.O.

Relieving Officer
Signature: 16/8/06

Noted in A/R at page _____
Noted in Leave A/C at page _____

(Name in Block Letters)
Designation: _____
Station: _____

Pay slip issued on _____

Designation: _____
Station: _____

Auditor Supdr. A.A.O.
A.A.O.

Dated: _____

Name of the balances for which responsibility is accepted by the Officer receiving charge

Cash Rs. NIL

Payment Advance Rs. NIL

Where transfer of charge proceeds the relieved Officer issue of formal Orders by the competent authority, a suitable indication to that effect may be given.

(16/8/06)
Relieving Officer.

C.No. 11(3)3/ET/LCS/1DK/2006/1252-55 Dated 16.8.06

Copy forwarded for information and necessary action to

01. The Commissioner of Customs, N.E.R., Shillong.
02. The Addl. Commissioner of Customs, N.E.R., Shillong.
03. The C.A.O., Customs Hqrs. Office, Shillong.
04. The P.A.O., Customs & Central Excise, Shillong.
05. The A.O.(Estt. Branch), Customs Hqrs. Office, Shillong
06. S/Shri. _____

(16/8/06)
Relieving Officer.

*Attestd
for
Advocate*

ANNEXURE 3



**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:- ecshillong@excise.nic.in EDECS :- (zone18)

C.No. II (3) 16/ CCU/SH/2006 / 538

Dated: - 20th November 2006

20 NOV 2006

To : The Commissioner,
Central Excise,
Shillong/ Dibrugarh.

The Commissioner,
Customs (Preventive),
N.E.R., Shillong

The Commissioner(Appeals)
Central Excise
Guwahati.

The General Secretary,
Group "B" "C" & "D" Ministerial/
Executive Association.

Sir/Madam,

Subject: - New Transfer Policy from Group "B" to "D" Officers-
Regarding.

I am directed to enclose herewith New Transfer Policy 2006 as the same
has been finalized for information and necessary action.

Yours faithfully,


 20/11/06
 (J.R.H. DIENGDOH)
 ASSISTANT COMMISSIONER

Enclo :- as above.

*Attested
for
Ansari*

16

GUIDELINES FOR TRANSFER AND POSTING IN RESPECT OF GROUP -B (EXECUTIVE & MINISTRIAL) GROUP-C (EXECUTIVE & MINISTRIAL) AND GROUP-D OFFICERS OF CUSTOMS AND CENTRAL EXCISE IN THE NORTH EASTERN REGION.

1. This may be called general guidelines for posting of Executive Officers in the grade of Superintendents and Inspectors working in the North Eastern Region, it is exercised by other officers in the region and also for administrative grounds for the same.

2. The Guidelines aims to:-

- a. Ensure minimum dislocation of officers in lines with the recent Department of Expenditure instruction for reducing expenditure on transfer.
- b. Give equal opportunity to all officers in Customs, Central Excise and Service Tax.
- c. Effective and proportionate distribution of available human resources in all the formations with a view to bring out the potential of the officers to the highest level in performing their duties.

3. Inter Commissionerate placement shall be done by the Chief Commissioner of Customs and Central Excise, North Eastern Region. The posting of the officers within the Commissionerate up to the Range/ CPF/LCS level shall be done by the respective commissioners within 5(five) working days of the A.G.T. This has been decided considering the geographical constraints which includes two tiers or three tier transfer orders.

4. Option for posting is to be exercised by the 31st October and posting order shall be issued by the 15th December. All officers are to be released latest by 31st January or on completion of the officers' children's academic sessions, if their ward is within class 12 standard - which ever is later.

5. All postings may be graded as, (1) sensitive, (2) Non-sensitive, (3) Hard Posting. List of classification of all the posts is enclosed. This list may be re-looked once a year.

6. While considering an officer for transfer, S/he shall be transferred to the nearest possible station while keeping in mind the overall guidelines.

7. Tenure in sensitive posting shall not exceed two years and one year for hard posting. Officers in non sensitive posting shall also be rotated on completion of two years. Except for reasons to be recorded in writing no officer shall be rotated from one sensitive to another sensitive posting.

8. A person shall not be posted to a place where he has worked earlier unless there are no optees for that Station.

9. The Normal tenure in Customs and Central Excise formations may be minimum six years. This period may be extended or reduced on administrative grounds. On completion of two years in Dibrugarh Commissionerate, an officer is to be transferred out if a request is made to that effect.

10. For posting to Dibrugarh and other places where no optees are available, the vacancies shall be filled up by taking officers from the following categories in that order :-

1. Newly recruited officers.
2. Officers promoted from one rank to another.
3. Officers returning from deputation.
4. Officers who have their hometown in and around that particular station.
5. Officers who have completed maximum tenure in any particular station.
6. It has also been decided to give as far as possible posting at a place of choice to the officers who have completed their tenure at Dibrugarh.

*Alfonso
Jai
Advocate*

11. Transfer from one place to another shall be made on the basis of station seniority and after completion of tenure of posting.

12. In places where an officer is willing to continue and if no option is exercised by other officers, the incumbent may be allowed to continue provided there are no administrative grounds for s/he to discontinue.

13. (i) During AGT the case of representation is to be considered first. If an officer is to be transferred as the result of representation by the other officer s/he should be rotated as per his option or to the nearby station.

(ii) All representations shall be submitted through proper channel with a copy to the respective Associations.

(iii) Representation shall be considered only for choice of station or place and not for specific posting.

(iv) If representations are considered on compassionate ground, the officer/s shall be given a non-sensitive posting for the extended period of stay for which representation has been considered.

14. Guidelines on posting of husband and wife and officers with only two years for retirement shall be as per the policy issued by the Department of Personnel and Training from time to time.

15. Officers repatriated from deputation shall report to the Chief Commissioner's Office and postings of such officer/s shall be decided by the Chief Commissioner. Except for exceptional cases, posting on loan basis shall be avoided as far as practicable.

16. Posting on promotion shall be as per exigency of the administration.

17. In exceptional cases for which reasons is to be recorded in writing administration may deviate from the above guidelines while considering an officer for transfer.

18. Due to uneven distribution of posting in customs, central excise and service tax in different areas it is not found feasible to have zones within the Chief Commissioner's Zone, as this will defeat the aim of equal opportunity to work in the three formations.

GROUP 'B' AND 'C' MINISTERIAL OFFICERS ASSOCIATION

1. All ministerial officers are liable to be transferred within the Zone. Routine transfer of Ministerial Officers from one station to another shall be avoided. However on administrative ground or on promotion/vacancy and representations, Gr. 'B' & 'C' Ministerial officers are liable for transfer from one station to another station.
2. Gr. 'B' and 'C' Ministerial officers shall be rotated from Customs to Central Excise and vice versa after every 5 to 6 years.
3. All ministerial officers shall be rotated from one charge to another within the same station after every 3 years.

-3-

GROUP 'D' OFFICERS

1. Though Gr. 'D' staff are also liable to be transferred anywhere within the Zone, frequent transfer of Gr. 'D' staff shall be avoided.
2. Transfer and Posting of Gr. 'D' within the Commissionerate shall be done from the respective Head Quarters of the three Commissionerates.
3. Tenure of posting in border area/ field position shall be for two years extendable by another one year. while considering the options for border area posting preference will be given to those who have never been posted to such areas on Seniority.
4. Except for posting to sensitive/ border areas, Gr. 'D' Officers will normally be posted nearest to their Hometown.
5. If a situation arises where there are no options for a particular area, administration will take its own decision as is convenient for Administration.

GR. 'C' DRIVERS ASSOCIATION

1. Gr. 'C' Drivers are liable to be transferred within the zone, however routine transfer from one Station to another shall be avoided as far as practicable.
2. Tenure of posting for Gr. 'C' Drivers in a particular Station other then Borders/Sensitive areas will be for 4-6 years.
3. Tenure of posting to Border/sensitive posts will be for a period of 2 years.
4. Gr. 'C' Drivers will be rotated from Customs to Central Excise and vice versa after every 4 to 6 years depending on administrative convenience.

U. SENSITIVE, NON-SENSITIVE AND HARD POSTING

Central Excise Commissionerate:-

1. Sensitive Posts :-

- a) Byrnihat Range - I
- b) Dymihat Range - II
- c) Guwahati Range - I
- d) Gueahati Range - II
- e) Guwahati Range - III
- f) Guwahati Range - IV
- g) Guwahati Range - V
- h) Guwahati Range - VII
- i) Hqrs, Anti- Evasion Branch
- j) Anti - Evasion Branch (Division)
- k) Audit Branch
- l) E O U S
- m) Personnel Section
- n) Vigilance Section

2. Hard Posts :-

- a) Diphu Range
- b) Imphal Range
- c) Aizawl Range

3. Non-Sensitive Posts :-

All the remaining posts in the Commissionerate/All Divisional Hqrs. And Ranges:

B. Shillong Customs (Preventive) Commissionerate:-

1. Sensitive Stations:-

i. Agartala :-

- a). Agartala LCS and Dhaka Bus Service
- b) Bishalgarh CPF
- c) Srimantapur LCS
- d) Sonamura CPF

ii. Aizawl :-

- a) Seling PP
- b) Champhai-Zokhawthar LCS/CPF

iii. Dhubri :-

- a) Ghatkopar LCS
- b) Mahendraganj LCS

iv. Dimapur :-

Cherrapunji CPF

v. Guwahati-Division:-

- ✓ a) ICD Amlingaon
- b) LGBI Airport

vi. Imphal :-

- a) Pallet CPF
- b) Moreh LCS
- c) Moreh CPF

vii. Karimganj :-

- a) Silchar CPF
- b) K.S.F.S LCS
- c) Sularkandi LCS

viii. Shillong :-

- a) Dawki LCS
- b) Borsora LCS
- c) Pynulsia CPF

2. Sensitive Post :-

i. Hqs. Office, Shillong :-

Hqs. Preventive Unit

ii. Divisions :-

All Divisional Preventive Force.

2. Hardship Post :-

i. Agartala :-

- a) Sabroom CPF
- b) Khowaighat LCS & PP
- c) Dholaighat LCS

ii. Aizawl :-

Demayiti LCS

iii. Dibruri :-

- a) Ullapani LCS
- b) Halisar LCS

iv. Dimapur :-

Hampung LCS

Abul
Jal.
Advocate

ANNEXURE-A



OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG

110 Mahatma Gandhi Road, Shillong - 793001, Meghalaya
Phone: 0364-2222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cusshg@sancharne

ORDER No 44/2007

Dated, Shillong, the 05th December 2007

Subject: -Transfers and posting in the grade of Group 'B' (Exe.) Superintendent - Order
regarding.

The following transfer and posting in the grade of Superintendent, Group 'B' (Gaz.Exe.) officers of Customs (Preventive), Commissionerate, North Eastern Region, Shillong are hereby ordered with immediate effect and until further orders.

Sl. No.	Name of Officers	Place of Posting	
		From	To
1.	Smt L. Shangpliang	Dawki LCS, Customs Division, Shillong	Customs Hqrs Office, Shillong
2.	Shri B.P. Jaishi	Disposal Unit, Customs Hqrs Office, Shillong	Dawki LCS, Customs Division, Shillong.

The officer at S.L. No 1 stands relieved with immediate effect.

C.NO.II(3) 3/CC/Hqrs. Estt/2004/7506-14(1)

Sd/-
(A. Madhavan)
Joint Commissioner
Dated:- Dt. 5.12.07

Copy forwarded for information and necessary action to:-

1. The Chief Commissioner, Customs & Central Excise Shillong Zone, Shillong.
2. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
3. The Asstt. Chief Accounts Officer, Customs Hqrs. Office, Shillong.
4. The Superintendent, Smt-VIG, Customs Hqrs. Office, Shillong.
5. Smt L. Shangpliang, Superintendent for compliance.
6. Shri B.P. Jaishi, Superintendent for compliance. He is directed to assume charge of Dawki LCS by 6th Dec, 2007, positively. He will continue to hold ^{and} charge of Disp Unit until further order.
7. The General Secretary, Group 'B' Executive Officers' Association, Customs & Central Excise, Shillong.
8. Guard File.

miss address
(A. Madhavan)
Joint Commissioner

5.12.07

*Alesta
Advocate*



**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:- ccshill@excise.nic.in EDECS :- (zone18)

ORDER No. 7/2007

Dated Shillong the 17th January 2007

The Inter-Commissionerate transfer Order in the Grade of Superintendent is as follows. The following Officers are transferred with immediate effect and are placed at the disposal of the concerned Commissioner. The Commissioners shall order the postings subsequently.

SI.No.	NAME OF THE OFFICER	FROM	TO
1.	2.	3.	4.
1.	Shri N.C. Talukdar	CE. Dibrugarh	CE Shillong
2.	Shri J.M. Borah	CE Dibrugarh	Customs(P) Shillong
3.	Shri T.K. Sen	CE. Dibrugarh	Customs (P) Shillong
4.	Shri Madhurjya Mohan Neog	CE. Dibrugarh	Customs(P) Shillong
5.	Shri Pallav Lochan Saikia	CE. Dibrugarh	C.C. Unit
6.	Shri Bijoy Bhutan Barua	CE. Dibrugarh	Customs (P) Shillong
7.	Shri B. Majumdar	CE Dibrugarh	CE Shillong
8.	Shri Manoj Kumar Brahma	CE Shillong	CC Unit
9.	Shri Sukanta Das	CE. Shillong	Customs (P) Shillong
10.	Shri A.K. Choudhury	CE Shillong	Customs (P) Shillong
11.	Shri Johar Dey	CE. Shillong	Customs (P) Shillong
12.	Shri Rameshwar Bhattacharjee	CE Shillong	CE. Dibrugarh
13.	Shri Ninamunni Phukan	CE Shillong	Customs (P) Shillong
14.	Smti Melicia Synnah	CE Shillong	Customs (P) Shillong
15.	Smti L. Sailo	CE Shillong	Customs (P) Shillong
16.	Shri S.K. Kundi	CE Shillong	Customs (P) Shillong
17.	Shri N.C. Patra	CCUnit	CE. Shillong
18.	Smti Z.K. Shadap	CCUnit	Customs (P) Shillong
19.	Shri Jambu Lama	Customs(P) Shillong	CE Shillong
20.	Shri T.C. Gayan	Customs (P) Shillong	CE Shillong
21.	Shri I.K. Kalita	Customs (P) Shillong	CE Dibrugarh
22.	Shri S. Ganguly	Customs (P) Shillong	CE Dibrugarh
23.	Shri Shital Chandra Das	Customs (P) Shillong	CE Shillong
24.	Shri Bijoy Krishna Deb	Customs (P) Shillong	CE Shillong
25.	Shri Biswajit Bhattacharjee	Customs (P) Shillong	CE Dibrugarh
26.	Shri Pallav Kumar Sinha Choudhury	Customs (P) Shillong	CE Shillong
27.	Shri J.C. Das -II	Customs (P) Shillong	CE Shillong
28.	Shri S.R. Dhar	Customs(P) Shillong	CE Dibrugarh

Sd/
(A.S.R. NAIR)
CHIEF COMMISSIONER

Contd....P/2....

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3/15
2/2/07

2/2

Adj Et

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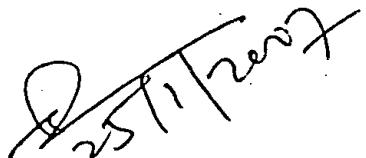
C.No. II (3)13/CCO/SH/2006/ 2139-48

Dated :- 25th January, 2007

25 JAN 2007

Copy forwarded for information and necessary action to:

1. The Commissioner, Central Excise, Shillong
2. The Commissioner, Central Excise, Dibrugarh
3. The Commissioner, Customs (Preventive), N.E.R. Shillong
4. The Joint Commissioner (P&V), Central Excise, Shillong
5. The Joint Commissioner (P&V), Customs (P), N.E.R., Shillong
6. The Joint Commissioner (P&V), Central Excise, Dibrugarh
7. The General Secretary, Group "B" Executive Officers Association, Customs and Central Excise, Shillong
8. The Administrative Officer (ET), Central Excise Customs (P), Shillong Dibrugarh with a request to inform the individual Officer concerned at their place of posting.


(N.C. PATRA)
SUPERINTENDENT

(2003) 11 Supreme Court Cases 740

(BEFORE M.B. SHAH AND R.P. SETHI, JJ.)

(Record of Proceedings)

SARVESH KUMAR AWASTHI Petitioner

U.P. JAI. NIGAM AND OTHERS Versus

U.P. JAI. NIGAM AND OTHERS Respondents

SLP (C) No. 2523 of 2001, decided on September 4, 2001

Service Law — Transfer of employee — Transfer of an officer at the behest of politicians without following any guidelines provided therefor — Held, an arbitrary or mala fide transfer of an efficient and independent officer is not in favour of good administration — Transfer of officers is required to be effected on the basis of set norms or guidelines without allowing any political interference in regard thereto — Chief Secretary of U.P. directed to file an affidavit pointing out the rules and regulations for effecting transfers of officers including higher officers like District Magistrates — Government Servant Conduct Rules, 1956, R. 27 (Para 3)

W-M/24868/S

Advocates who appeared in this case :

P.P. Rao, Senior Advocate (Anish Kumar Gupta and Shrish Kumar Misra, Advocates, with him) for the Petitioner;

Harish N. Salve, Solicitor General (Ajay K. Agarwal, Advocate, with him), for the Respondents.

ORDER

1. Heard learned counsel for the parties.

2. It is the contention of the petitioner that his transfer is mala fide and without following any guidelines for transferring the officers. As against this, it has been pointed out that the petitioner is transferred because certain complaints were received against him. Learned counsel for the petitioner has drawn our attention to Annexure A-2, the additional affidavit filed by the petitioner, which is in the form of noting and order (C&DS) dated 27-8-2000 which indicates that transfers are effected at the recommendations of either Ministers or MLAs/MPs/MLCs.

3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

4. In this set of circumstances, the Chief Secretary, State of U.P. is directed to file necessary affidavit within six weeks from today pointing out rules and regulations for effecting transfers of officers including higher

† From the Judgment and Order dated 12-1-2001 in WP No. 1557 of 2000 of the High Court of Allahabad at Lucknow

officers such as District Magistrates. A copy of Annexure A-2 (p. 124 of the paper-book) be also sent to the Chief Secretary, State of U.P. along with this order by which the transfers of the officers are effected. Stand over for six weeks.

Court Masters

(2003) 11 Supreme Court Cases 741

(BEFORE G.B. PATTANAIK AND B.N. AGRAWAL, JJ.)

CHANDRA VILASH RAI

Appellant:

Versus

STATE OF BIHAR AND OTHERS

Respondents.

Civil Appeal No. 1994 of 1998 with No. 1998 of 1998.

decided on February 1, 2001

A. Service Law — Departmental enquiry — Penalty/Punishment — Mitigating factors — Contravention of Rules and Regulations of Cooperative Bank and disobedience of orders of Managing Director by Secretary of the Bank — Committing of such action not at his own but at the behest of Board of Directors, held, would not exonerate the delinquent of the liabilities which he would incur for such illegalities and irregularities

— However, in view of that factor and also in view of the long period of more than 20 years of service put in by him, punishment of dismissal altered to that of premature retirement which also was a major punishment under the Staff Regulations of the Bank — Retiral benefits, if any permissible on such premature retirement, directed to be given — Misconduct — Committing acts of misconduct at the behest of superiors — Effect of, if any, on legal consequences

B. Service Law — Dismissal from service — Validity — Question that dismissal order passed against Secretary of Cooperative Bank without obtaining prior approval of Registrar stood vitiated, raised before Supreme Court without raising the same before High Court — In such circumstances, the said question left unexamined

(Para 2)

H-M/CFLNST/24753/SL

ORDER

1. These two appeals raise a common question and were therefore heard together and are disposed of by this common judgment. Both these appellants had served as Secretary in the same cooperative society called Bihar State Cooperative Bank Limited. For certain dereliction on their part, regular disciplinary proceedings had been initiated and a set of charges had been levelled. In the enquiry the charges stood established and ultimately the appropriate authority passed the order of dismissal from service. Assailing the order of dismissal from service, writ petitions were filed in the Patna High Court, which were heard by a Division Bench. One of the Judges was persuaded to take the view that the alleged delinquency and negligence on the part of the delinquents would not amount to misconduct since those acts and

After
Signature
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH : GUWAHATI

O.A. No.302 / 2007

MS. LILYDA SHANGPLIANG

.....APPLICANT
- VERSUS -

UNION OF INDIA & OTHERS.

.....RESPONDENTS

WRITTEN STATEMENT OF THE RESPONDENTS: -

I, Shri Pradip Kumar Das, son of late M. N. Das, and I am representing the respondents No.1 to 7 in the above petition and I file the written statement on behalf of the above respondents No.1 to 7. The statements which are not specifically admitted are deemed to be denied.

1. That with regards to the paragraph 1 the respondent begs to state that those are matter of records. Allegation made by the applicant as regards to her transfer with a malafide intention to accommodate Respondent No.7 is baseless highly imaginary and hence denied.
3. That with regards to the statements made in the paragraph 2 and 3 the deponent begs to state that those are within specific knowledge of the applicant and the deponent cannot admit or deny the same.

Contd. /-

Customs Commissioner
सीमा शुल्क विभाग गुवाहाटी
Customs Division, Guwahati (9.12.07)

3. That with regards to the statements made in the paragraph 4.1 to 4.4. of the original application the respondents begs to state that those are matter of records and the respondent do not admit anything which is not borne out of record.
4. That with regards to the statements made in the paragraph 4.5 the deponent begs to state that Transfer Policy is a set of broad guidelines framed by the department and do not cover the scenario by the higher authority. It is submitted that the transited and immediate relieving of the applicant from Dawki LCS is on account of public interest and administrative exigencies of the case. The contention of the applicant is misplaced and misleading. As such, the Transfer policy does not confer any legal right of continuance in any post, nor does it bar the Department respondents from making any transfer when public interest and administrative exigency are involved.
5. That with regards to the statement in para 4.6 the respondents beg to state that the applicant was transferred on extraneous consideration and with malafide intention by the deponent is baseless highly imaginary and denied. The order was effected after due application of mind and approval of Commissioner of Customs, Shillong (Respondent No.4). The transfer of the applicant was based in the light of events at Dawki LCS as follows: -

It came to light that certain officers posted at Dawki LCS and who were reporting directly to Ms.

Contd.../-

Pradip M. Das.

सहाय्यक नियमपाल
Assistant Commissioner
श्रीमान् शुल्क प्रभाग गुवाहाटी
Customs Division, Gauhati

२३ जून २००८

गुवाहाटी बायोर
Gauhati Bench

- 3 -

Lilyda Shangpliang, Superintendent the applicant herein had unauthorisedly cleared a consignment that had been detained on the ground that it was to be illegally exported in contravention of the provisions of the Customs Act, 1962. Preliminary investigations point to serious supervisory lapses on the part of Ms. Lilyda Shangpliang. The event occurred in mid-September, 2007 whereas Ms. Shangpliang brought this to the notice of the senior officers only on 30th November, 2007 vide her backdated letter 28th September 2007. It was felt that her continuance at this sensitive posting was not desirable because she took no remedial action in such a serious matter and delayed the matter inordinately for reasons best known to her. Therefore she was transferred with immediate effect on administrative grounds and pending further investigation in the matter. The contention that Respondent No.6 had extraneous consideration and a malafide intention to accommodate Respondent No.7 at Dawki LCS is mischievous, motivated and baseless. It is an attempt by the applicant to tarnish the reputation of Respondent No.6 and to deflect the attention of the Hon'ble Tribunal from her inept handling of an extremely sensitive matter involving Govt. revenue. The Respondents are of the view that the applicant has approached to the Hon'ble Tribunal at this juncture so that the Department is restrained from taking action against her for her incompetence and lack of integrity. The applicant was relieved of her charge with immediate effect because of the gravity of the case and the

Contd.../-

Ranajit M. Das
Ranajit M. Das
Assistant Commissioner
Gauhati Customs Commissioner, Gauhati
Customs Division, Gauhati

serious ramification involved. Her continuance at LCS Dawki would have hampered on extremely sensitive investigation that has been launched to fix responsibility in case of fraud and loss of Govt. revenue. Therefore it is submitted that there is no malafide on the part of the Respondent No.6. It may also be pointed out that the Assistant Commissioner of concerned Division (to whom Lilyda Shangpliang, Superintendent reported) has also been transferred alongwith the errant officers in the light of the events mentioned above. Since the gravity of the case was serious, the officer was relieved immediately. So that an enquiry came be conducted by the respondents without my hindrance, influences from any officials.

6. That with regards to the statements made in paragraph 4.7 the respondent begs to state that the applicant was informed telephonically by the Assistant Commissioner (her supervisory officer) about the transfer. Instead of waiting to handover charge to her reliever, she proceeded on her leave and has subsequently produced a medical certificate to cover-up her absence from duty. It is learnt that the applicant was in the habit of neglecting her official duties and spent more times in Shillong than at Dawki LCS, her place of posting. It is felt that an event of this gravity occurred at Dawki LCS because of her casual and indifferent approach to her work.

Contd: :-

Pradip M. Dan.

केन्द्रीय नियमित विभाग
Assistant Commissioner
शीता शुल्क व्यापार गुवाहाटी
Customs Division, Gauhati

7. That with regards to the statement made in Paragraph 4.8 the deponent begs to state that Ms. Shangpliang, Superintendent was transferred on administrative ground and the reasons are explained in para 6. Further, serious dereliction of duty on the part of Ms. Lilyda Shangpliang, Superintendent left the administration with no option but to transfer her with immediate effect. It is reiterated that the applicant informed her superiors about the events at Dawki LCS vide her backdated letter dated 28-09-2007. This letter reached the office of the Commissioner only on 30-11-2007.

8. That with regards to the statements made in paragraph 4.9 the respondent begs to state that the contention of malafide intention is baseless and denied. The order has been issued based on the decision of the Commissioner of Customs, Shillong without my malice. The case law cited by the applicant is not tenable in the instant case since she has been transferred on account of supervisory lapses and dereliction of duty noticed while she functioned as Superintendent, LCS, Dawki.

9. That with regards to the statements made in para 4.10 of the application the respondent begs to state that the contention of officer that she would continue as Superintendent, Dawki LCS is mischievous and smacks of indiscipline. She stands relieved as on 05-12-2007 regardless of whether she has handed over charge or not. The said transfer

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Ranadip M. Das.

ৱাসিন্দি আসুকুন
Assistant Commissioner
ৱাসিন্দি পুলিশ পোল গুৱাহাটী
Customs Section, Guwahati

order was passed for the reason of administrative exigencies and without any malafide.

10. That with regards to the statements made in paragraph 4.11 and 4.12 of the application the respondent begs to state that the applicant has no case to substantiate in favour of her continuance as Superintendent, LCS, Dawki.
11. That with regards to the statements made in paragraph 5.1 the respondent begs to state that the applicant's reliance of Transfer Policy for continuing in the post of Supdt. LCS, Dawki is misplaced. Transfer policy is a set of broad guidelines and do not cover the scenario where there is supervisory lapses and dereliction of duty. It is submitted that the transfer and immediate relieving of the applicant from Dawki LCS is on account of public interest and administrative exigencies of the case. The contention of the applicant is misplaced and misleading. As such the Transfer policy does not confer any legal right of continuance in any post, nor does it bar the Department from making any transfer when public interest and administrative exigency are involved.
12. That with regards to the statements made in the paragraphs 5.2 to 5.4 the respondent begs to state that the allegation of the applicant was transferred on extraneous consideration and with malafide intention by the deponent is baseless and denied. The order was effected after due

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Prasip M. Das.

सहायक न्यायकाल
Assistant Commissioner
सीमा शुल्क प्रभाग, गुवाहाटी
Customs Division, Guwahati

गुवाहाटी नियमित

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application of mind and approval of Commissioner of Customs, Shillong (Respondent No.4). The transfer of the applicant was based in the light of events at Dawki LCS as explained in para 4.6.

13. That with regards to the statements made in paragraph 5.5 the respondent begs to state that impugned transfer and posting order dated 05-12-2007 has been issued for immediate corrective action. The applicant being fully aware of the events of Dawki LCS, failed to take any corrective steps. She informed her superiors after more than two and half months of the occurrence of the events at Dawki LCS. This alone raises serious question about her motives. Respondent No.4 was, therefore, compelled to take immediate action to remove the applicant from LCS, Dawki since her integrity was questionable. It is further submitted that a full investigation has been launched to uncover the misdeeds of the officer concerned in respect of the events at Dawki LCS. If the applicant were to continue as Superintendent, Dawki LCS, then the investigation is bound to be hampered since the applicant would try to ensure that no responsibility is fixed on her.

14. That with regards to the paragraph 5.6 the respondent begs to state that the instant transfer has been effected in view of public interest involved and administrative exigency. As such the Transfer Policy is not relevant in this case and the grounds set forth in the application are

Contd.../-

Pranip M. Das.

सहायक व्यापक
Assistant Commissioner
सिंगा शुल्क विभाग, गुवाहाटी
Customs, Division, G. H. Ward

গুৱাহাটী প্রায়োগ

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neither tenable in law as well as on facts and circumstances of the case.

15. That with regards to the statement made in paragraphs 6 and 7 the respondent begs to state that the applicant attempted to subvert the departmental process in this regard by approaching to the Hon'ble Tribunal. It is a mischievous attempt by her to hamper an investigation into her role in the event at Dawki LCS.
16. That with regards to the statement made in paragraphs 8 to 8.4 the respondent begs to state that the averments of the department that there exist strong ground for transfer and relieving the officer it is felt that there are no ground of retaining the applicant rather than to join in new place of posting. That her continuance in Dawki LCS would sent a message to the officers and staff that the administration has turned a blind eye to her supervisory lapses and dereliction of duty. It would also hamper the investigation that is being conducted by the administration to uncover the fraud and loss of Govt. revenue at Dawki LCS.
17. That with regards to the statements made in the paragraphs 9 to 9.2 the respondent begs to submits that the grave injustice will be done if the Hon'ble Tribunal stops the operation of the transfer order because it would amount to rewarding an officer whose conduct is doubtful and on whom the administration has lost faith on account of her

Contd.:/-

Ranadip M. Dm.

সহায়ক প্রায়োগ
Assistant Commissioner
কাশিমা শুল্ক প্রশাসন, গুৱাহাটী
Customs Division, Guwahati

গুৱাহাটী পৰিষেৰ

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questionable integrity in the matter. The continuance of the applicant at Dawki LCS would hamper a free and fair investigation.

VERIFICATION

I, Shri Pradeep Kumar Das, son of Late M. N. Das, aged about 59 years, by caste Hindu, by profession Govt. Service, Resident of Amreshati-5, P.O. christian Bazaar, Mouza - Dispm, P.S. - Dispm, in the District of Kamrup, do hereby state and verify the above statements made are true to my best of knowledge and belief and I have not suppressed any material facts.

And I sign this verification on this the 15th day of December, 2007 at Guwahati.

Pradeep M. Das.

SIGNATURE

অধিকার মাস্টার
Assistant Commissioner
দামোদৰ কমিশন. গুৱাহাটী
Customs Division, Guwahati

- 9 JAN 2008

गुवाहाटी न्यायपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

Filed by the applicant
through Mr. Biju, advocate
on 09/01/08

In the matter of:-

O.A. No. 302 of 2007

Smti Lilyda Shangpliang.

..... Applicant:

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of:-

Rejoinder submitted by the applicant in
reply to the written statements
submitted by the Respondents.

The humble applicant above named most humbly and respectfully state as
under:-

1. That the applicant has gone through the written statement and has
understood the contents thereof.
2. That with regard to the statements made in paragraph 1 of the written
statement the applicant categorically denies the same and further reiterate
that the transfer of the applicant from Dawki, L.C.S. Customs Division to
Customs Headquarter Office, Shillong is made with the ulterior motive to
accommodate respondent No. 7.
3. That the applicant categorically denies the correctness of the statements
made in Para 4 and 5 of the written statement and further begs to say that
the transfer of the applicant from Dawki, L.C.S. Customs Division to
Customs Headquarter Office, Shillong has not been made in public
interest or administrative exigency but with a malafide intention to

Lilyda Shangpliang

- 9 JAN 2008

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Guwahati Bench

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accommodate respondent No. 7 on the ~~pretext~~ and ~~alleged~~ ground that the applicant has unauthorisedly cleared a consignment in contravention of the provisions of the Customs Act 1962. It is evident from the statement of the respondents made in para 5 that she has been transferred on the ~~alleged~~ ground of unauthorised clearance of a consignment in contravention of the provisions of Customs Act 1962. Such wild allegation which is brought against the applicant is contrary to the factual position but in order to defend the case of the applicant before the learned Tribunal such a statement is made. In para 5 it is alleged that on a preliminary investigation it has revealed that a serious supervisory lapse has occurred on the part of the applicant on the ~~alleged~~ ground that the incident has occurred in the middle of September 2007 whereas the applicant has brought it to the notice of the higher authority by her back dated letter dated 28.09.2007. Therefore the statement made in para 5 of the written statement itself is self contradictory. In one hand it is alleged that the applicant has cleared the consignment unauthorisedly and on the other hand it is stated that the applicant has reported the matter on 30.11.2007 by a back dated letter dated 28.09.2007. Therefore it is quite clear that the statements are contradictory, more so when the unauthorised clearance of consignment in contravention of the provisions of the Customs Act 1962 is brought to the notice of the senior officers only by the applicant herself. Therefore allegation that she has cleared unauthorisedly the consignment is highly objectionable. In this connection the applicant like to draw the following facts to the notice of the Hon'ble Tribunal regarding the incident of unauthorisedly clearance of the consignment:

12.09.2007- Applicant was at Dawki LCS

13.09.2007- Applicant was on casual leave.

14.09.2007- Applicant was on casual leave.

15.09.2007 and 16.09.2007- Saturday and Sunday.

17.09.2007- Applicant resumed duty at Dawki LCS. Applicant came to learn from Gr. D staffs (Sri K.K. Singh, Havildar and Sri Ramanand Roy, Sepoy) that two of the Inspectors posted at

Lilyda Shangpeling

- 9 JAN 2008

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Guwahati Bench

Dawki LCS seized consignment and subsequently released the same on 13.09.2007 in between 21 hrs and 22 hrs (after office hours) when the applicant was on casual leave and did not report the seizure and subsequent release of the same to the applicant.

17.09.2007 to 21.09.2007- Applicant of her own investigated the matter and got satisfied herself about the seizure of consignment and subsequent release of the same by two Inspectors.

22.09.2007- Applicant personally meet her immediate controlling officer i.e. Asstt. Commissioner, Customs, Shri M.M. Marbaniang at Shillong and appraised him in details about the incident to the Asstt. Commissioner, Customs.

28.09.2007- Applicant prepared a complain and handed over it to the Asstt. Commissioner, Customs Shri M.M. Marbaniang, who is her immediate controlling officer.

02.10.2007- Applicant talked to the Commissioner over his mobile phone. But before the applicant could appraise the Commissioner about the seizure of consignment and unauthorised release of the same by two Inspectors at Dawki LCS, the Commissioner directed her to come through proper channel and to discuss with Asstt. Commissioner, Customs being her immediate controlling officer.

In between 22.09.2007 to 02.12.2007, the Asstt. Commissioner, Customs, the immediate controlling officer of the applicant did not make any inquiry about the seizure of the consignment and unauthorised release of the same.

It is categorically denied that the aforesaid complaint is brought to notice of the higher authorities only on 30.11.2007 but in fact it is brought to the notice of the higher authorities way back on 22.09.07.

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Guwahati Bench

03.12.2007- Asstt. Commissioner, Customs, Shillong went to Dawki for an inquiry (i.e. after lapse of about 2 months) and submitted his inquiry report.

05.12.2007- Applicant has been stand relieved by the impugned order dated 05.12.2007 without providing her any opportunity to hand over charge as required under the provision of G.F.R. 1963.

10.12.2007- Applicant approached this Hon'ble Tribunal through the instant original application against the impugned order of transfer dated 05.12.07.

13.12.2007- Asstt. Commissioner, Shri M.M. Marbaniang transferred from the office of Customs Division, Shillong to the office of Chief Commissioner, Shillong.

15.12.2007- Applicant came to learn that one Superintendent, Customs went to Dawki for investigation.

26.12.2007- Applicant came to learn that the Deputy Commissioner, Customs went to Dawki for inquiry.

Till date applicant has not been asked by her superior officers to appraise the department about the seizure of consignment and unauthorised release of the same at Dawki LCS by the two Inspectors although applicant detected the case and made complain to his immediate controlling officer.

It is submitted that from the aforesaid events it is quite clear that the applicant has taken all necessary steps in the matter of unauthorised release of consignment which was seized by the Inspectors in her absence in station and suppressed the incident to the applicant. In fact she was kept in dark about such unauthorised clearance of consignment but the same came to her notice from the Gr. 'D' officials of the Dawki LCS and thereafter she made an inquiry and reported the matter to her immediate controlling officer and she was under the impression that since she

Dilyda Shangpingsingh

গুৱাহাটী ন্যায়পৰিষad
Guwahati Bench

reported the matter to her immediate controlling officer and the immediate controlling officer should inform the higher authorities, now it appears that the applicant has been made a victim of the circumstances for no lapse on her part. If the unauthorised release of the consignment has not been taken up by the Asstt. Commissioner with the higher authorities that too when the applicant submitted a report of the said incident in writing, therefore, the allegation that there is a serious lapse on the part of the applicant is categorically denied. Even the higher authorities came to learn about the unauthorised release of the consignment only from the applicant but the higher authority without holding any investigation in a very hasty manner issued the impugned transfer order dated 05.12.2007 without ascertaining the factual position. Since the applicant has reported the unauthorised release of the consignment, therefore it can rightly be said that the applicant is not involved in the incident but it has alleged that there is serious lapse on the part of the applicant which is after thought and the said allegation is brought against the applicant in order to defend their arbitrary and illegal action before the Court of law. It is learnt by the applicant that Asstt. Commissioner, Shri M.M. Marbanlang has been transferred from Customs Division, Shillong to the office of the Chief Commissioner, Shillong after filing of the original application by the applicant before the Hon'ble Tribunal i.e. on 13.12.2007 whereas the O.A. No. 302/2007 has been filed on 10.12.2007. Therefore it is quite clear that in order to make an eye wash and also in order to defend the action of the respondents they have affected transfer of the Asstt. Commissioner on 13.12.2007. The applicant being an honest officer reported the incident of unauthorised release of the consignment to his immediate controlling officer i.e. Asstt. Commissioner, Customs Division, Shillong but now she has been made a victim of the circumstances as because the Asstt. Commissioner did not report the matter to his higher authority.

The applicant lodged detail complain on 28.09.07 through proper channel regarding the incident of unauthorised release of consignment and that letter was handed over to Asstt. Commissioner by hand. As such the applicant cannot be held responsible if the matter is brought to the notice of higher authority by the Asstt. Commissioner at a later stage.

Lilyda Shangphei

- 9 JAN 2017

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Guwahati Bench

Therefore, transferring the applicant on the alleged ground of serious lapses is serious punitive in nature and there was no circumstances which warrants issuance of the impugned transfer order dated 05.12.07 of the applicant from Dawki to Shillong, on that score alone the impugned order of transfer dated 05.12.07 is liable to be set aside and quashed.

A copy of the complain dated 28.09.07 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- A.

4. That the applicant categorically denies the statements made in paragraph 6, 7, 8, 9, and 10 of the written statement and further begs to say that allegation of neglecting official work and spent more times at Shillong is highly objectionable and such allegation are after thought without based on record.
5. That the applicant categorically denies the correctness of the statements made in paragraph 11, 12, 13, 14, 15, 16 and 17 and further begs to say that on the pretext of investigation when the matter of unauthorised release of consignment is brought to the notice of the authorities at the instance of the applicant but the respondent No. 6 taking advantage of the situation arranged the posting of the respondent No. 7 at Dawki, as such the impugned order of transfer dated 05.12.07 has been issued with a malafide intention, as such the same is liable to be set aside and quashed. The allegation of supervisory lapses and dereliction of duty is highly objectionable and contrary to the factual position rather the respondents are making an attempt to question the integrity and honesty of the applicant. It is learnt from reliable source that investigation has already been conducted, therefore the Hon'ble Tribunal be pleased to direct the respondents to place the investigation report before the Hon'ble Tribunal as well as relevant records pertaining to transfer of the applicant from Dawki LCS to Customs Headquarter office, Shillong.
6. That in the facts and circumstances, the applicant humbly submits that she is entitled to the reliefs prayed for and the Original Application deserves to be allowed.

Lilyda Shangpheieng

- 9 JAN 2008

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Guwahati Bench

VERIFICATION

I Smti Lilyda Shangpiliang, aged about 55 years, working as Superintendent, Customs, Dawki LCS, Customs Division, Dawki, Meghalaya, applicant in the instant Original Application, do hereby verify that the statements made in paragraph 1 to 6 of the rejoinder are true to my knowledge and rest are my humble submission before the Hon'ble Tribunal, I have not suppressed any material fact.

And I sign this verification on this the 09th day of January 2008.

Lilyda Shangpiliang

OFFICE OF THE SUPERINTENDENT
LAND CUSTOMS STATION : : DAWKI

C. No. II (8) 1/ET/LCS/DK/2000/602(CA).

Confidential (by hand)
Dated : 28.09.2007

To,

The Commissioner (Prev)
Customs Hqrs.
N.E.R., Shillong.

(Through Proper Channel)

Sub : Complaint report, regarding detection case of 20 (twenty) bags of ladies suits piece (each bags contain 100pcs.) of Indian Original, meant for illegal Export.

Sir.

I beg to report that on 11.09.07, on tips of the information, the customs officers, detected a case on 20 (twenty) bags of ladies suits piece (each bags containing 100pcs.) of Indian origin, concealed inside the jungle area near Kharlamin Village, 3 Km. (approx) to the Bangladesh Border. These goods were purposely kept inside the jungle for illegal attempt of Export to Bangladesh.

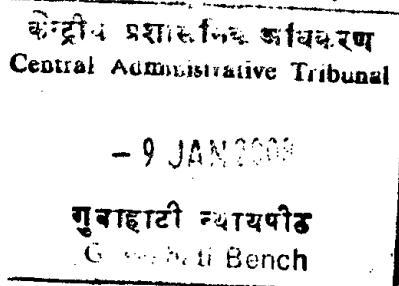
2. The customs officer, after detection of the goods were brought to the office and kept inside the office godown, for further investigation. No claimant came forward to claim as ownership of the said goods at that time.
3. The officers on duty and detected the case are :
 1. Shri. T.T.N. Bhutia, Inspector
 2. Smti. K. Diengdoh, Inspector
 3. Shri. R.K. Singh, Havildar
 4. Shri. Ramanand Roy. Sepoy
 5. Shri. Gaura Dutta, Farash
 6. Shri. Rowell Singh, Farash
4. That Sir, on 13.09.07 abd 14.09.07, I was on C.L. for 2 (two) days with station leave permission, for attending the funeral ceremony of my uncle. Shri. K.N. Sharma, Inspector, was directed to look after the station work during my absence.
5. That Sir, on 17.09.07, morning when I joined office, it was learnt that the said goods, were released on 13.09.07 night in between 21.00 hrs to 22.00 hrs, that too after office hours, to one Party by the name Shri. Raju Pal, residence of Bakur Dawki.
6. That Sir, at the time of released, only 2 (two) officer presence (i.e. S/Shri. T.T.N. Bhutia & K.N. Sharma, Inspectors and witnessed by 2 (two) farash namely S/Shri. Gaura Dutta & Rowell Singh as they were staying/ residing in the office permisses.
7. That Sir, interestingly after a thorough enquiries made, reveals, that the officers had taken a fine of Rs. 2.5 lakh (Rupees Two Lakhs Fifty thousand) only, from the party, on released of the said goods.

केन्द्रीय प्रशासन अधिकरण Central Administrative Tribunal
- 9 JAN 2007
गुवाहाटी न्दायपीठ Guwahati Bench

Attest
S. C. Adhikar

- 9 -

8. That Sir, to my utter surprised and un thinkable, how Shri K.N. Sharma, being the Senior Officer could act and misguided to the Junior officers. Such mentality and attitude of the officers, had brought a great shame and tarnish the image of the station and as well as the ~~the~~ insult *to the* controlling officer.
9. That Sir, had the officers act on their part to a quality expected as a conscientious officer, this case as it was an un-claimed would have been the customs highest seizure ever achieved of the station, where seizure value would have been to Rs. 12. to 13 Lakhs approximately.
10. That Sir, if one Inspector could take such drastic decision in his own hand without the knowledge of the controlling officer, perhaps a superintendent post was not required/necessary in the station.
11. That Sir, posting of such officers who were least bothered the gravity of the case and that too in such a sensitive places like Dawki, I regret to state that the integrity in the station would be out of restrictive.
12. That Sir, under the above reports and facts, I am bound to pray for the punishment as deemed fit by the authority and also requested for immediate removal from the station of both the Inspector S/Shri. T.T.N. Bhutia and K.N. Sharma with the replacement of new officers at the earliest, so that such kind of malafide practices should be totally stopped.
13. Submitted for immediate order as deemed fit please.



Yours faithfully,

L. Shangpliang
28/09/07
(L. Shangpliang)
Superintendent

C. No. II (8) 1/ET/LCS/DK/2000/603-4(4)

CONFIDENTIAL
(By Hand)

Dated : 28.09.2007

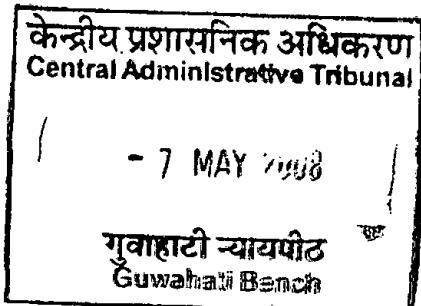
Copy for information and necessary action to :

- (i) The Joint Commissioner of Customs (P) Hqrs., Shillong.
- (ii) The Assistant Commissioner of Customs Division, Shillong. Enclosed herewith a complaint letter dt. 8.10.07 (original) of Shri. P. Pohlong, Muktapur, for information and necessary action at your end.

C/C

L. Shangpliang
28/09/07
(L. Shangpliang)
Superintendent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI



In the matter of:-

O.A. No. 302/2007

Smti Lilyda Shangpliang.

..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-And-

In the matter of:-

Additional rejoinder submitted by the applicant against the written statement submitted by the respondents.

The applicant above named most respectfully begs to state as under:-

1. That your applicant begs to say that the letter dated 28.09.2007 addressed to the Commissioner (Preventive) Customs HQ, NER, Shillong was handed over to Assistant Commissioner Sri M. M. Marbaniang, Customs Division, Shillong by hand. She has also discussed with the then Assistant Commissioner, Marbaniang regarding illegal release of seized consignment by two Inspectors, namely; Kapil Nath Sarma and T.T.N Bhutia. However, Mr. Marbaniang assured the applicant that after necessary inquiry he would take up the matter with the Commissioner. Subsequently, when the applicant met the Assistant Commissioner, Mr. Marbaniang in the month of October, 2007, and enquired about the illegal release of seized consignment, he requested the applicant to incorporate in the said letter, copy of information to:-

- (1) Joint Commissioner of customs (P) Head quarters, Shillong.
- (2) The Assistant Commissioner of Customs Division, Shillong.

However, the applicant without realizing the consequence of the same but incompliance with the verbal request of Mr. Marbaniang has incorporated

Filed by the applicant
through A. Datta, advocate
on 07.05.08

Lilyda Shangpliang

complaint letter dated 08.10.2007 in the aforesaid letter dated 28.09.2007, since the request is made by her immediate controlling officer but the applicant could never realize that the matter was never taken up with the Commissioner. The applicant has trusted Sri Marbaniang, Assistant Commissioner on good faith and could never think that Sri Marbaniang in his turn would not take up the matter with the Commissioner. Therefore, it appears that Sri Marbaniang, Assistant Commissioner made an attempt to hush up the matter in collusion with the Inspectors who are involved in illegal release of seized consignment. It is relevant to mention here that said Sri Marbaniang, who was earlier posted at Guwahati and entrusted with the duties to supervise the official proceedings in the Guwahati Airport. At that relevant point of time i.e. during his posting at Guwahati Airport, it is learned from reliable source that some smuggling good used to come through international flight from Bangkok to Guwahati and those consignment used to be unloaded at Guwahati Airport and thereafter those consignment used to be rebooked for Kolkata through domestic flights and all the relevant bills, documents and necessary papers used to be prepared by a vested circle with the aid and assistance of some customs official, at Guwahati Airport and those consignments were used to be rebooked for Kolkata. However subsequently, this illegal transportation of smuggled goods came to the notice of the higher authority. Thereafter, on an inquiry, 4 officers were suspended on the ground of alleged involvement. However, said Sri Marbaniang who was the supervising officer on arrival and departure of international flight was immediately shifted from Guwahati to Shillong and posted as Assistant Commissioner, Customs at Shillong Division since he is a Group 'A' officer.

केन्द्रीय प्रशासनिक अधिकारी विभाग
Central Administrative Tribunal

Surprisingly no action was initiated against said Sri M. M. Marbaniang, Assistant Commissioner. It is further learned that all the 4 suspended officers in their reply

~ 7 MAY 2008 to the higher authority has stated that Sri Marbaniang is involved in smuggling

गुवाहाटी न्यायपीठ
Guwahati Bench

of goods, through Guwahati Airport. As such the higher authority at Shillong is well aware of the style and functioning of Sri Marbaniang, Assistant

Commissioner, who made an attempt to hush up the entire matter, regarding illegal release of seized consignment without the knowledge of the applicant.

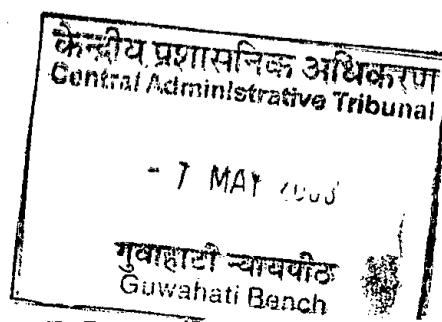
2. That it is stated that, the applicant on an earlier occasion when a complain was received from a local lady Smti. S. Lamin against one of the Inspector alleging

Lilyda Shangpiany

non handing over of 14 numbers of wooden boats to her although she had deposited a total amount of Rs. 6,000/- at the time of auction of 20 numbers seized wooden boat but only 6 numbers of boats were handed over to her. On receipt of the complain, the applicant issued a show cause notice to Sri K.N. Sarma, Inspector, LCS, Dawki on the basis of the complaint received from Smti. S. Lamin. However, said Sri K. N. Sharma, Inspector submitted a reply on 19.10.2007, which was not satisfactory. However, the applicant although gave a reply to Smti. S. Lamin but thereafter the entire matter was reported to the Assistant Commissioner Sri Marbaniang with all relevant documents including report on 23.10.2007. But surprisingly no action was taken by said Sri Marbaniang, Assistant Commissioner about the complain of Smti. S. Lamin. Therefore it is a glaring example that even though the applicant has reported all incidents, complains and illegal activities to said M.M. Marbaniang, Assistant Commissioner, but no action was taken from his end on the complains and similarly the matter of release of consignments by the Inspectors at Dawki LCS although reported in time, but the same has been suppressed by said Sri Marbaniang before the higher authority, rather it appears that said Sri Marbaniang is always protected by the higher authorities by shifting him from one office to another office. It is also learnt that after the transfer of the applicant from Dawki to Shillong and more particularly after receipt of notices from the learned Tribunal of the original application, said Sri Marbaniang was shifted from Shillong Customs Division. It is to be noted here at this stage that the applicant prayed for production of investigation report regarding illegal release of consignment by the Inspectors. But surprisingly, the higher authority opposing such prayer for the reasons best known to them. The incident took place about 6 months back and altogether 3 investigations were carried out in the matter, as such there should not be any difficulty on the part of the authority to produce the relevant records for proper adjudication of the case of the applicant.

(Copy of the complain dated 08.07.2007, reply dated 20.07.2007, 16.10.2007 and reply dated 19.10.2007 are enclosed herewith and marked as Annexure- I, II, III and IV respectively).

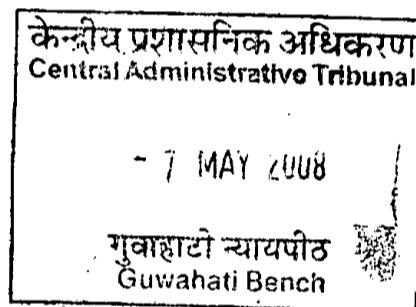
3. That in the facts and circumstances stated above, the application deserves to be allowed with costs.



VERIFICATION

I Smti Lilyda Shangpliang, aged about 55 years, working as Superintendent, Customs, Dawki LCS, Customs Division, Dawki, Meghalaya, applicant in the instant Original Application, do hereby verify that the statements made in paragraph 1 to 3 of the additional rejoinder are true to my knowledge and rest are my humble prayer before the Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this the 6th day of May 2008 at Shillong.



Lilyda Shangpliang

Annexure A

To

The Superintendent of the Customs Department (Dawki)

Srimati, S. Lamin, reside at Earbammon informed that the twenty boats sold in auction from your department (office) on 26.6.07 only six (6) of them has been handed to me, but cash has been cleared for twenty numbers at the total amount Rs.6000.00, request to make clear about this, if the fourteen numbers of boat could not be arranged, the balanced money may kindly be refund back.

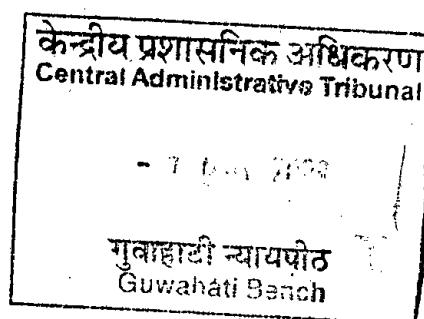
The six numbers of boat that were sold were kept at the river side (Limergot) in India territory for our fishing purposes. Then on the reset when we went to the river side we found all the boats were missing and later on we came to know that the B.S.F has ceased all the six numbers of boat on 7.7.07 and handed to your office.

It is for information, that the said boat ceased by B.S.F is due to some electrical problem as the boats were frightened of the river side (Limngot) may be loosened due to the overflow of the river.

Therefore I request you to look into the matter and release the ceased boats, as the ceased boats sold from your office in auction for our own personal use.

An early action on the matter is requested.

Attested
Murti
Advocate



Yours faithfully,

(S. Larin)

Mr. S. Lannin, Resident of the Customs Department
(Deenkhil)

5-38
08/07
Smt. K. Devi, who is a resident of Sivnagar, has applied for an amount of Rs. 6000/- for the purchase of a wooden boat for her personal use. The same has been deposited in the account of the said Smt. K. Devi, who is a resident of Sivnagar, for the sum of Rs. 6000/-.

I, S. Lannin, reside at Far Branch
Shamati, S. Lannin, reside at Far Branch
for twenty boats sold in Auction
for your department (office). Only six (6) of them has
been handed to me, but both has been cleared
for twenty numbers of boat. If possible
request to make clear about this, if
the fourteen numbers of boat could not be arranged
the balanced money may kindly be refund back.
The six numbers of boat that were sold were
kept at the river side (Wingot) in Indian Territory
for our fishing purposes. Then on the next day
when we went to the river side we found all
the boats were missing and later on we came
to know that the B.S.T. has ceased all the six
numbers of boat on 7/7/07 and closed its
office.

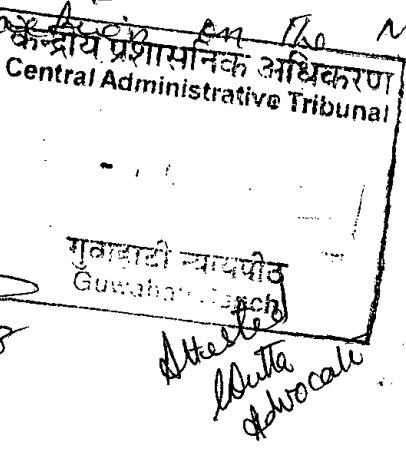
If it is from the information, that the said
boat ceased by B.S.T. is due to some external problem
as the boat was tightened at the river side (Wingot)
may be loosened due to the overflow of the river
therefore I requested you to look into the
matter and released the ceased boat, as the ceased
boat sold from your office in Auction for our own
personal use.

An early ~~decision~~ on the matter is requested.

Yours faithfully
S. Lannin
07/7/07

Attached:

27/04/08



Office of the Superintendent,
Land Customs Station, Dawki

C.No.VIII(14)2/Cus/PREV·INVES/LCS/DK/06/446(A)

Dt.20.07.07

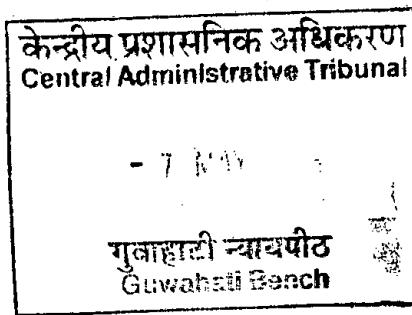
To

Smt S. Lamin
Erbancon, East Khasi Hills,
Meghalaya

Sub : Claim for refund of the balance auction amount dt. 26.6.07 – reg.

Please refer to your application dt. 8.7.07 on the above subject.

In this connection, I would like to inform you that 20 (twenty) nos. of wooden country boats here placed for public auction. On 26.6.07 and in course of auction you were the highest bidder pf Rs.6000/- (Rupees six thousand) only for all the 20 (twenty) nos of wooden boats whereas the official authority has accepted your bid. So question of refund cannot be entertained at this stage as the amount of Rs.6000/- already deposited and appropriated into the govt. account.



Superintendent
Dawki LCS

Office of the Superintendent ~~Annexure-11~~
Land Customs Station

Dawki

By Post

C. NO. V III (14) 2 / CUS / PREV- INVEST / LCS / DK / 06 / 446 (A) DT: - 20.07.07

To

Int. S. Lamen,
Entanou, East Khasi Hills,
Meghalaya.

Sub:- Claiming for refund of the balance
amount of Rs. 26.6.07 - reg.

Please refer to your application
dt. 8.7.07 on the above subject.

In this connection, I would like to inform
you that 20 (Twenty) nos. of wooden bangles
were placed for public auction on 26.6.07 and
in course of auction you were the highest bidder
of Rs. 6000/- (Rupees Six thousand) only for all the 20
(Twenty) nos. of wooden bangles, where as the official
authorities have accepted your bid. So, now question
of refund cannot be entertained at this stage,
as the amount of Rs. 6000/- already deposited
and appropriated into the govt. account.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

गुवाहाटी न्यायपीठ
Guwahati Bench

- 7 -

O/C

Attested:

27/04/08

20/07/07
(लिलিমा सांगमिलाम)
(LILIDA SHANGMILAM)
अधीकारी
Superintendent
दावकी थल रीमा शुल्क स्टेशन
Dawki L.C.S.

Attested
Mutta
Advocate

OFFICE OF THE SUPERINTENDENT
LAND CUSTOMS STATION :: DAWKI (By hand)
CONFIDENTIAL

C.No.II(8)1/ET/LCS/DK/2000/669-70
To

Dated 16.10.07

Shri K.N.Sharma,
Inspector,
L.C.S. Dawki

Sub : Auction of 20 (twenty) non of country Boats dated 26.06.07
-regarding.

Based on the complaint dated 08.07.07, submitted by Smti S. Lamin, R/o Erbaman, E.Khasi Hills, Meghalaya, it appears that you have auction the seized 20 (twenty) of country boats dated 26.06.07 and Smt Lamin was the highest bidder @ Rs.6000/- (Rupees six thousand only as claimed by her

2. But on scrutiny of the office records it appears that out 20(twenty) nos of the C/boat, you have shown auction for 6 (six) nos only as per TRS issue No.B21436 & B 21437 dated 26.06.07 @ Rs.21436 & Rs.21437/- dated 26.06.2007 @ Rs.150/- & 750/- respectively when the total amount was Rs.900/- (Nine hundere) only and deposited into the S.B.I, Dawki vide TRG challan No.56 dated 27.06.07.S.B.I.

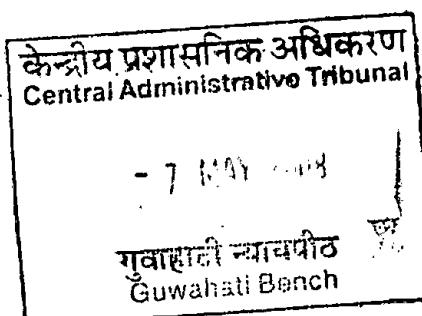
3. Whereas, the rest balance 25 (forteen) nos of c/boat and the remaining balance amount of Rs.5100/- (Rupees five thousand one hundred) only were not reflected nor shown deposited into the S.B.I Dawki as the auction sale proceeds. This practice was highly irregular and considered as mis appropriation of the Govt. revenue.

4. Despite to my verbal request for the accounting of the said balance 14 nos. of c/boats with the remaining balance amount of Rs.5100/- (Rupees five thousand one hundred) only. You have failed to do so. You have not taken a serious note to it.

5. Further, reply letter also issued to Smt Lamin vide this office letter C.No.VIII(14)Cus/Pre-Ins/LCS/DK/16/446(A) dated 20.07.07 stating that the amount of Rs. 6000/- deposited by her on 26.06.07 as auction sale proceeds of the 20 nos c/boat had been accepted and appropriated to the Govt. accounts.

6. Therefore, in view of the above facts, you are hereby asked to justify whey the balance amount of Rs.5100/- for 14 nos c/boats auction not found accounted as per the office records.

7. Reply of the same, should be submitted within 3 (three) days on receipt of this letter.



Sd/-
Superintendent
L.C.S, Dawki

OFFICE OF THE SUPERINTENDENT

LHDN. CLUSTERS STATION: DAWKI (By hand)

C. NO. II (S) 1/ET/CCS/DK/acc/669-70

CONFIDENTIAL (By hand)
Dated: 16.10.07To
Shri K. N. Sharma,
Inspector,
L.C.S., DawkiSub:- Auction of 20 (Twenty) nos of country boats dated
26.06.07 - Regarding.

Based on the complaint dated 08.07.07, submitted by Shri S. Lamin, R/o Expediter, L. Khari Hills, Meghalaya, it appears that you have auctioned 20 (Twenty) nos of country boats dated 26.06.07, and Shri Lamin was the highest bidder @ Rs 6000/- (Rupees Six Thousand) only and accepted as claimed by her.

But on scrutiny of the office records, it appears that out of 20 (Twenty) nos of the c/boats, you have shown auction for 6 (Six) nos only as per TRS issued No A 21436 & A 21437 dated 26.06.07 @ Rs 150/- and Rs 750/- respectively, & when the total amount was Rs 900/- (Ninety hundred) only, and deposited into the S.B.I., Dawki with TRB Challan No 56 dt 27.06.07.

Whereas, the rest balance 14 (fourteen) nos of c/boats and the remaining balance amount of Rs 5100/- (Rupees Five thousand one hundred) only, were not reflected, nor shown deposited into the S.B.I., Dawki as the auction sale proceeds. This practice was highly irregular and considered as mis-appropriation of the Govt. Revenue.

Despite to my verbal request for the accounting of the said balance 14 nos of c/boats with the remaining balance amount of Rs 5100/- (Rupees Five thousand one hundred) only, you have failed to do so. Since you have not taken a serious note to it.

Further, reply letter also issued to Shri Lamin, with this office letter C. NO. VII (14) 2/CCS/Proc-2ws/LCS/DK/CC/446/01 dt 26.07.07, stating that the amount of Rs 6000/- deposited by her on 26.06.07 as auction sale proceeds of the 20 nos c/boats had been accepted and appropriated to the Govt. accounts.

Therefore, in view of the above facts, you are hereby asked to justify, why the balance amount of Rs 5100/- for 14 nos c/boats auction, not found accounted as per the office records.

Reply of the same, should be submitted within 3 (Three) days of receipt of this letter.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Superintendent, 15/10/07
L.C.S., Dawki.

Affixed:

गुवाहाटी न्यायपीठ
Guwahati Bench

27/09/08

OFFICE OF THE SUPERINTENDENT

LAW & CUSTOMS STATION: DAWKI (By hand)

C.No. II (9) 1/ET/CS/OK/scr/669-70

CONFIDENTIAL
Dated: 16.10.07

To
Shri K.N. Sharma,
Inspector
L.C.S., DAWKI

Sub:- Auction of Twenty nos of County boats dated
26.06.07 - regarding.

Based on the complaint dated 09.07.07, submitted by Shri S. Lamin, R/C Esq., Mawmaw, L. M. Hill, Meghalaya, it appears that you have auctioned ^{the said} 20 (Twenty) nos. of County boats dated 26.06.07, and Shri Lamin was the highest bidder @ Rs 600/- (Rupees Six Thousand) only and accepted ~~as~~ claimed by her.

2. But on scrutiny of the office records, it appears that out of 20 (Twenty) nos. of the c/boats, you have shown receipt from C(Sir) nos only as per TRS issued No B 21436 & B 21437 dated 26.06.07 @ Rs 150/- and Rs 75/- respectively when the total amount was Rs 700/- (Rupees Seven Hundred) only and deposited into the S.A.T., DAWKI with TRT Challan No 56 dt 24.06.07.

3. Whereas, the total value on 14 (Fourteen) nos of c/boats and the remaining balance amount of Rs 500/- (Rupees Five Thousand One Hundred) only, were not reflected nor shown deposited into the S.A.T., DAWKI as the auction sale proceeds. This practice was highly irregular and considered as misappropriation of the Govt. Revenue.

4. Despite of my verbal request for the accounting of the said balance 14 nos. of c/boats with the remaining balance amount of Rs 500/- (Rupees Five Thousand One Hundred) only, you have failed to do ~~so~~. ~~and~~ you have not taken a serious note to it.

5. Further, ^{also} reply letter dated to Shri Lamin, with this office letter C.No. VTM (14) 2/Cus/Law-Dawki/CS/OK/4466(A) dt 26.07.07, stating that the amount of Rs 600/- deposited by him dt 26.06.07, as auction sale proceeds of the 20 nos c/boats had been accepted and appropriated to the Govt. accounts.

6. Therefore, in view of the above facts, you are hereby asked to justify, why the balance amount of Rs 500/- for 14 nos c/boats auction not found accounted as per the office records.

7. Reply of the same, is ^{to} be submitted within 3 (Three) days of receipt of this letter.

15/10/07
Superintendent,
L.C.S., DAWKI.

OFFICE OF THE SUPERINTENDENT OF LAND CUSTOMS STN.

To

The Superintendent
Dawki, L.C.S.

Sub : Auction of 20 (twenty) nos of ~~Convict~~ Boats dated 26.6.07 –
regarding.

DAWKI
केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal 9.10.07

- 7. MAY ...

गवाहाटी न्यायपीठ

Reference to your letter No.C.No.II(8)1/ET/LCS/DK/2000/669 dated 16.10.07, this is for your information that only 6(six) no. of boats were auctioned vide TR-5 NO. 21436 and 21437 and total amount of Rs.900/- (Nine hundred only) was deposited into SBI, Dawki vide TR-6 No.56 dated 27.06.07. These six (06) no. were auctioned to S. Lamin and she also expressed her willingness to take further 14 (forteen) nos. of boats or may be even more than 14 nos. for which she kept Rs.5100/- in my custody.

2. But first, she wanted to collect these 6 nos. of Boats already auctioned to her and also to inspect the other boats, and if found alright she would send her men to collect the other boats also.

3. But I was informed after a few days that she has already received 6 nos of boats, but would not like to buy the other boats as they were totally damaged and informed that she would buy better boats latter.

4. She was informed to come and collect the other boats also, but I was informed that she had to go to Delhi for urgent work and would come after she comes back from Delhi.

5. As she has not turned up till now, neither the boats could be arranged for her nor the money could be refunded to her.

6. But it is surprising to note that you have issued a fallacious letter to Smt S.Lamin, stating that Rs.6000/- has been appropriated to the Govt. Accounts, knowing fully well that this is a blatant lie. I fail to understand your motive in this. And you have not informed me of any complaint or endorsed the same to me for my comments or clarifications whatsoever.

Madam, you should have at least discussed this matter once before acting so hastily to issue a letter to S.Lamin based on errors and lies.

However, this explanation would keep/make things clear in all perspectives and it is suggested that the erroneous letter be withdrawn

*Attested
Dutta
Advocate*

9

and Smt S.Lamin be summoned to office in front of me so that she can bid for more boats or else the money may be refunded to her.

Sd/-
Kapil N. Sharma
Inspector

19-10-07

C.No.II(8)1/ET/LCS/DK/2000/676

Dated 23.10.07

Forwarded to the Asstt. Commissioner, Customs Division, Shillong in continuation to this office letter of even No.670 dated 16.10.07 for information & necessary action, with the comments herewith as deemed fit at your end.

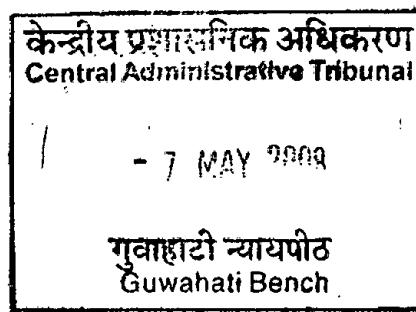
The reply as per paras are all blatant his.

Para 1-3 : Smt Lamin's application & statement (in original) dated 08.07.07 enclosed herewith, as self explanatory.

Para 4-5 : Smt Lamin had gone to Delhi during the mid of Sept'07 only. Auction conducted on 26.06.07. A gap of nearly 3 months passed which is not convincing nor acceptable.

Para 6 : Reply letter of this office letter No.VIII(14)2/Cus/Prev-Ins/LCS/DK/06/446(A) dt. 20.07.07, copy enclosed for ready reference.

Enclo : As above.



Superintendent
Dawki LCS

19-10-07

To
The Superintendent
Darrki L.C.S.

Sub: Auction of 20 (Twenty) no. of Country Boats
dated 26.6.07 - regarding

Reference to your letter no. C. no. 11(8)1/1/ET/LCS/1
DR/1000/1669 dt. 16-10-07, this is for your
information that only 6 (Six) no. of boats
were auctioned vide SR-5 nos. 21436 and 21437
and total amount of Rs. 300/- (Three hundred only)
was deposited into SBI, Darrki vide DR-6 no.
56 dt. 27-6-07. These six (6) no. were auctioned
to S. I. Kaur, and she also expressed her
willingness to take further 14 (Fourteen) no. of
Boats or may be even more than 14 nos.
for which she kept Rs. 5100/- in my custody.

2. But first, she wanted to collect these
6 no. of boats already auctioned to her and
also to inspect the other boats, and if found
all right, to she would send her men to
collect the other boats also.

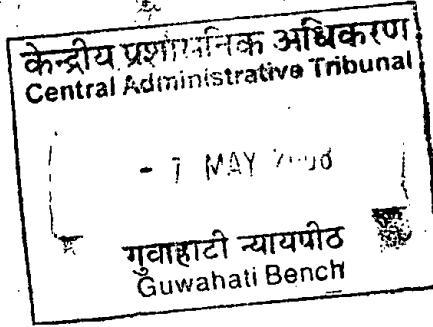
3. But, I was informed after a few days
that she ~~now~~ has already received 6 no.
of boats, ~~but~~ would not like to ~~receive~~
the other boats as they were ~~totally~~ damaged
and it informed that she would ~~receive~~
other better boats later.

4. She was informed to come and
collect the other boats also, but I was
informed that she had to go to Delhi
for urgent work and would come after she
comes back from Delhi.

5. As she has not turned up till now,
neither the boats could be arranged for her
nor the money could be refunded to her.

Attested:

Do
27/04/08



R.I.O. - 2

6. But, it is surprising to note that you have issued a fallacious letter to Smti. S. Lamin stating that Rs. 6000/- has been appropriated to the Govt. accounts knowing fully well that this is a blatant lie. I fail to understand the your motive in this. And you have not informed me of any complaint or endorsed the same to me for my comments or clarifications whatever.

Secondly, you should have at least discussed this matter once before acting so hostile to issue a letter to S. Lamin based on errors and lies.

However, This explanation would keep/make things clear in all perspectives and it is suggested that the p and it is suggested that the p erroneous letter be withdrawn and Smti. S. Lamin be summoned to office in front of me so that she can bid for more boats or else the money may be refunded to her.

At Blank

Mohamed 19/10/07
Kopil N. Sharma

19-10-07

By hand Inspector
CONFIDENTIAL (Dawki L.C.S.)

C. NO. II (8) 1/EI/LCS/DR/2000/676 Dated - 23/10/07
Forwarded to the Asstt. Commissioner, Customs Division, Shillong, in continuation to this office letter of even No 670 dt 16.10.07 for information & necessary action, with the comments herewith as deemed fit at your end.

The reply as per parae are all blatant lies.

Para 1-3 : Smti Lamin's application & statement (in original) dt 08.07.07 enclosed herewith, as self explanatory.

Para 4-5 : Smti Lamin had gone to Delhi during the mid of Sept 07 only. Auction conducted on 26.06.07. A gap of nearly 3 mths passed which is not convincing nor acceptable.

Para - 6 Reply letter of this Office letter No VIII (14) 2/Cm/Proc-Inv/LCS/DR/06/ H46(A) dt 20.07.07, *copy enclosed for ready reference.*

Encl : - As above

Attested :

27/04/08

Central Administrative Tribunal	(प्रियंका नायर)
27/04/08	14/05/08
Superintendent	Guwahati Bench
Guwahati Bench	Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH: GUWAHATI
In OA NO 302/2007

IN THE MATTER OF:-

O.A NO. 302/2007

Mr. Krishna Bahadur Bhujel
(कृष्ण भुजेल)

(K. B. BHUJEL)
Deputy Commissioner of Customs
सीमा-शुल्क प्रमाणी, शिलांग
Customs Division, Shillong

through *Great and Bounding cause*
20.6.08

SMTI. LILYDA SHANGLIANGAPPLICANT

-VERSUS-

UNION OF INDIA & OTHERSRESPONDENTS

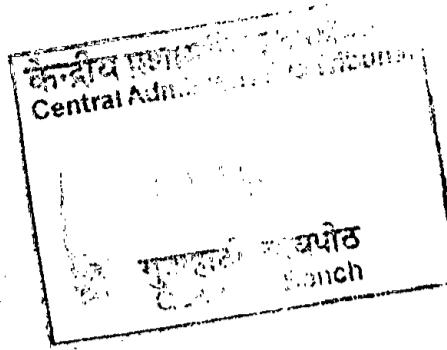
REPLY TO THE REJOINDER ON BEHALF OF THE
RESPONDENTS ABOVE NAMED:-

With regards to para 1 of the application filed by the applicant for the impleadment of the Assistant Commissioner as a respondent in the O.A., the deponent begs to submit that there is no merit in her prayer. Contrary to the applicant's claim that she had informed the Assistant Commissioner regarding the unauthorized release of the consignments, it is reiterated that the Assistant Commissioner came to know of the matter only on 30.11.2007 hence the claim is categorically denied, and this is merely time wasting tactic adopted by the applicant in order to delay and prolong the case in the Honorable Court. The department reiterates that the letter of the applicant was received only on 30.11.2007. With regards to the claim made by the applicant that she had promptly brought the matter to the notice of her immediate higher authority, who in turn failed to take further appropriate action on the matter is absolutely untrue and misleading. Even it is understood that the letter informing the Assistant Commissioner was written on 28.09.2007 one fails to understand how she could have incorporated therein a future dated letter i.e. the letter dated 08.10.2007. It is clearly evident from her letter that she has been lying throughout in her claims that she had actually written the on that day.

With the regards to the references to Guwahati Air port the deponent begs to state that the matter has no significance in the present case and is absolutely out side the purview of discussion of the case at hand and is an attempt by the applicant to divert the focus of the case trying to trivialize her role by trying to blow up the role of the Assistant Commissioner.

Allegations that the transfer of the Assistant Commissioner is always done to protect his reveals the applicants ignorance regarding the same. It is once again reiterated that the decision to transfer the Assistant Commissioner was taken at the time of transfer of the Superintendent And the same as per protocol was conveyed to the Chief Commissioner, who is stationed in Kolkata and therefore for logical reasons of his working from Kolkata the actual order was issued and done at a later date. Therefore, it was never done as an afterthought and much before the filing of the O.A. In other words, the filing of the O.A had no bearing on the transfer of the Assistant Commissioner.

Krishna Bahadur Bhujel
 (कृष्ण बहादुर भुजेल)
 (K. B. BHUJEL)
 उप-आयुक्त सीमा-शुल्क
 Deputy Commissioner of Customs
 सीमा-शुल्क प्रशासन, निलंग
 Customs Division, Shillong



VERIFICATION

I, Shri. Krishna Bahadur Bhujel, S/o. Late Rambir Bhujel
..... aged about 58..... years, by caste Hindu, by
profession Govt. service, resident of Upper Mawpremp O. Shillong-2,
Mouza Shillong-2, P.S. Shillong-2, in the District of East Khasi Hills, do declare
hereby state and verify the above statements made are true to my best of
knowledge and belief.

And, I sign this verification on this the 18th Day of June 2008 at
Shillong.

Krishna Bahadur Bhujel

(के. बी. भूजेल)
(K. B. BHUJEL)
उप-आयुक्त सीमा-शुल्क
Deputy Commissioner of Customs
सीमा-शुल्क प्रभाग, शिलांग
Customs Division, Shillong

25 JUN 2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH: GUWAHATI

OA NO 302/2007

AMMENDMENT OF ORIGINAL APPLICATION OA
TITLE OF THE CASE; O.A.NO.302/2007.

SMTI. LILYDA SHANPLIANG

.....APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS

.....RESPONDENTS

WRITTEN STATEMENT OF THE RESPONDENTS:-

I, Shri Krishna Bahadur Bhujel S/o, Late Rambir Bhujel and I am representing the respondents No. 1 to 7 in the above petition and I file the written statement on behalf of the above respondents no. 1 to 7. The statement which are not specifically admitted are deemed to be denied.

1. That with regards to the paragraph 1 the respondent beg to state that those are matters of records. Allegations made by the applicant as regards to her transfer with a malafide intention to accommodate respondent no. 7 is baseless, highly imaginary and hence denied.
2. - That with regards to the statements made in the paragraph 2 and 3 the deponent begs to state those are within specific knowledge of the applicant and the deponent cannot admit or denied the same.
3. That with regards to the statements made in the paragraph 4.1 to 4.4 of the original application the respondent begs to state that those are matter of records and the respondents do not admit anything which is not borne out of record.

Filed
Krishna Bahadur Bhujel
(কৃষ্ণ বাহদুর ভুজেল)

মুদ্রা-স্থান-স্থৰ
(K. B. BHUJEL)
Deputy Commissioner of Customs
সিমা-স্থান প্রধান, শিলং
Customs Division, Shillong
১০/৬/০৮
Krishna Bahadur Bhujel
Signature

4. That with regards to the statement made in the paragraph 4.5 the deponent begs to state that Transfer policy is a set of broad guidelines framed by the department and do not cover the scenario where there is supervisory lapses and dereliction of duty. It is submitted that the transfer and immediate relieving of the applicant from Dawki LCS is on account of public interest and Administrative exigency of the case. The contention of the applicant is misplaced and misleading. As such the transfer policy does not confer any legal right or continuance any post, nor does it bar the department respondents from making any transfer when public interest and administrative exigencies are involved.

5. That with regards to the statement in paragraph 4.6 the respondents beg to state that the applicant was transferred on extraneous consideration and with malafide intention by the deponent is baseless, highly imaginary and denied. The order was effected after due application of mind and approval of Commissioner of Customs, Shillong (Respondent No.4). The transfer of the applicant was based in the light of events at Dawki LCS as follows :

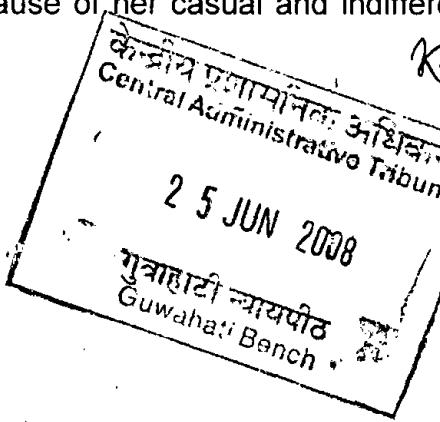
It came to light that certain officers posted at Dawki LCS and who are reporting directly to Ms. Llyda Shangliang, (Superintendent the applicant herein) had unauthorizedly cleared a consignment that had been detained on the ground that it was to be illegally exported in contravention of the provisions of the Customs Act 1962. Preliminary investigation point to serious supervisory lapses on the part of Ms. Lilyda Shangliang. The event occurred in mid September 2007 whereas Ms. Shangliang brought this to the notice of the senior officers only on 30th November 2007 with her backdated letter dated 28th September 2007. It was felt that her continuance at this sensitive posting was not desirable because she took no remedial action in such a serious matter and delayed the matter inordinately for reasons best known to her. Therefore, she was transferred with immediate effect on administrative ground and pending further investigation in the matter. The contention that

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Customs Division, Shillong

respondent No.6 had extraneous consideration and a malafide intention to accommodate respondent No.7 at Dawki LCS as mischievous, motivated and baseless. It is an attempt by the applicant to tarnish the reputation of respondent No. 6 and to deflect the attention of the Hon'ble Tribunal from her inept handling of an extremely sensitive matter involving Govt. revenue. The respondents are of the view that the applicant has approached to the Hon'ble tribunal at this juncture so that the department is restrained from taking action against her for incompetence and lack of integrity. The applicant was relieved of her charge with immediate effect because of the gravity of the case and the serious ramification involved. Her continuance at LCS Dawki would have hampered an extremely sensitive investigation that has been launched to fix responsibility in case of fraud and loss of Govt. revenue. Therefore, it is submitted that there is no malafide on the part of the respondent No.6. It may also be pointed out that the Assistant Commissioner of the concerned Division(to whom Lilyda Shangliang, Superintendent reportedly) has also been transferred alongwith the errant officers in the light of the events mentioned above. Since the gravity of the case was serious, the officer was relieved immediately, so that an enquiry can be conducted by the respondents without any hindrance, influence from any officials.

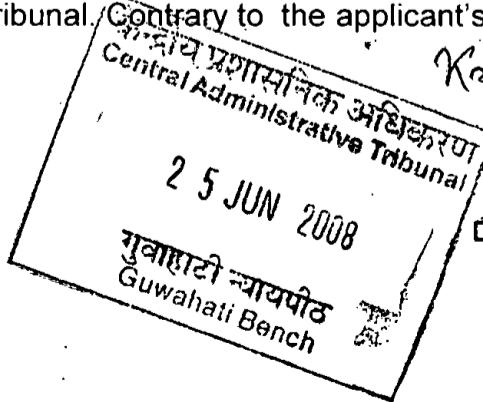
6. That with regards to the statements made in paragraph 4.7 the respondent begs to state that the applicant was informed telephonically by the Assistant Commissioner (Her supervisory officer) about the transfer. Instead of waiting to handover charge to her reliever, she proceeded on her leave and has subsequently produced a medical certificate to cover-up her absence from duty. It is learned that applicant was in the habit of neglecting her official duties and spent more time at Shillong than at Dawki LCS, her place of posting. It is felt that an event of this gravity occurred at Dawki LCS because of her casual and indifferent approach to her work.



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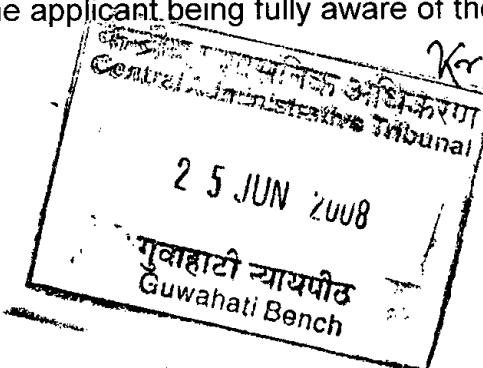
7. That with regards to the statements made in paragraph 4.8 the deponent begs to state that Ms. Shangliang, Superintendent was transferred on administrative ground and the reasons are explained in para 5. Further, a serious dereliction of duty on the part of Ms. Lilyda Shangliang, Superintendent left the administration with no option but to transfer her with immediate effect. It is reiterated that the applicant informed her superiors about the events at Dawki LCS with her backdated letter dated 28.09.2007. This letter reached the office of the Commissioner only on 30.11.2007.
8. That with regards to the statements made in paragraph 4.9 the Respondent begs to state that the contention of malafide intention is baseless and denied. The order has been issued based on the decision of the Commissioner of Customs, Shillong without any malice. The case law cited by the applicant is not tenable in the instant case since she has been transferred on account of supervisory lapses and dereliction of duty noticed while she functioned as Superintendent, LCS Dawki.
9. That with regards to the statements made in para 4.10 of the application the respondent begs to state that the contention of officer that she would continue as Superintendent, Dawki LCS is mischievous and smacks of indiscipline. She stands relieved as on 6.12.2007 regardless of whether she has handed over charge or not. The said transfer order was passed for the reason of administrative exigency and without any malafide.
10. That with regards to the statements made in paragraph 4.11(A), 4.11(B) and 4.12 of the application the respondent begs to state that the Assistant Commissioner had no knowledge of the said incident until 30.11.2007 when the applicants backdated letter was received. Therefore, the respondent begs to submit that there is no merit in her prayer and this is merely a time wasting tactic adopted by the applicant in order to delay and prolong the case in the Hon'ble Tribunal. Contrary to the applicant's claim that she had



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 Customs Division, Shillong

informed the Assistant Commissioner regarding the unauthorized release of the consignments, it is reiterated that the Assistant Commissioner came to know of the matter only on 30.11.2007 hence the claim is categorically denied. Therefore the need to make him respondent does not arise and hence the applicant has no case to substantiate in favour of her continuance as Superintendent LCS Dawki.

11. That with regards to the statements made in paragraph 5.1 the respondent begs to state that the applicant's reliance of transfer policy for continuing in the post of Supdt. LCS Dawki is misplaced. Transfer policy is a set of broad guidelines and do not cover the scenario where there is supervisory lapses and dereliction of duty. It is submitted that the transfer and immediate relieving of the applicant from Dawki LCS is on account of public interest and administrative exigencies of the case. The contention of the applicant is misplaced and misleading. As such the transfer policy does not confer any legal right of continuance in any post, nor does it bar the department from making any transfer when public interest and administrative exigency are involved.
12. That with regards to the statements made in paragraph 5.2 to 5.4 the respondent begs to state that the allegation of the applicant was transferred on extraneous consideration and with malafide intention by the deponent is baseless and denied. The order was effected after due application of mind and approval of Commissioner of Customs Shillong (Respondent No. 4). The transfer of the applicant was based in the light of the events at Dawki LCS as explained in para 4.6.
13. That with regards to the statements made in paragraph 5.5 the respondents beg to state that impugned transfer and posting order dated 06.12.2007 has been issued for immediate corrective action. The applicant being fully aware of the events of the Dawki



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LCS, failed to take any corrective steps. She informed her superiors after more than two and half months of the occurrence of the events at Dawki LCS. This alone raise serious question about her motives. Respondent No.4 was therefore compelled to take immediate action to remove the applicant from LCS Dawki since her integrity was questionable. It is further submitted that a full investigation has been launched to uncover the misdeeds of the officer concern in respect of the events at Dawki LCS. If the applicant were to continue as superintendent, Dawki LCS, then the investigation is bound to be hampered since the applicant would try to ensure that no responsibility is fixed on her.

14. That with regards to the statements made in paragraph 5.5 the respondent begs to state that the instant transfer has been effected in-view of public interest involved and administrative exigency. As such the transfer policy is not relevant in this case and the grounds set for in the application are neither tenable in law as well as on facts and circumstances of the case.
15. That with regards to the statements made in para 5.7 and 5.8, the respondent begs to state that, the fact that the matter was informed to the higher authorities after a lapse of more than two months by the applicant by a backdated letter with fabricated despatch number. This inordinate delay on a matter of such gravity is nothing less than a grave supervisory lapse. And the department reiterates that the letter of the applicant was received only on 30.11.2007. With regards to the claims made by the applicant that she had promptly brought the matter to the notice of her immediate higher authority, who in turn failed to take further appropriate action on the matter is absolutely untrue and misleading. It is clearly evident from her letter dated 28.09.2007 that she has been lying throughout in her claims that she had actually written the letter on that day. Perusal of the letter shows that she has enclosed therein a complaint dated 08.10.2007. This clearly establishes that the date of

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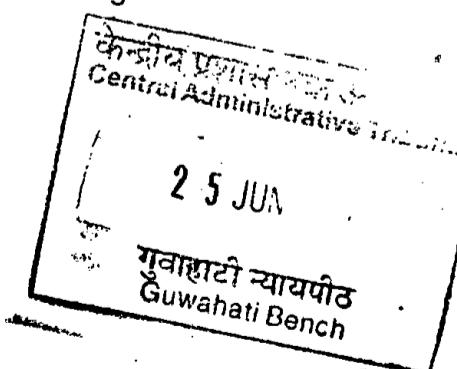
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गुवाहाटी न्यायपीठ
Guwahati Bench

A'

28.09.2007 as mentioned in the letter, is concocted by the applicant to cover up her lapse. It may be pertinent to add that the despatch number of the letter too is misleading as the dispatch register show running number and the suffixing of the letter 'A' to the despatch number is a clear indication that it was inserted with malafide intention on a later date.

16. That with regards to the statements made in paragraph 6 and 7 the respondents begs to state that the applicant attempted to subvert the departmental process in this regard by approaching to the Hon'ble Tribunal. It is a mischievous attempt by her to hamper an investigation into her role in the event at Dawki LCS.
17. That with regards to the statement made in paragraph 8 to 8.4 the respondent-begs to state the averments of the department that there exist strong ground for transfer and relieving the officer it is felt that there are no grounds of retaining the applicant rather than to join in new place of posting. That her continuance in Dawki LCS would sent a message to the officers and staff that the administration has turned a blind eye to her supervisory lapses and dereliction of duty. It would also hamper the investigation that is being conducted by the administration to uncover the fraud and loss of Govt. revenue at Dawki LCS.
18. That with regards to the statements made in paragraph 9 to 9.2 the respondents beg to submit that the grave injustice will be done if the Hon'ble Tribunal stops the operation of the transfer order because it would amount to rewarding an officer whose conduct is doubtful and on whom the administration has lost faith on account of her questionable integrity in the matter. The continuance of the applicant at Dawki LCS would hamper a free and fair investigation.



Kristina Bahadur Bhujel
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Deputy Commissioner of Customs
सीमा-शुल्क प्रभाग, शिलांग
Customs Division, Shillong

VERIFICATION

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

I, Shri. Krishna Bahadur Bhujel, S/o. Late Ransir Bhujel
..... aged about 58..... years, by caste Hindu by
profession Govt. service, resident of Upper Mawprem P.O. Shillong-2
Mouza Shillong-2, P.S. Shillong-2, in the District of East Khasi Hills, do
hereby state and verify the above statements made are true to my best of
knowledge and belief.

And, I sign this verification on this the 18th Day of June 2008 at
Shillong-

Krishna Bahadur Bhujel

(কে. বি. বুজেল)
(K. B. BHUJEL)
চাপ-আয়ুক্ত সীমা-শুল্ক
Deputy Commissioner of Customs
সীমা-শুল্ক প্রশাসন, শিলং
Customs Division, Shillong