

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. BA 85/2007

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet..... BAPg. 1to 4
2. Judgment/Order dtd 02.08.2007Pg. 1to 9. 11. 2007
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 85/2007Pg. 1to 43
5. E.P/M.P.....Pg.to.....
6. R.A/C.P.....Pg.to.....
7. W.S. 1. 12. 2007Pg. 1to 12
8. Rejoinder.....Pg. 1to 5
9. Reply.....Pg.to.....
10. Any other Papers.....Pg.to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Shabita
26.09.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 85/07
2. Miscellaneous Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(s) Prabire Kr. Das VS Union of India & Ors

Advocate for the Applicant(s) M. Chanda, S. Nath
Ms. M. Dutta

Advocate for the Respondent(s) AMCASE M. L. Sharma

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed C.F. for Rs. 50/- deposited vide IPO/ED No. <u>286/980540</u>. Dated <u>8.1.07</u>.....</p> <p><u>[Signature]</u> Dy. Registrar</p> <p><u>Petitioner's Griev</u> <u>for issue notices are</u> <u>received with encls.</u></p> <p><u>[Signature]</u></p>	<p>29.3.2007</p>	<p>Present: The Hon'ble Mr. K.V. Sachidanandan Vice-Chairman.</p> <p>The claim of the Applicant, an Enforcement Officer, O/o the Asstt. Director, Directorate of Enforcement, Guwahati, is for choice place of posting. The contention of the Applicant is that he has been subjected to three severe heart attack and Angio Plasty Operation was performed upon him, but his health condition has further deteriorated in Guwahati and the medical facilities in Guwahati is not upto the standard as far as his disease is concerned and he was compelled to be on medical leave continuously for 306 days. In earlier O.A. No. 184/2006 this Tribunal directed the Respondents to consider and dispose of</p>

Contd....

Contd.
29.3.2007

the representation sympathetically, but much against the order of this Tribunal Respondents vide impugned order dated 7.7.2007 have rejected the claim of the Applicant in view of ongoing restructuring is going in the Directorate. It is pleaded in the O.A. that subsequent to this order as per Annexure-13 dated 21.3.2007, 28 persons have been transferred and out of them at Sl.No.15 S.K.Ghosal has been transferred from Guwahati to Kolkata. Applicant's specific contention is that seven posts are lying vacant at Kolkata.

Order dt 29.3.07
2 copy. Copy received
on behalf of Respondent
Specially
30/03/07

20/4/07

Heard Mr.M.Chanda, learned counsel for the Applicant. Mr.M.U.Ahmed, learned Addl. C.G.S.C. is specifically directed to obtain instruction as to whether there is any vacancy in Kolkata within 15 days from today.

post on 12.4.2007.

Vice-Chairman

/bb/

7.5.07.

post the matter on 10.5.07.

Vice-Chairman

lm

Notes of the Registry	Date	Order of the Tribunal
<p>31.5.07 No reply filed.</p> <p>order dt. 1/6/07 issuing to learned advocates for both the parties.</p> <p>6/6/07. Received</p> <p>14/5/07</p> <p>bb/</p>	<p>10.05.2007</p> <p>/bb/</p> <p>/bb/</p>	<p>Mr.M.Chanda, learned counsel is present for the Applicant.</p> <p>When the matter came up for admission today, as directed by this Court on 29.3.2007, Mr.M.U.Ahmed, learned Addl. C.G.S.C. for the Respondents, produced a copy of the letter dated 11.04.2007 issued by the Assistant Director, Directorate of Enforcement wherein it is stated that there are five vacancies at Kolkata office.</p> <p>A copy of the said letter is placed on record. Since the matter is very urgent Respondents are directed to submit its reply statement within three weeks from today. Post the matter on 04.06.2007.</p> <p>Parties agreed that matter can be disposed of at the admission stage itself.</p> <p>Considering the submission and instruction received from the Directorate of Enforcement the Respondents are directed to keep one post vacant out of the five vacancies at Kolkata till the next date.</p> <p>Vice-Chairman</p>
<p>bb/</p>	<p>1.6.2007</p> <p>bb/</p>	<p>Mr.M.U.Ahmed learned Addl. C.G.S.C. requested for time to file reply statement. Let it be done within three weeks. It is made clear that Respondents have to file reply statement within that time.</p> <p>Post the case on 25.06.2007. In the meantime interim order shall continue.</p> <p>Vice-Chairman</p>

OA. 85/07

No Wls filed.

22.6.07.

25.6.07. Let the case be listed on 6.7.07. In the meantime, the applicant will file the rejoinder, if any.

Vice-Chairman

lm

6.7.2007

Rejoinder has been filed. Pleadings are complete.

O.A. is admitted. Post the case on 17.7.2007 for hearing.

Vice-Chairman

/bb/

27.6.07
Wls filed by the Respondent Nos. 1 to 4. page 1 to 12. Copy not served.

Rejoinder not filed.

5.7.07.

17.7.2007

Let the case be posted on 23.7.07 for hearing.

Vice-Chairman

pg

23.7.07.

Post the matter on 27.7.07.

Vice-Chairman

9.7.07
Rejoinder submitted by the Applicant. page 1 to 5. Copy served.

27.7.2007.

Heard Mr.M.Chanda, learned counsel for the Applicant. and Mr.M.U.Ahmed, learned Addl.C.G.S.C. for the Respondents. Judgment is reserved.

Vice-Chairman

The case is ready for hearing.

bb

2.8.2007

Judgment pronounced in open Court, kept in separate sheets.

The O.A. allowed in terms of the order. No costs.

Vice-Chairman

Received for Respondent
3/8/07
13.8.07
copy of the judgment handed over to the parties.
27/8/07

/bb/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 85 of 2007.

DATE OF DECISION : 02-08-2007

Shri Prabir Kumar Das.

.....Applicant/s

Sri M. Chanda

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

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

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR K.V.SACHIDANANDAN, VICE CHAIRMAN

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 to be forwarded for including in the Digest being compiled at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wise to see the fair copy of the judgment ? Yes/No.

Vice-Chairman

7

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.85 of 2007.

Date of Order : This the 2nd Day of August, 2007.

THE HON'BLE SHRI K.V.SACHIDANANDAN, VICE CHAIRMAN

Shri Prabir Kumar Das,
Son of Late Pradyut Kumar Das,
Enforcement Officer
Office of the Assistant Director,
Directorate of Enforcement
Guwahati Sub Zonal Office
By Lane No. 1, House No. 20
Rajgarh Road, Guwahati-781003.

..... Applicant

By Advocate Shri M. Chanda

- Versus -

1. Union of India
Represented by Secretary to the
Govt. of India,
Ministry of Finance, New Delhi-110001.
2. The Director,
Directorate of Enforcement
Lok Nayak Bhavan
Khan Market, New Delhi-110 003.
3. The Special Director (Administration)
Directorate of Enforcement
Lok Nayak Bhawan
Khan Market, New Delhi-110 003.
4. The Deputy Director(Admn.)
Directorate of Enforcement
Lok Nayak Bhawan , 6th Floor,
Khan Market, New Delhi-110 003.
5. The Deputy Director
Directorate of Enforcement
Kolkata Zonal Office,
C.G.O. Complex, Salt Lake, Kolkata-64.


.... Respondents

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

L

ORDERSACHIDANANDAN K.V.(V.C)

The applicant who is now working as Enforcement Officer in the office of the Assistant Director, Directorate of Enforcement, Guwahati. The applicant joined service as Junior Stenographer under the Directorate of Enforcement, Government of India, Special Unit at Kolkata. He was promoted as Assistant Enforcement Officer in 1978 and on 27.3.1992 he was transferred from Special Unit Kolkata to Kolkata zonal office, Kolkata. On June 1996 he was again transferred from Kolkata to New Delhi Zonal office. Subsequently he was transferred to Guwahati on 1.11.2004. On 1997 he suffered severe heart attack when he was posted at New Delhi and underwent Angio Plasty Operation (Annexure-1). On 2002 again he suffered from severe heart attack at Kolkata and again underwent Angio Plasty Operation in the B. M. Birla Heart Research Institute, Kolkata and his health deteriorated day by day (Annexure-3). He was transferred to Guwahati on 13.9.2004 not considering the health condition of the applicant. He immediately filed representation on 15.9.2004 before the 2nd respondent with the request for his retention at his home station at Kolkata zonal office on medical ground. The same was not considered. He joined the Guwahati office on 1.11.2004 and he is staying at Guwahati all alone. His wife has to take care of his children as they are studying and she has to look after his 84 years old ailing mother who is also staying at Kolkata. In Guwahati also his health condition deteriorated and he was under medical care (Annexure-5). He filed another representation on 3.1.2005 before the Director with a request to transfer him on humanitarian ground. As per the medical report the damage of the heart went down upto 40% and he filed representation on 4.4.2005 (Annexure-6) for his transfer. The applicant has completed his tenure posting at North East Region



and as per O.M dated 14.12.1983 he is entitled to have a choice posting. This was extended by another O.M. dated 22.7.1998 thereby making it clear that a person who has completed 2 years at North East Region is entitled to the benefit of choice station posting. When he fell sick in Guwahati on 16.6.2005 to 21.4.2006 at the advice of Special Cardiologist he availed leave for 407 days and this leave was deducted from his total tenure at North East which is not correct and it cannot be a reason for denying the choice posting. Therefore, the applicant is any way entitled to have a choice posting to Kolkata since he has completed his tenure. His request is not acceded to and due to said in action of the respondents the applicant has filed this present O.A seeking the following reliefs.

- i) That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter bearing No. F.No. A-14/4/2005-Pt II dated 7.2.07 (Annexure-10).
- ii) That the Hon'ble Tribunal be pleased to direct the respondents to transfer the applicant at Kolkata with immediate effect on extreme medical ground as well as in the light of the O.M. dated 14.12.1983, 22.7.1998 issued by the Govt. of India, Ministry of Finance, New Delhi.

2. The respondents have filed a detail written statement contending that applicant has filed an O.A.184/2006 on similar grounds and this Tribunal by order dated 1.8.2006 directed the respondents to consider the representation and dispose of the same and the respondents had considered his case and rejected the claim on the ground that "in view of the ongoing process of restructuring of the Directorate, at this stage the request made therein cannot be acceded to" though the Director of Enforcement had sympathetically considered and did not outrightly reject the applicant's request for transfer. The restructuring process of deployment of staff at new offices opened at seven cities is still continuing and would take some more time for completion. The O.M mentioned in the O.A stipulate that the posting in N.E.Region shall be for fix tenure of 2 years for the officers who have rendered more than ten years of service, however, the period



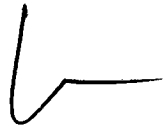
of leave, training etc. in excess of 15 days per year will be excluded in counting the tenure period. The applicant is working in Guwahati from 1.11.2004 and has availed leave for 407 days during the period. Hence he has not completed the required tenure of two years. The applicant joined the Directorate of Enforcement, Kolkata on 9.2.1972 and was never transferred out of Kolkata till July 1996 when he was transferred to Delhi Zonal Office. He worked at Delhi for a brief period less than 10 months and was transferred back to Kolkata where he continued till June, 1997. Therefore, the applicant has almost worked continuously at his choice station at Kolkata from 9.2.1972 to 8.10.2004 barring a short stint at Delhi Zonal Office i.e. for a period of almost 32 years until he was transferred to Guwahati in October 2004. The applicant is an executive officer and have all India transfer liability and they have to undergo transfers as a matter of policy. To work for such a long period at one station was nothing short of luxury for the applicant. The grievance of the applicant is to be seen in the context of then responsibilities and the exigencies of their employment and effective functioning of the Directorate which has an all India jurisdiction. The Director has to ensure that his offices in different areas function and officers drawing good salaries from Government are placed where there is work further the grievance of the officer has to be seen in the context of the ground situation. Guwahati has got sufficient medical facilities available in any State Capital. The Director has rightly rejected the applicant's request for transfer which he was empowered to do so. His request was not acceded to only in view of the ongoing process of restructuring of the Directorate. The applicant has failed to mention that period of leave, training etc. in excess of 15 days per year will be excluded in counting the tenure period of two years. The contention of the applicant that the benefit of the choice station posting cannot be denied in the light of the O.M. dated 14.12.1983, 1.12.1988 and 22.7.1988 is incorrect. As per orders of this

Tribunal the Director has kept one post of Enforcement Officer vacant at Kolkata even though the process of restructuring is going on. Therefore, the applicant has failed to make out a case for his transfer.

3. The applicant has filed a detailed rejoinder contending that applicant has joined Guwahati on 1.11.2004 and completed more than 2 years and 8 months at Guwahati and as such he is entitled to be posted at Kolkata in the light of the O.M. dated 14.12.1983, 1.12.88 and 22.7.98 as well as on extreme humanitarian ground. There are as much as 5 posts still lying vacant at Kolkata. No sympathy has been shown to the applicant regarding his humanitarian/health ground but he has been denied due consideration in spite of 5 posts are lying vacant at Kolkata.

4. Heard Mr M.Chanda, learned counsel appearing for the applicant and Mr M.U.Ahmed, learned Addl.C.G.S.C for the respondents. Learned counsel appearing for the parties has taken my attention to the various pleadings, evidence and materials placed on record. The counsel for the applicant would argue that for more than one ground he is entitled for choice posting. Firstly, he has already completed 2 years 8 months in the North East Region and as far as the circulars he is entitled to have a choice posting at Kolkata. Secondly, on humanitarian and health ground and thirdly he has less than 3 years for retirement. In this regard the applicant's counsel has taken my attention to para 25.20, page 83 of the Swamy's- Fifth Pay Commission Report, which is reproduced below :

"Generally transfers should not be made after a Government servant has attained an age three years less than the age of his superannuation and wherever possible, a retiring Government servant should be transferred to a station of his choice, three years prior to his superannuation."



The counsel for the respondents on the other hand submitted that altogether his case is not rejected but since restructuring process is going on and it will take some time to process the issue he can be accommodated later.

5. I have given due consideration to the arguments and the materials placed on record. It is borne out from records that in 1997 when he was posted at New Delhi he had a heart attack and was admitted at Safdarjung Hospital, New Delhi and thereafter at AIIMS, New Delhi where he underwent Angio Plasty operation as evident by Annexure-1 and 2 respectively. Thereafter he has suffered another heart attack in 2002 at his residence at Kolkata and immediately he was admitted at B.M.Birla Heart Research Institute, Kolkata and subsequently also an Angio Plasty operation was performed on 4.2.2002 (Annexure-3). It is also borne out that a very renowned Cardiologist has undertaken this procedure and at the time of discharge following recommendations had been made.

- "i) To walk 4 Km a day.
- iii) To avoid saturated fat food.
- iv) To take medicines as per prescription.
- v) Regular check up."

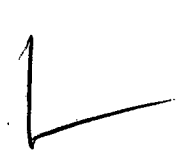
Thus there is a clear indication that he is not free from the problem and sustained medical care, strict dieting, strict living pattern are all prescribed. Therefore, he has got a strong medical ground for a comfortable home stay. However, he was transferred to Guwahati thereafter on 18.9.2004 and he joined there on 1.11.2004. Earlier when the applicant filed O.A. 184/06, vide order dated 1.8.2006 this Tribunal directed the respondents to consider his case with all sympathy. The operative portion of the said judgment is reproduced below.

"In the interest of justice, this Court directs that the representations that has been filed by the applicant shall be considered by the Respondent no.2 with all sympathy and pass appropriate order and communicated the same to the Applicant within three months from the date of receipt of this order."

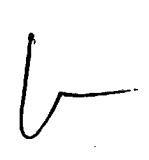
But by impugned order dated 7.2.2007 (Annexure-10) his request for transfer from Guwahati to Kolkata was rejected. It appears that the respondents had not given due application of mind in understanding what the direction of the Court was. This Court directed that the case of the applicant should be considered with "all sympathy". The respondents could have considered the ill health of the applicant and follow up action to be taken by the applicant as per advice of the Doctor. A person who underwent 2 Angio Plasty Operation has been considered by the respondents as if he is a healthy man and the routine impugned order has been passed on the ground of ongoing process of restructuring for which the applicant cannot be accommodated at Kolkata despite the fact there are few vacancies available. The way in which the respondents has reacted to the issue when there was an order to consider the case with 'all sympathy' and without considering the factual position of the ill health of the applicant, his case was not considered. On that ground alone the impugned order Annexure-10 deserves to be set aside and quashed. Going to the next point of tenure posting the applicant has admittedly as of now has completed 2 years and 8 months at Guwahati. The applicant is relying on certain circulars dated 14.12.1983 and it is profitable to understand what the tenure posting is as per Annexure-11. Certain incentives are granted for serving in the remote areas where the tenure posting is stipulated, relevant portion of which is quoted below :

"There will be a fixed tenure of posting 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training etc in excess of 15 days per year will be excluded in counting the tenure period 2/3rd years. Officers on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible."

This also incorporated in the O.M. dated 14.12.1983 and subsequently also the O.M. dated 1.12.1988 and 22.7.1988 followed the circular. The Hon'ble Gauhati



High Court in Writ Petition(C) No.3577 of 1999, Shri Bhagwan Menghani vs. Union of India & Ors. (Annexure-11) dated 16.12.2002 had occasion to consider this issue of tenure posting in detail and accepted the Memorandum dated 14.12.1983 and directed the respondents to pass appropriate orders for his transfer to a place of his choice (Noida) within a period of two months from the date of receipt of a copy of this judgment. Having found that the applicant has already completed 2 years 8 months as of now and considering the fact that applicant was compelled to avail leave for 407 days on extreme medical ground, the respondents is not justified in not considering the case of the applicant on the ground that he has not completed tenure posting. Even assuming that the period of leave availed on medical ground not to be reckoned for the purpose of tenure posting for completion of hard station posting, I am of the view that the applicant's case must be considered as an exception and these period of 2 years 8 months should be construed as tenure posting for the purpose of calculating the said period and the applicant should be having completed the said period of tenure and is entitled for transfer to a choice posting. I make it clear this will not stand as precedence for any other case. On this ground also the impugned order is not justified and the applicant is entitled for a transfer to his choice posting at Kolkata. It is an accepted rule that a person who has got only a short period for retirement should be transferred to a place of his choice. In this case only 3 years as stated by applicant's counsel. On that ground also the applicant is entitled for a choice posting at Kolkata. It is also stated by the applicant that there are 5 vacancies presently available and the same has been admitted by the Respondents in their statement. This court further observe that restructuring process, if any, should not stand in the way of the applicant's transfer on the choice posting to Kolkata since all the above grounds are in favour of the applicant.



6. In the conspectus facts and circumstances of this case and all the reasons stated supra, this Court set aside and quash the impugned order dated 7.2.2007 and direct the respondents to consider and pass appropriate order transferring the applicant from Guwahati to Kolkata i.e. choice place of the applicant's posting since there is available vacancy at Kolkata, as expeditiously as possible and in any case within a period of 2 months from the date of receipt copy of this order.

The Original Application is allowed and disposed of as above. In the circumstances no order as to costs.



(K.V.SACHIDANANDAN)
VICE CHAIRMAN

28 MAR 2007

गुवाहाटी बेंच
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O. A. No. 85 /2007

Shri Prabir Kumar Das

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant while serving as Enforcement Officer at Kolkata Zonal Office, he was transferred and posted at Guwahati Sub-Zonal Office. Accordingly he joined at Guwahati Sub-Zonal Office as Enforcement Officer on 01.11.2004 and has completed his fixed tenure of posting of 2 years at NE Region.

8/22/99
61.04.2005

Applicant while posted at New Delhi, he suffered severe heart attack and undergone Angio Plasty Operation, which fact is evident from the Clinical summary of Safdarjang Hospital, New Delhi.

(Annexure- 1, 2)

04.12.2002- Applicant again suffered severe heart attack at his residence at Kolkata and Angio Plasty Operation was performed at Kolkata.

(Annexure- 3)

15.09.2004- Applicant was transferred from Kolkata Zonal Office to Guwahati Sub-Zonal Office on 13.09.04, he submitted representation for his retention at his hometown Kolkata on poor health condition, but the same was not considered. Accordingly he joined at Guwahati on 01.11.04.

(Annexure- 4)

03.04.2005- Applicant's health condition further deteriorated at Guwahati and he was advised by the Doctor at Guwahati for constant medical check up and needs care of family members.

(Annexure- 5)

03.01.2005, 04.04.2005- Applicant submitted representations before respondent No. 2, praying for his transfer at hometown Kolkata on medical ground and humanitarian ground.

(Annexure- 6 Series)

22.06.2005- Applicant again fell ill at Guwahati Office and he was rushed to Wintrobe Hospital, Guwahati. He was then air lifted to B.M. Birla Heart Research Centre, Kolkata, where his third Angio Plasty operation was performed on 22.06.05 and he was advised to be extra ordinary careful and should avoid worry, hurry and tension.

(Annexure- 7)

300/99

Prabir Kumar Das

22.06.2006- Applicant was compelled to avail leave of 306 days on medical ground. He again submitted representation for his transfer at Kolkata.

(Annexure- 8)

01.08.2006- Applicant finding no response to his representation approached this Hon'ble Tribunal through OA No. 184/2006 for a direction upon the respondents to transfer him at Kolkata. However, said representation was disposed of with the direction to consider his representation sympathetically.

(Annexure- 9)

07.02.2007- Respondent No. 4 vide impugned order dated 07.02.07 most mechanically denied prayer of the applicant for transfer at Kolkata on extreme health ground.

(Annexure- 10)

14.12.1983- Govt. of India, Ministry of Finance issued Office Memorandum providing fixed 2 years tenure of posting at NE Region and entitlement of choice station posting after completion of fixed tenure. Applicant has completed about 2 years 5 months at Guwahati as such he is entitled to choice posting at Kolkata on the extreme medical ground.

(Annexure- 11)

12.02.2007- Applicant submitted another representation to the respondent No. 4, praying therein to consider his transfer at Kolkata on medical ground as well as in the light of O.M dated 14.12.83.

(Annexure- 12)

21.03.2007- Directorate of Enforcement, New Delhi issued office order dated 21.03.07 whereby 28 Enforcement Officer has been transferred at various stations including one from Guwahati to Kolkata but the prayer of the applicant was not considered, more so in view of the fact that inasmuch as 7 posts (approximately) of Enforcement Officer are lying vacant at Kolkata.

Hence this Original Application.

P R A Y E R S

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter bearing No. F. No. A-14/4/2005-Pt II dated 07.02.07 (Annexure- 10)
2. That the Hon'ble Tribunal be pleased to direct the respondents to transfer the applicant at Kolkata with immediate effect on extreme medical ground as well as in the light of the O.M dated 14.12.1983, 1.12.1988, 22.07.1998 issued by the Govt. of India, Ministry of Finance, New Delhi.
3. Costs of the application.

Prabir Kumar Das.

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 direct the respondent to keep vacant at least one post of Enforcement Officer at Kolkata till disposal of this application.
 2. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.
-

Prabir Kumar Sen

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. 85 /2007

Shri Prabir Kumar Das : Applicant.

~~-Versus-~~

Union of India & Ors. : Respondents.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.	---	Application	1-16
2.	---	Verification	-17-
3.	1	Copy of Clinical summary of Safdarjang Hospital.	18-19
4.	2	Copy of discharge order dated 01.04.07.	20-21
5.	3	Copy of Angio plasty operation report dated 04.12.02.	22-23
6.	4	Copy of representation dated 15.09.04.	-24-
7.	5	Copy of medical certificate dated 03.04.05.	-25-
8.	6 (Series)	Copy of representation dated 03.01.05 and 04.04.05.	26-28
9.	7	Copy of medical certificate dated 22.06.05.	-29-
10.	8	Copy of representation dated 22.06.06.	-30-
11.	9	Copy of learned Tribunal's order dated 01.08.06.	31-33
12.	10	Copy of impugned order dated 07.02.07.	-34-
13.	11	Copy of O.M dated 14.12.1983	-35-
14.	12	Copy of representation dated 12.02.07.	36-37
15.	13	Copy of establishment order dated 21.03.07.	38-39
16.	14	Copy of judgment and order dated 16.12.2007.	40-43

Filed By:

S. Nath

Advocate

Date: *28.03.07*

Prabir Kumar Das

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 85 /2007

BETWEEN:

Shri Prabir Kumar Das

Son of Late Pradyut Kumar Das
Enforcement Officer
Office of the Assistant Director
Directorate of Enforcement
Guwahati Sub-Zonal Office
Rye-Lane No. 1, House No. 20,
Rajgarh Road, Guwahati- 781 003.

-----Applicant.

-AND-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Finance, New Delhi- 110001.
2. The Director,
Directorate of Enforcement
Lok Nayak Bhavan
Khan Market, New Delhi- 110 003.
3. The Special Director (Administration)
Directorate of Enforcement
Lok Nayak Bhavan
Khan Market, New Delhi- 110 003.
4. The Deputy Director (Admn.)
Directorate of Enforcement
Lok Nayak Bhavan, 6th Floor,
Khan Market, New Delhi- 110 003.
5. The Deputy Director
Directorate of Enforcement
Kolkata Zonal Office
C.G.O. Complex, Salt Lake, Kolkata- 64.

..... Respondents.

Filed by:-
Applicant - 1
Through:-
S. N. S.
Advocate
28.03.2007-

Prabir Kumar Das

DETAILS OF THE APPLICATION

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

This application is made against the impugned order bearing letter No. F. No. A-14/4/2005-Pt II dated 07.02.2007 (Annexure-10) and praying for a direction upon the respondents to consider transfer and posting of the applicant from Cuwahati to Kolkata in the light of the Govt. of India, Ministry of Finance O.M dated 14.12.1983, dated 01.12.1988 and O.M dated 22.07.1998 as well as on extreme humanitarian ground and medical ground.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

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

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. He is a permanent resident of 105/4, Parnasree Pally, Kolkata- 60.

4.2 That your applicant begs to state that he had joined in the Office of the Directorate of Enforcement, Government of India, Special Unit, Kolkata in February 1972 as a Junior Stenographer. In May 1978, he was promoted on merit quota as an Assistant Enforcement Officer in the above-mentioned Office at Special Unit, Kolkata.

Prabir Kumar Das

4.3 That your applicant begs to state that on 27.03.1992 he was transferred from Special Unit, Kolkata to Kolkata Zonal Office, Kolkata. On June 1996, he was again transferred from Kolkata Zonal Office to Delhi Zonal Office at New Delhi. Now he is working as Enforcement Officer in Guwahati Sub-Zonal Office, Guwahati- 3 since 01.11.2004.

4.4 That your applicant begs to state that on 08.02.1997, he suddenly suffered severe heart attack when he was posted at New Delhi. However, with the help of office colleague and his neighbour, he was admitted at Safdarjang Hospital, New Delhi and after slight recovery he was again admitted at AllMS, New Delhi where he had undergone Angio Plasty Operation.

Copy of Clinical summary of the applicant issued by the Safdarjang Hospital, New Delhi and discharge order, dated 01.04.97 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 1 and 2 respectively.

4.5 That your applicant begs to state that on 22.11.2002 he again suffered severe heart attack at his residence at Kolkata when he was immediately admitted him at B.M Birla Heart Research Institute, Kolkata. Subsequently another Angio Plasty Operation was performed on 04.12.2002. Thereafter the health condition of the applicant has started to deteriorate day by day.

Copy of Angio Plasty Operation report dated 04.12.02 issued by the B.M. Birla Heart Research Centre, Kolkata is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 3.

4.6 That your applicant begs to state that on 13.09.2004, vide Estt. Order No. 10/2004, he was transferred from Kolkata Zonal Office to Guwahati Sub-Zonal Office without considering the poor health conditions of the applicant. He immediately filed a representation on 15.09.2004 before the Respondent No. 2 for his retention at his home station Kolkata Zonal Office

Pradeep Kumar Das

4

on Health/Medical ground. But the same was not considered by the Head Office/Respondents and he was compelled to join at Guwahati Sub-Zonal Office on 01.11.2004. It is to be stated that he is staying at Guwahati alone because it is not possible to bring his wife and two children as they are looking after his old aged ailing mother, aged about 84 years at his home town at Kolkata. Now due to mental agony and stress the wife of the applicant is also suffering from high Sugar, high pressure, hypertension and constant falling of Hemoglobin.

Copy of representation dated 15.09.04 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 4.

- 4.7 That your applicant begs to state that his health condition further deteriorated at Guwahati and he was rushed to Dr. D.J. Lahon on 03.04.2005 for medical check-up and he was advised by the Doctor for constant medical check-up and he needs to be looked after by his family members to carry out his daily work. The report of Dr. D.J. Lahon was sent to the Head Office by way of representation for necessary action.

Copy of medical certificate dated 03.04.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 5.

- 4.8 That your applicant begs to state that on 03.01.2005 he filed a representation before the Director, Directorate Enforcement (FEMA), Govt. of India, New Delhi, i.e. Respondent No. 2 praying for consideration of his case on medical and humanitarian ground and to transfer him to his home town Kolkata. In the said representation he has stated that he has already suffered severe heart attacks twice and has to undergone two Angio Plasty Operation, which have already damaged his heart up to 40 % as per report of special Cardiologist of Dr. D. Kahli of B.M. Birla Heart Research Institute. After that he has also filed a representation on 04.04.2005

Prabin Kumar Bar

requesting the Respondent No. 2 to consider his case for home posting at Kolkata.

Copy of representation dated 03.01.05 and 04.04.05 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 6 (Series).

- 4.9 That your applicant begs to state that on 15.06.2005 during office hours, he again fell ill at Guwahati Office and immediately his colleague took him to Wintrobe Hospital, Guwahati, wherein he was examined and found his condition to be critical and immediately he was transferred to Down Town Hospital, Guwahati for further treatment. The Head Office was informed all along and as per their advice the applicant was air lifted to Kolkata and admitted again to B.M. Birla Heart Research Centre wherein third Angio Plasty Operation was performed on 22.06.2005. He was also advised by the B.M. Birla Heart Research Centre to be extra ordinarily careful and he should avoid worry, hurry and tension in order to prevent the progress of aggressive disease. At that time the applicant's family was verbally assured by the then Director of Enforcement that the applicant's health conditions will be considered shortly for transferring the applicant to his home town at Kolkata but nothing has been done in this regard till date.

Copy of medical certificate dated 22.06.05 issued by the B.M. Birla Research Centre, Kolkata is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 7.

- 4.10 That your applicant begs to state that since the health condition of the applicant was not satisfactory, the applicant was advised by the Specialist Cardiologist of B.M. Birla Heart Research Institute, Kolkata to take rest and therefore the applicant was compelled to go on medical leave till 21st April 2006 and availed medical leave for 306 days. During and after the aforesaid period that he made several representations before the Respondent No. 2 praying to consider his transfer to his hometown Kolkata on Medical and Humanitarian ground but the respondents did

Prabir Kumar Das.

not consider case of the applicant and even not informed anything in spite of several representations already submitted before the Respondent No. 2.

Copy of representation-dated 22.06.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 8.

- 4.11 That your applicant begs to state that being aggrieved due to non-consideration of his transfer to his home town at Kolkata, the applicant approached this Hon'ble Tribunal by filing an O.A. No. 184/2006, praying for a direction upon the respondents to transfer the applicant from Guwahati to Kolkata i.e. his hometown, considering of health and the interest of his family members including his old age ailing mother, ailing wife and two children. However, the said O.A. No. 184/2006 was disposed of on 01.08.2006 at the admission stage with a direction to the respondent No. 2 to consider the representation submitted by the applicant with all sympathy and pass appropriate order and communicate the same to the applicant within three months from the date of receipt of this order.

Copy of the learned Tribunal's order dated 01.08.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 9.

- 4.12 That finding no response from the Respondent No. 2 regarding compliance of the direction passed by the Hon'ble Tribunal on 01.08.06, the applicant filed a Contempt Petition No. 30/2006 in O.A. No. 184/2006. However, the respondents filed an order of compliance dated 07.02.2007 before the Hon'ble Tribunal, wherein it has been stated that the representation of the applicant has been considered and disposed of eventually the Hon'ble Tribunal on 19.03.2007 was pleased to dismiss the aforesaid Contempt Petition.

Prabir Kumar Das

4.13 That it is stated that while the C.P. No. 30/2006 in O.A. No. 184/06 was pending before the Hon'ble Tribunal, the Deputy Director, Directorate of Enforcement, New Delhi vide his impugned letter bearing No. F. No. A-14/4/2005-Pt II dated 07.02.07 has most mechanically rejected prayer of the applicant for transfer from Guwahati to Kolkata on extreme humanitarian and medical ground. It is pertinent to mention here that the Hon'ble Tribunal in it's order dated 01.08.06 directed the respondent No. 2 to consider the transfer of the applicant with all sympathy but the respondents have rejected prayer of the applicant on the vague ground of ongoing process of restructuring of the Directorate. It is relevant to mention here that restructuring of the Directorate has no bearing with the transfer and posting of the applicant from Guwahati to Kolkata on extreme medical ground, more so when the Hon'ble Tribunal directed the respondents to consider representation of the applicant with all sympathy. Be it stated that there are approximately 7 (seven) posts of Enforcement Officer lying vacant at Zonal Office, Kolkata, therefore there is no difficulty on the part of the respondents, to transfer the applicant from Guwahati to Kolkata, more so in view of the fact that Senior Consultant Cardiologist of B.M Birla Heart Research Centre, Kolkata in his report dated 22.06.05 (Annexure- 7 to the O.A.) suggested the applicant for regular check up, to be extra ordinarily careful and should avoid worry, hurry and tension in order to prevent the progress of aggressive disease and this fact is well known to the respondents but the respondent No. 2 knowing fully well the fact has most mechanically issued the impugned order dated 07.02.07. As such action of the respondents in issuing impugned order dated 07.02.07 is arbitrary, unreasonable, opposed to the principle of natural justice and the same is liable to be set aside and quashed.

Copy of the impugned order dated 07.02.07 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 10.

Prabir Kumar Das

4.14 That it is stated that the Govt. of India extended privileges and facilities such as choice station posting and weightage for Central deputation/training abroad and special mention in confidential reports to the Central Government civilian employees who have completed their fixed tenure in N.E. Region. The relevant portion of the G.I. M.F.O.M No. 20014/3/83, IV dated 14.12.1983 are quoted below;

(i) Tenure of posting/deputation

There will be a fixed tenure of posting 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in continuing the tenure period 2/3 rd years. Officers, on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region, will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in confidential reports

Satisfactory performance of duties for the prescribed tenure in the North east shall be given due recognition in the case of eligible officers in the matter of-

- (a) Promotion in cadre posts;*
- (b) Deputation to central tenure posts; and*
- (c) Courses of training abroad.*

Prabir Kumar Das

The general requirement of at least three years service in a cadre post between two central tenure deputation may also be relaxed to two years in deserving cases of meritorious service in the North East.

A specific entry shall be made in the CR of all the employees who rendered a full tenure of service in the North Eastern Region to that effect.

Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-east in the matter of promotion in the cadre posts, deputation to Central tenure post and courses of training abroad.

In view of the provision laid down in the O.M dated 14.12.1983, which was subsequently extended by the O.M, dated 1.12.1988 as well as by the O.M dated 22.7.1998 and the said benefit is still in force. Therefore it is quite clear that on completion of two years tenure in N.E. Region, a civilian central Govt. employee is entitled to the benefit of choice station posting. The applicant suffered three severe heart attack and subsequently three Angio Plasty operation was done and he has taken all the troubles and carried out his order of posting and joined at Guwahati and has already served for more than 2 years in this difficult and remote corner of the country. It is pertinent to mention here that the applicant has completed his tenure at N.E Region on 01.11.2006 as such he is entitled to choice posting at Kolkata on humanitarian and extreme medical ground as well as in the light of the aforesaid Office memorandums issued by the Govt. of India from time to time in view of the fact that approximately 7 (seven) posts of Enforcement Officer are lying vacant at Kolkata.

Copy of the O.M dated 14.12.83, 01.12.88 and 22.07.98 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 11.

- 4.15 That your applicant begs to state that when he fell sick at Guwahati on 15.06.05, he was compelled to take leave for 306 days i.e. from 16.06.2005 to 21.04.2006 at the advise of Special Cardiologist and this fact is well known

Prabin Kumar Das.

to the respondents. But while submitting reply in C.P. No. 30/2006, the respondents have suppressed the above fact and have taken the plea that the applicant has availed leave for 407 days during his posting at Guwahati and most tactfully avoided the fact that the applicant was compelled to avail medical leave after facing three severe heart attack and last one on 15.06.05 and this fact was intimated to the respondents by the applicant at the time of seeking leave on medical ground. Thus denying the benefit of choice posting to the applicant on extreme medical ground on the plea of availing leave of 407 days is not tenable, more so in view of the fact that applicant has already completed about 2 years 5 months at Guwahati. Therefore, he is entitled for choice posting at Kolkata on extreme medical ground as well as in the light of the O.M dated 14.12.83, 01.12.88 and 22.07.98.

- 4.16 That your applicant begs to state that after receipt of the impugned order dated 07.02.07 he submitted a detail representation addressed to the Deputy Director, Directorate of Enforcement, New Delhi, praying for transfer at Kolkata. In his representation dated 07.02.07, the applicant inter alia stated that he visited Head Office at New Delhi and had personally explained to the Director of Enforcement about his health conditions and the inconveniences facing at his present place of posting at Guwahati and he was directed to hand over all the medical papers to his P.A. with the assurance that the matter will be looked into for consideration. But all became in vain and his health condition was not considered at all. The applicant also stated that in the mean time he has completed two years tenure at North Eastern States and he deserve his right to return back to his choice posting, even if any restructuring process is going on, as per Govt. of India order dated 14.12.83. Therefore, the applicant once again humbly submitted that the H.O. letter as stated above bearing that 'request made therein cannot be acceded to' may kindly be withdrawn.

Prabir Kumar Das

It is pertinent to mention here that the applicant has about 3 years 3 months of service at his credit and at this lag end of his service career he deserves choice posting in the light of the recommendation of the 5th Central Pay Commission, but the same has been denied to the applicant for the reasons best known to the respondents.

Copy of the representation dated 12.02.07 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 12.

- 4.17 That most surprisingly when the representation of the applicant dated 12.02.07 is pending before the respondent, the Directorate of Enforcement, Govt. of India, New Delhi issued Establishment Order No. 04/2007 bearing letter No. A-14/4/05 dated 21.03.2007, whereby 28 Enforcement Officers have been transferred at various stations, amongst them one officer from Guwahati Office has been transferred from Guwahati to Kolkata but the request of the applicant for his transfer from Guwahati to Kolkata on extreme medical ground and also in the light of O.M dated 14.12.83 has not been considered by the respondents at all in spite of the fact that he was assured by the Respondent No. 2 that his case will be considered. It is relevant to mention here that the Hon'ble Tribunal dismissed the C.P. No. 30/2006 on 19.03.07 finding that the respondents has rejected the representation of the applicant and the order of transfer and posting has been issued on 21.03.07. It appears from the order dated 21.03.07 that the respondents in one hand did not consider the prayer of the applicant for transfer at Kolkata on the ground of ongoing process of restructuring of the Directorate but on the other hand respondents have considered the transfer of inasmuch as 28 officers. Therefore, it appears that denial of prayer of transfer of the applicant to Kolkata on extreme medical ground as well as on humanitarian ground on the pretext of process of restructuring of the Directorate is nothing but to deny the applicant his legitimate claim of transfer to Kolkata on health ground, moreover his request for transfer to

Prabir Kumar Das

Kolkata did not earn sympathy from the respondents as directed by this Hon'ble Tribunal vide order dated 01.08.06. Therefore, action of the respondents is vindictive and nothing but to harass and mentally harass the applicant for the reason that the applicant has filed O.A. No. 184/2004 as well as C.P. No. 30/2006 before this Hon'ble Tribunal and such action is ill motivated, arbitrary, opposed to the principle of natural justice and liable to be set aside and quashed. Therefore, the Hon'ble Tribunal be pleased to set aside and quash the impugned order dated 07.02.2007 and further be pleased to direct the respondents to transfer the applicant from Guwahati to Kolkata in any one of the existing 7 vacancies, on extreme medical ground and humanitarian ground and also in the light of the O.M dated 14.12.1983, 01.12.88 and 22.07.98 and till such time at least one post of Enforcement Officer at Zonal Office, Kolkata shall be kept vacant.

Copy of the establishment order dated 21.03.07 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 13.

- 4.18 That in the similar facts and circumstances this Hon'ble Tribunal entertained series of transfer and posting cases and passed orders directing the respondents to provide choice station posting to the Central Government civilian employees who are posted in this region from outside the N.E Region, mention may be made of the judgment and order dated 16.12.2002 passed by the Hon'ble Gauhati High Court in the case Shri Bhagwan Menghani -Vs- Union of India & Ors.

Copy of judgment and order dated 16.12.2002 passed in W.P (C) No. 3577/99 are enclosed herewith and marked as Annexure- 14.

- 4.19 That 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.

Prabir Kumar Das.

4.20 That this application is made bonafide and for the cause of justice.

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

- 5.1 For that, the applicant is a heart patient and undergone severe heart attack on three occasions since 1997 and while working at Guwahati he suffered heart attack on 15.06.04 and at present he has completed more than 2 years service at Guwahati out of 2 years fixed tenure as per O.M dated 14.12.1983, as such he is entitled to choice posting on extreme medical ground as well as in the light of the O.M date 14.12.83, 01.12.87 and 22.07.98.
- 5.2 For that, Senior Consultant Cardiologist of B.M Birla Heart Research Centre, Kolkata in his report dated 22.06.05 (Annexure- 8 to the O.A.) suggested the applicant for regular check up, to be extra ordinarily careful and should avoid worry, hurry and tension in order to prevent the progress of aggressive disease. Therefore, applicant is legitimately entitled for choice station posting at his hometown at Kolkata for better medical facility and care, which he has been denied vide impugned order dated 07.02.07.
- 5.3 For that, that the applicant has about 3 years 3 months of service at his credit and at this fag end of his service career he deserves choice posting in the light of the recommendation of the 5th Central Pay Commission, but the same has been denied to the applicant for the reasons best known to the respondents.
- 5.4 For that, the ongoing process of restructuring of the Directorate cannot be ground for denying the transfer of the applicant from Guwahati to Kolkata as such the impugned order dated 07.02.07 is arbitrary, unreasonable and opposed to the principle of natural justice and the same is liable to be set aside and quashed.

Prabir Kumar Das

- 5.5 For that, the applicant has acquired valuable and legal right to choice station posting at Kolkata as per O.M dated 14.12.1983, 1.12.1988, 22.07.1998 issued by the Govt. of India, Ministry of Finance, New Delhi to avail family care as well as medical care.
- 5.6 For that, the respondents in one hand did not consider the prayer of the applicant for transfer at Kolkata on the ground of ongoing process of restructuring of the Directorate but on the other hand respondents have considered the transfer of inasmuch as 28 officers vide Establishment order No. 04/2007 dated 21.03.2007. As such action of the respondents in denying request of the applicant is ill motivated, unreasonable and arbitrary. Therefore, the Hon'ble Tribunal be pleased to direct the respondents to transfer the applicant at Kolkata on extreme medical ground as well as in the light of O.M dated 14.12.83, 01.12.87 and 22.07.98.
- 5.7 For that, inasmuch as 7 (seven) posts of Enforcement Officers are lying vacant at Kolkata, therefore there is no difficulty on the part of the respondents to transfer the applicant in any one of the existing vacant post.
- 5.8 For that, the applicant has left behind his old aged ailing mother, his ailing wife and two children at Kolkata alone and the applicant is in constant worry and anxiety over the well being of his family members.
- 5.9 For that the representation of the applicant has been rejected in a cryptic manner by the impugned order dated 07.02.2006 in a most arbitrary manner on the vague ground of ongoing process of restructuring of the Directorate.
- 5.10 For that applicant is suffering from tension, heart ailments and mental torture, and as such deserves due consideration in the matter of transfer and posting at Kolkata on extreme medical ground.

Prabir Kumar Das.

6. Details of remedies exhausted.

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

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

The applicant further declares that save and except filing O.A. No. 184/2006, he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on 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 letter bearing No. F. No. A-14/4/2005-Pt II dated 07.02.07 (Annexure- 10)
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to transfer the applicant at Kolkata with immediate effect on extreme medical ground as well as in the light of the O.M dated 14.12.1983, 1.12.1988, 22.07.1998 issued by the Govt. of India, Ministry of Finance, New Delhi.
- 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.

Prabir Kumar Das

9. Interim order prayed for

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

- 9.1 That the Hon'ble Tribunal be pleased to direct the respondent to keep vacant at least one post of Enforcement Officer at Kolkata till disposal of this application.
- 9.2 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10.

11. Particulars of the I.P.O

- i) I.P.O No. : 286,980540
ii) Date of issue : 08.01.2007.
iii) Issued from : G.P.O., Guwahati.
iv) Payable at : C.P.O., Guwahati.

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

Prabir Kumar Sen.

VERIFICATION

I, Shri Prabir Kumar Das, Son of Late Pradyut Kumar Das, aged about 56 years, working as Enforcement Officer, Office of the Assistant Director, Directorate of Enforcement, Guwahati Sub-Zonal Office, Bye-Lane No. 1, House No. 20, Rajgarh Road, Guwahati- 3, 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 28th day of March 2007.

Prabir Kumar Das.

GOVT. OF INDIA
SAFARJANG HOSPITAL
DEPARTMENT OF CARDIOLOGY
NEW DELHI

ANNEXURE-1

DR. RAKESH VERMA
M.D. (Medicine), D.M. (Cardiology)
Consultant & Head

Phone: 665060

CLINICAL SUMMARY

Name: MR. P. K. DAS
Address: L-11, 73/1 ADARJANG KALKAJI, NEW DELHI
MRD No: 8031 Ward: 34 B: No. (1)
Admitted on: 8/12/97
Discharged on: 19/12/97

RISK FACTORS:
Age/Sex: 44/M
Diabetes mellitus: Yes/No
Hypertension: Yes/No
Smoking: Yes/No
Hyperlipidemia: Yes/No
Family History: Yes/No
Obesity: Yes/No

DIAGNOSIS: CAD, Acute Anterior MI, Anterior MI

ADMITTING INDICATIONS: Effort related pain & discomfort, acute Anterior MI, Presyncope

HOSPITAL COURSE: Transfer to Adarjang, New Delhi (8/12/97)

Condition at Discharge: Stable

TREATMENT

- T/T GIVEN
1. Bed Rest ✓
 2. Oxygen Inhalation ✓
 3. STK/UK
 4. Beta Blocker IV/P.O.
 5. IV NTG ✓
 6. Heparin IV/SC ✓
 7. Ca++ Channel Blocker
 8. Aspirin ✓
 9. ISMN ISON
 10. ACE Inhibitor ✓
 11. Syp. Digoxin
 12. Syp. Clopidogrel/T. ACZOLAN
- Plan: 1. Home on Cardio. DR. P. K. DAS

ADVISED ON DISCHARGE

1. Diet as explained
2. Physical Activity As advised
3. T. Clopidogrel 75mg Q.D.
4. T. Clopidogrel 75mg Q.D.
5. T. Clopidogrel 75mg Q.D.
6. T. Clopidogrel 75mg Q.D.
7. Syp. Digoxin 0.25mg Q.D.
8. Syp. Digoxin 0.25mg Q.D.
9. Syp. Digoxin 0.25mg Q.D.
10. Syp. Digoxin 0.25mg Q.D.
11. Syp. Digoxin 0.25mg Q.D.
12. Syp. Digoxin 0.25mg Q.D.

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

Plan: 1. Home on Cardio. DR. P. K. DAS

SALIENT INVESTIGATIONS

Date 10/2/93 From 10/2/93 Date 10/2/93 Date

IMES:

CPK-MB

SGOT

ACK (P)

OH

CHEMISTRY:

Blood Sugar

Fasting

B.P.

Blood Urea

Serum Creatinine

Serum Uric Acid

Serum Sodium

Serum Potassium

Lipid Profile:

Total Cholesterol

HDL-C

LDL-C

TG

(dated

ECG (dated 10/2/93)

ECG - Q - T, AVL, V2, V6 - STP V2, V6

10/2/93 ECG - Q - T, AVL, V2, V6, STP V2, V6

CHO (dated

10/2/93

TMT (dated

10/2/93

CATH/ANGIO

Date /

Ac: No.

Radionuclide Studies (MUGA, PY-1)

Date

No

Others

collected
Adulter
Advocate

CARDIO THORACIC SCIENCES CENTRE
DEPARTMENT OF CARDIOLOGY
All India Institute Of Medical Sciences, New Delhi-110029
DISCHARGE SUMMARY

ANNEXURE-2
4507111
T828

38

Name P K Das Age 47 Sex M CR No. 496149
CV No. 3311/97 DOA 30.3.97 DOD 1.4.97 Ward C12C13C14C15C16C17C18

DIAGNOSIS

- CAD
- Recent Ant. MI (8.2.97)
- AOS IT
- SVD
- PICA (Small) CAD

RISK FACTORS

DM YES ☐ NO ☐
HT ☐ ☐
LIPIDS ☐ ☐
SMOKING ☐ ☐
E/H ☐ ☐
OBESITY ☐ ☐

MITTING INDICATIONS

HOSPITAL COURSE AND CONDITION AT DISCHARGE

Levon 4m/lost with Gatchel Ballon 2 x 20 mm at 6 o'clock.
3.5 x 20 mm at 6 o'clock for 2 mm. Paced 19 mm. 8 o'clock.
with good and results.

INTERVENTIONS

PLAN

Follow up with Dr. Sankar Chakraborty OPD 2 PM.

TREATMENT

- (1) Tab Monokale 20 mg BD
- (2) Tab. Disprin 325 mg OD
- (3) Tab. Digoxin 250 - 100
- (4) Tab. Diltiazem 30 mg TDS
- (5) Tab. Aspirin 325 mg OD
- (6) Tab. Clopidogrel 75 mg BD
- (7) Digoxin 250 L/S

Dr. Sankar Chakraborty
Advocate

Attend - ☐ Cardiology OPD Mon/Wed/Fri 1 PM ☐ Coronary Clinic Thursday 1 PM
☐ Arrhythmia Clinic Wednesday 9 AM ☐ Hypertension Clinic Thursday 9 AM
☐ Intervention Clinic Friday 9 AM After _____ Weeks

Senior Resident (Cardiology)
A.I.I.M.S.
New Delhi-110029

Attended
Advocate

Attended
P. K. DAS
Enforcement Officer
Directorate of Enforcement
(FEMA), Govt. of India
Salt Lake, Kolkata-700084

DIETITIAN

4. Avoid Sugar, Honey, Jaggery (Gur), Candy (Talmisri).

INVESTIGATIONS

HEMOGRAM

Date
Hb 12.6
TLC
DLC
ESR
PBF

BIOCHEMICAL

Date
Urea/Creat 2.0
FBS/PPHS 12
Na/K 140/5.4
Uric Acid
SGOT/ALT

Date
CTE
TGT
ASLO
CRP
Blood C/S

URINE

R/E
M/E
Protein (1st / Alb)

ALK(P)

Bil (1st / Alb)

LIPID PROFILE

Chol (Total)
HDL C
LDL C

STOOL

FT

IG

ECG

ECG

Sept 5 on Anticoag Coag.

ECG

Date

No.

ECG

Date

No.

HOLTER

Date

No.

EPS

Date

No.

CATH/ANUG

Date

AC No.

#

RADIONUCLIDE STUDIES (MUGA/PYP)

Date

No.

OTHERS

JR. RES.

RR. RES.

CONSULTANT

*W. H. Stead
M. W. Schvokalt*

Bohman



B. M. Birla Heart Research Centre

171, NATIONAL LIBRARY AVENUE, KOLKATA - 700 027 (INDIA)
Phone 456 7777, 456 7890 • Fax (91) 033 456-7000
www.birlaheart.com • e-mail bmbhc@birlaheart.com

ANNEXURE-3
In Assistance with
THE CLEVELAND CLINIC
FOUNDATION
Cleveland, Ohio, USA



PATIENT ID

NAME

AGE

FLASBY NO.

DATE OF FLASBY

CONSULTANT CARDIOLOGIST

DATE OF ADMISSION

DATE OF DISCHARGE

: CO
: MR. PRADIP K. DAS
: 52 YEARS
: 329381
: 04-DEC-02
: DR. D. KAHALU, MD, DM
: 24-NOV-02

PROCEDURE :

The Right femoral artery and right femoral vein were cannulated using 2 Fr & 6 Fr Cordis sheaths respectively by the Seldinger technique. A JR 3.5cm guiding catheter was engaged to the RCA and dye injected to opacify the artery which showed 90% right lesion in the proximal one third of the RCA immediately after its origin. A 0.014" Hi-Torque Balance guide wire was passed across the site of the lesion and tip of the wire kept at the site of the CDA. A 3.0 x 15mm ACS Multilink Penta stent was positioned over the RCA lesion and deployed at 15 ATM pressure for 60 seconds. The stent deployment was successful and the lesion dilated well. The guiding catheter, the guide wire, the balloon were all taken out keeping the stent in situ. The post Stent PICO course was uncomplicated and uneventful and the patient had an uneventful recovery during the hospital stay.

RECOMMENDATION :

1. To walk 4 km a day.
2. To avoid saturated fat food.
3. To take medicines as per prescription.
4. Regular check up.

D. K. KHALU

DR. DEEPA KHALU, MD, DM
SR. CONSULTANT CARDIOLOGIST

*Attended by
Dr. K. Das
Advocate*



44445
3/19/04
P. K. DAS
Enforcement Officer
Directorate of Enforcement
(FEMA), Govt. of India
Salt Lake, Kolkata-700084

-22A-

21

31

(Typed true copy)
(Extract)

ANNEXURE-3

B.M. Birla Heart Research Centre
1/1, NATIONAL LIBRARY AVENUE, KOLKATA-700027 (INDIA)
Phone 4567777, 456-7890 Fax (91) 033 456-7000

PATIENT ID : CA 2 51853
NAME : MR PRABIR KR DAS
AGE : 52 YRS
PLASTY NO. : 32938
DATE OF PLASTY : 04-DEC-02
CONSULTANT CARDIOLOGIST : DR. D. KAHALI MD. DM
DATE OF ADMISSION : 24-NOV-02
DATE OF DISCHARGE :

PROCEDURE:

The Right femoral artery and right femoral vein were cannulated using 7 Fr & 6 Fr Cordis Sheaths respectively by using seldinger technique. A JR 3.5 cm guiding catheter was engaged to the RCA and due injected to opacify the artery which showed 80 % tight lesion in the proximal one third of the RCA immediately after its origin. A 0.014" Hi-torque Balance guide wire was passed across the site of the lesion and tip of the wire kept at the site of the PDA. A 3.0 / 15 mm ACS Multi link Penta stent was positioned over the RCA lesion and deployed at 15 ATM pressure for 60 seconds. The stent deployment was successful and the lesion dilated well. The guiding catheter, the guide wire, the balloon were all taken out keeping the stent in situ. The post Stent PTCA course was uncomplicated and uneventful and the patient had an uneventful recovery during the hospital stay.

RECOMMENDATION:

1. To walk 4 Km a day.
2. To avoid saturated fat food.
3. To take medicines as per prescription.
4. Regular check up.

Sd/-

DR. DHIMAN KAHALI MD, DM
SR. CONSULTANT CARDIOLOGIST.

*Attested
Dr. D. Kahali*

फैक्स/Fax : 24631847

भारत सरकार

Government of India

दूरभाष No Tel No 24611989
24692056

प्रवर्तन निदेशालय

DIRECTORATE OF ENFORCEMENT

छठा तल, लोक नायक भवन, खान मार्केट, नई दिल्ली-110003
6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003

F. No. C-8/7/06

Date 11.04.07

To,

The Assistant Director
Directorate of Enforcement
GAUHATISubj: Order of CAT, Guwahati Bench on the
O.A No. 85/07 of Sh. P. K. Das, E.O. Guwahati Bench

Sir,

Please refer to your office letter no. C-8/1/400/2006
dated 30.3.07 on the above mentioned subject.I am directed to convey that there
are five vacancies in the grade of
Enforcement Officers at Kolkata. The
Honble CAT may please be apprised
of the position.This has the approval of Director of
Enforcement.

Yours faithfully,

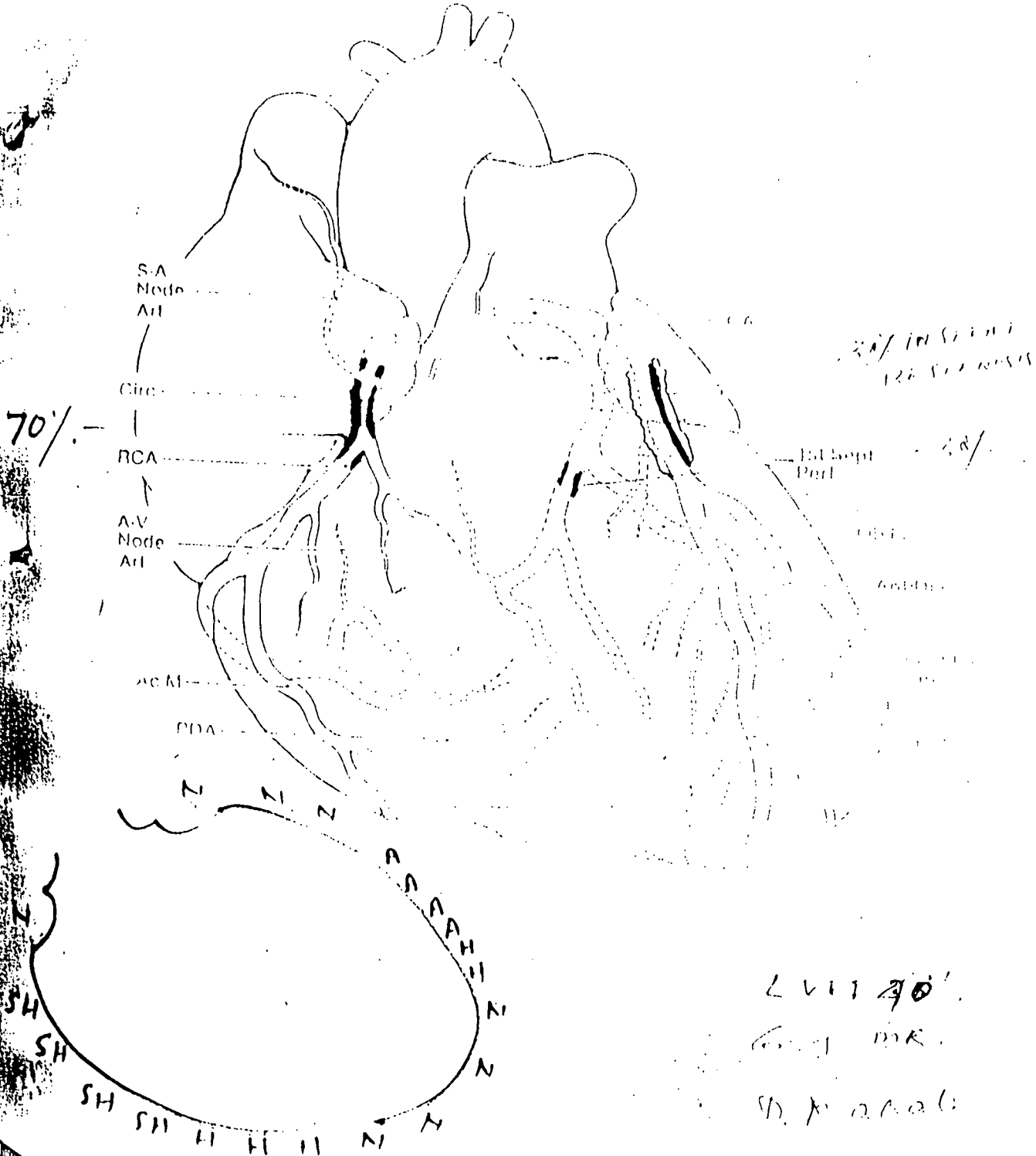
K. C. RUS TOGI

Assistant Director (vig)

B. M. Birla Heart Research Centre

Name **MR. PRABIR KR. DAS** Age 52yrs Sex M

Sligean **DR. P. K. DAS** Date 28.11.2000



Attested By
Dr. P. K. Das

DR. P. K. DAS
Enforcement Officer
Directorate of Enforcement
(FEMA), Govt. of India
Salt Lake, Kolkata-700064

ANNEXURE-4

From: P.K.Das,
Enforcement Officer,
Directorate of Enforcement,
Kolkata Zonal Office,
KOLKATA.

To
The Director,
Directorate of Enforcement,
Government of India
Khan Market,
NEW DELHI - 110003.

(THROUGH PROPER CHANNEL)

Sir,

Sub: Prayer for retention in Calcutta Zonal Office
On Health/Medical Grounds.

With due respect I wish to bring to the kind notice of the Director of Enforcement, the few following words for favour of kind consideration and necessary action.

That, Sir, I have suffered from two severe heart attacks once while I have been serving in Delhi (1997) and again while in Calcutta (2002), and both the times gone on operations (Angio-plasry) and on both the occasions were deployed with stents. Since then I have been under strict dieting, strict living patterns, medication and sustained medical care of the Cardio Specialist of SSKM Hospital, Calcutta. (Relevant documents enclosed).

That, Sir, my two minor Children are pursuing their education in Calcutta, and my dependent mother (78), a rheumatic patient is under the constant physical care of my wife and a shift at this stage would disrupt the entire fragile arrangements.

That, Sir, if I am retained in Calcutta, I would save jeopardizing my critical heart ailment, continue to undergo the ongoing treatment living/dieting arrangements, save disrupting my children's education, attend to the welfare/medical requirements of my mother and save my wife from all the agonies that might entail to her from the shifting.

In the circumstances it is earnestly prayed that I may kindly be retained under Calcutta Zonal Office during the fag end of my career.

*Attended
Delhi
Advocate*

Encl: Medical Reports. (10 pages)

Dated: 15th Sept, 2004.

Yours faithfully,

/s/ P.K. Das

(P. K. Das)

ENFORCEMENT OFFICER

DR. D. J. LAHON, M.B.B.S.
Reg. No. : 14271 (AMC)

- 25 -
Farm Gate
Khanapara, Ghy.-22
Ph. No : 2367989 (R)

us
ANNEXURE-5

Date 3/4/05

TO WHOM IT MAY CONCERN

Certified that Mr P.K Das, who
had undergone two PTCA procedures
due to coronary artery blockage,
needs constant medical care and
supervision.

As such facilities are very limited
in this region he has to visit
the nearest super-speciality Centre
constantly for constant medical
checkup. His physical condition is
very fragile and as such he needs
to be looked up by his family
members to carry out his daily works
constantly.

Dr Dhruvaji Lahon, M.B.B.S.
Regd. No. 14271 (A.M.C.)

Witnessed
Advocate

ANNEXURE-6 (series)

From :

P. K. Das,
Enforcement Officer,
Directorate of Enforcement (FEMA),
Govt. of India,
Guwahati Sub-Zonal Office,
Guwahati

0

The Director,
Directorate of Enforcement (FEMA),
Govt. of India,
Lok Nayak Bhawan,
Khan Market,
NEW DELHI

(THROUGH PROPER CHANNEL)

Sir,

Sub : Prayer for consideration of Home Posting – Reg.

With due respect, I may like to bring to the kind information that on 02.04.2005, suddenly I was feeling very much uneasy with slight breathing problem. In the early morning on 03.04.2005 I rushed to a nearby Doctor with all my medical papers for his advise and necessary examination. The concerned Doctor was kindly gone through all my previous medical reports as well as the medicines are being taken by me everyday. He also took sufficient care and checked me again and advised me to continue all the medicines in time as already prescribed by the Doctor in Kolkata. He also advised me to check-up myself with a renowned cardiologist constantly. (Copy of the Doctor's Certificate is enclosed).

In view of the above, it is earnestly requested to kindly consider me for my Home posting for which I will remain ever grateful.

In view of the above circumstances, I am again earnestly requested you to consider my case sympathetically with humanitarian ground.

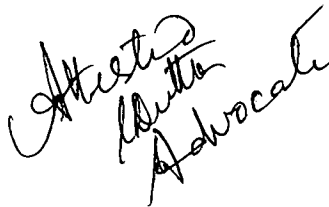
Thanking you,

Yours faithfully,

Dated : 4th ~~Sept~~ ^{April} 2005.

Encl: As above.


(P. K. Das)
Enforcement Officer.


Advocate

- 27 -

17

ANNEXURE-6 (series)

From :
P. K. Das,
Enforcement Officer,
Directorate of Enforcement (FEMA),
Govt. of India,
Guwahati Sub-Zonal Office,
Guwahati

Dated: 03.01.2005.

To
The Director,
Directorate of Enforcement (FEMA),
Govt. of India,
NEW DELHI

(THROUGH PROPER CHANNEL)

Sir,

Sub : Prayer for considering the health conditions and for posting at Kolkata

Kindly refer to my representation dated 15.07.2004.

In compliance of the order, I have joined at Guwahati office leaving behind my ailing old mother and ailing wife with great anxiety. As I have suffered severe heart attacks twice, first in February, 1997 and then in December, 2002, and both the times gone under Airgeo-planty operations, strict restrictions are imposed by the Doctors on my livelihood considering the fact that my heart is severely damaged by the attacks. The present condition of my heart is not much hopeful as the same has already damaged more than 40% by the above said two attacks. In this context, the report of Dr. D. Kahali of B. M. Birla Heart Research Institute is enclosed herewith for your kind perusal as Annexure - 'A'.

In the circumstances stated above, not only I used to take medicines daily (seven items) but also needed to maintain strict diet restrictions for my survival as advised by the Doctor. Since I am staying

*Attested
Advocate*

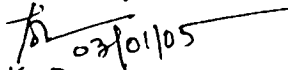
-28-

28

alone at Guwahati, it has become very difficult for me to arrange the foods as per advice of the Doctors. Water here, is also not being suit, resulting developing gas, which subsequently pressing upward, when i am feeling very uneasy and sometimes developing chest pain which is very alarming for my life. There is none to help me, only helplessly praying God. Sometimes, I myself going alone to the local Doctor with great risk for examining myself and/or taking their advise. It is needJess to say that CARDIO SPECIALIST is rare available at Guwahati and I have to depend only on general local doctors. As my health condition is very alarmining my old mother including other family members are passing each day with great anxiety.

Sir, considering the above situation, I am earnestly requested again to kindly consider my case from the medical point of view as well as humanitarian ground and allow me to back to Kolkata for which I will remain ever grateful.

Yours faithfully,


(P. K. Das)
Enforcement Officer
Guwahati

Encl ; as above.



B. M. Birla Heart Research Centre

1/1, NATIONAL LIBRARY AVENUE, KOLKATA - 700 027
Phone : 2456-7890, 2456-7777 • Fax : (91) (33) 2456 7000
www.birlaheart.org • e-mail : bmbhrc@birlaheart.org

Copy ANNEXURE-7

In Assistance with
THE CLEVELAND CLINIC
FOUNDATION
Cleveland, Ohio, USA

PATIENT ID : 03 5 65031
NAME : MR PRADEEP KR DAS
AGE : 54 YRS
PLASTY NO. : 41537
DATE OF PLASTY : 22-JUN-05
CONSULTANT CARDIOLOGIST : DR DHIMAN KAHALI
DATE OF ADMISSION : 22-JUN-05
DATE OF DISCHARGE :

PROCEDURE :

Right femoral artery and femoral vein were already cannulated using 7F and 6F Cordis Sheaths respectively by Seldingers method with prior written and verbal consent was taken from the patient and his wife. A 3.5 6F JR guiding catheter without side holes was engaged to the RCA and a 0.014" HI-torque floppy wire was passed across the tight RCA lesion and POBA to mid RCA performed at two sites with 1.5 x 12 mm Voyager balloon at 15 ATM pressure for 45 secs at two different sites followed by deployment of 3 x 33 mm drug eluting Pronova Stent to the proximal RCA at 16 ATM pressure for 30 secs, twice. The lesion dilated well without any residual stenosis and huge RCA was re-constituted with TIMI III flow. The post Stent PTCA course was uneventful and uncomplicated. The patient had a speedy recovery following the procedure.

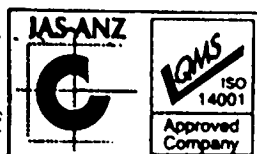
RECOMMENDATIONS :

1. To walk 4 Kms daily.
2. Aggressive life style modification measures.
3. Low saturated fat, salt and calorie restricted diet.
4. ~~Do not smoke and avoid alcohol.~~
5. ~~Be extremely careful and he should avoid, heavy, heavy and tension in order to prevent the progress of atherosclerosis.~~
6. To consult with Dr. Kahali after 15 days and SOS in case of emergency.
7. To inform Dr. Kahali if there is any haemorrhage or bleeding spots on the body and to stop Tab. Clopidogrel immediately and to do a blood test for platelet count.
8. To take drugs regularly as per prescription.

Attended
Dr. Kahali
Advocate

Dr. Kahali

DR. DHIMAN KAHALI. MD. DM.
SENIOR CONSULTANT CARDIOLOGIST.



ANNEXURE-8th

From :
P. K. DAS,
Enforcement Officer,
Guwahati Sub-Zonal Office,
GUWAHATI 781 003

To
The Director,
Directorate of Enforcement,
Lok Nayak Bhavan,
Khan Market,
New Delhi - 110003

Sir,

THROUGH PROPER CHANNEL.

Re : Prayer for transfer from Guwahati to Kolkata

With due respect, I may like to refer my representations dated 15.9.2004, 03.01.2005, 04.04.2005, 12.07.2005, 19.01.2006, 01.02.2006, 12.03.2006 and 02.06.2006 requesting for transfer from Guwahati to Kolkata on the health grounds. Unfortunately, till date my case has not been considered although any accident cannot be unwarranted to an acute heart patient like me.

It is therefore prayed again to please look into the matter and consider my case sympathetically. It is also informed that my health condition is not satisfactory and my case has not been considered yet. All medical reports relating to my health condition is well available at H.O.

Yours faithfully,

P.K. Das
22/06/06

Dated: 22nd June, 2006

(P.K. Das)
Enforcement Officer

*Attested
By
Advocate*

- 31 -
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ANNEXURE-9

Original Application No. 184 of 2006

Date of Order : This the 1st August 2006.

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

The Hon'ble Sri Gautam Ray, Administrative Member.

Shri Prabir Kumar Das
Son of Late Pradyut Kumar Das
Enforcement Officer
Office of the Assistant Director,
Directorate of Enforcement Guwahati Sub-Zonal Office
House No. 4, Bye Lane No. 4, Rajgach Road,
Guwahati - 781 003.

... Applicant

By Advocates Mr Anil Ahmed and Ms Smita Bhattacharjee.

Versus -

The Union of India, represented by the
Secretary to the Government of India,
Ministry of Finance, New Delhi - 1.

The Director,
Directorate of Enforcement
Lok Nayak Bhavan, Khan Market
New Delhi - 110 003.

3. The Special Director (Administration)
Directorate of Enforcement
Lok Nayak Bhavan, Khan Market
New Delhi - 110 003.

4. The Deputy Director
Directorate of Enforcement
Kolkata Zonal Office
C.G.O. Complex, Salt Lake
Kolkata - 64.

... Respondents

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

*Directly
With
Advocate*

L

ORDER (ORAL)

K. V. SACHIDANANDAN (V.C.)

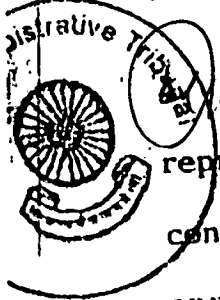
The Applicant was appointed as Junior Stenog in the office of the Directorate of Enforcement, Government Special Unit, Kolkata. Thereafter, the Applicant was promoted as an Assistant Enforcement Officer at Special Unit, Kolkata. The Applicant was transferred from Special Unit, Kolkata Zonal Office, Kolkata and on June 1996, he was transferred from Kolkata Zonal Office to Delhi Zonal Office, Delhi. Now, the Applicant is working as Enforcement Officer, Guwahati Sub Zonal Office, Guwahati from 01.11.2004. The Applicant has undergone three times Angio Plasty Operation, first at A.P.S. Hospital, New Delhi and other two at B.M. Birla Heart Research Centre, Kolkata. The Applicant submitted representation on 22.06.2006 seeking transfer from Guwahati to Kolkata due to his health reasons. But the Respondents did not reply to the said representation. Aggrieved by the said inaction of the Respondents, the Applicant filed this Application seeking the following reliefs:-

"8.1 That the Hon'ble Tribunal may be pleased to direct the Respondents to transfer the applicant from Guwahati to Kolkata, to his home town, considering his condition of health and the interest of his family members including his old aged ailing mother, ailing wife and two children.

8.2 To pass any other appropriate relief or relief(s) to which the Applicant may be entitled and as may be deemed fit and proper by the Hon'ble Tribunal."

2. We have heard Mr A. Ahmed, learned Counsel for the Applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. for the Respondents.

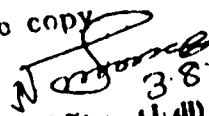
3. Mr A. Ahmed, learned Counsel for the Applicant submitted that the Applicant submitted representations right from 15.09.2004 seeking transfer to his hometown. However, the Respondents did not respond to the said representations. Mr Ahmed, learned Counsel further submitted that he will be satisfied if a direction is given to the Respondents to consider these representations of the Applicant with all sympathy and as per guidelines. Mr M.U. Ahmed, learned Addl. C.G.S.C. for the Respondents submitted that it will suffice the ends of justice and he has no objection in adopting such course of action.

 In the interest of justice, this Court directs that the representations that has been filed by the Applicant shall be considered by the Respondent No. 2 with all sympathy and pass appropriate order and communicate the same to the Applicant within three months from the date of receipt of this order.

The O.A. is disposed of as above at the admission stage itself. In the circumstances, no order as to costs.

SA/VICE CHAIRMAN
SA/MEMBER (A)

Date of Application : 3.8.06
Date on which copy is ready : 3.8.06
Date on which copy is delivered : 3.8.06
Certified to be true copy


Section Officer (Jd.)
C. A. T. Guwahati Bench
Guwahati-5

3/8/06

34-

07 2007 18:27 FAX

ANNEXURE-10

फॉक्स/Fax : 24631847

भारत सरकार

दूरभाष सं० Tel No 24611989
24692000

Government of India

प्रवर्तन निदेशालय

DIRECTORATE OF ENFORCEMENT

छठा तल, लोक नायक भवन, खान मार्केट, नई दिल्ली-990003
6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003

By fax
Speed post

F. No. A-14/4/2005-PtII

Date.....
07.02.07

To

Shri P.K Das
Enforcement Officer
Directorate of Enforcement
Guwahati.

Through: A.D, Dte. Of Enforcement, Guwhati

Sir,

Sub: Request for transfer to Kolkata

Please refer to the various representations submitted by you for your transfer from Guwhati to Kolkata.

2. In this connection, I am directed to convey that the Director of Enforcement has taken into careful consideration, the Representations submitted by you for your transfer from Guwahati to Kolkata, but it is regretted that in view of the ongoing process of restructuring of the Directorate, at this stage the request made therein cannot be acceded to.

Yours faithfully,

(ARUN SHARMA)
DEPUTY DIRECTOR

Attested
10/2/07
Guwahati

7/2/07

8/2/07

APPENDIX - 9

INCENTIVES FOR SERVING IN REMOTE AREAS

[G.I., M.F., O.M. No. 20014/3/83-E, IV, dated the 14th December, 1983, read with O.M. No. 20014/3/83-E, IV, dated the 30th March, 1984, 27th July, 1984, G.I., M.F., U.O. No. 3943-E, IV/84, dated the 17th October, 1984, O.M. No. F. 20014/3/83-E, IV, dated the 31st January, 1985, 25th September, 1985, U.O. No. 824-E, IV/86, dated the 1st April, 1986, O.M. No. 20014/3/83-E, IV, dated the 29th October, 1986, O.M. No. 20014/3/83-E, IV/E, II (B), dated the 11th May, 1987, 28th July, 1987, 15th July, 1988 and O.M. No. F. 20014/16/86-E, IV/E, II (B), dated the 1st December, 1988 and O.M. No. 11 (2)/97-E, II (B), dated the 22nd July, 1998.]

I

Allowances and facilities admissible to various categories of civilian Central Government employees serving in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram, Andaman and Nicobar Islands and Lakshadweep Islands. These orders also apply *mutatis mutandis* to officers posted to N-E Council, when they are stationed in the N-E Region and to the civilian Central Government employees including officers of All India Services posted to Sikkim.

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period $\frac{2}{3}$ rd years. Officers, on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region, will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in Confidential Reports:

Satisfactory performance of duties for the prescribed tenure in the North-East shall be given due recognition in the case of eligible officers in the matter of—

- promotion in cadre posts;
- deputation to Central tenure posts; and
- courses of training abroad.

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North-East.

A specific entry shall be made in the CR of all employees who rendered a full tenure of service in the North-Eastern Region to that effect.

Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre posts, deputation to Central tenure post and courses of training abroad.

(iii) Special (Duty) Allowance:

Central Government civilian employees who have All India transfer liability will be granted Special (Duty) Allowance at the rate of $12\frac{1}{2}\%$ of basic pay on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or deputation (duty) allowance already being drawn without any ceiling on its quantum. The condition that the aggregate of the Special (Duty) Allowance plus Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs. 1,000 per month shall also be dispensed with from 1-8-1997. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

The Central Government civilian employees who are members of Scheduled Tribes and are otherwise eligible for the grant of Special (Duty) Allowance under this para. and are exempted from payment of Income Tax under the Income Tax Act will also draw Special (Duty) Allowance.

NOTE 1.— Special duty allowance will not be admissible during periods of leave/training beyond 15 days at a time and beyond 30 days in a year. The allowance is also not admissible during suspension and joining time.

NOTE 2.— Central Government civilian employees, having 'All India Transfer Liability' on their posting to Andaman & Nicobar Islands and Lakshadweep Islands are, with effect from 24th May, 1989, granted 'Island Special Allowance' in lieu of 'Special (Duty) Allowance'. See Orders in Section V of this Appendix.

(iv) Special Compensatory Allowance:

The recommendations of the Fifth Pay Commission have been accepted by the Government and Special Compensatory Allowance at the revised rates have been made effective from 1-8-1997.

For orders regarding current rates of Special Compensatory allowance—See Part V of this Compilation - HRA and CCA

(v) Travelling Allowance on first appointment:

In relaxation of the present rules (SR 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in

-36-

ANNEXURE-12

From :
P. K. DAS,
Enforcement Officer,
Directorate of Enforcement,
Guwahati Sub-Zonal Office,
GUWAHATI - 781 003

To

Date : 12.02.2007

**The Deputy Director,
Directorate of Enforcement,
Govt. of India,
Lok Nayak Bhavan, 6th Floor,
Khan Market,
NEW DELHI**

(THROUGH PROPER CHANNEL)

Sir,

Re : Transfer to Kolkata

Kindly refer to the H.O. letter No. A-14/4/2005-Pt.II dated 07.02.2007 received by me on 08.02.2007.

With due respect I may like to state here that due to an acute heart patient I made so many representations to the H.O. but without any reply till 08.02.2007. Moreover, I visited H.O. on 19.02.2006 and personally explained to our learned Director of Enforcement about my health conditions and the inconvenience facing at my present place of posting at Guwahati, when I was directed to hand over all the medical papers to the P.A. with the assurance that the matter will be looked into for consideration. But all became vain and my health conditions was not considered at all by the H.O. till July, 2006 and even not informed me anything about my prayers. Finding no other way, I placed the matter even before the Division Bench of Hon'ble CAT, Guwahati Bench even before completion of my two years tenure as I was facing great inconvenience for the state of my health. On hearing my plea and on going through all the medical documents, Hon'ble Division Bench of CAT was pleased to pass an order on 01.08.2006 that " **the representations that has been filed by the Applicant shall be considered by the Respondent No.2 with all sympathy and pass appropriate order and communicate the same to the applicant within three months**". This order of the Hon'ble Division Bench of the CAT, Gauhati Bench is considered a clear direction to the Directorate to consider my case within 3 months. Surprisingly this order was not honored and not even informed me anything within three months as per above order and therefore my advocate was compelled to file a Contempt Petition.

On 08.02.2007, I received a letter from H.O. bearing No.A-14/4/2005/Pt.II dated 07.02.2007 wherein it was informed that my request '**cannot be acceded to**'. This word is not acceptable and considered as disregard of Hon'ble CAT order dated 1.8.2006. Furthermore, in the meantime I have completed my two years tenure at North eastern States and I deserve my right to return back to my choice posting, immediately after completion of two years tenure, even if any restructuring process is going on, as per Govt. of India Order No. 20014/3/83E IV dated 14.12.83 passed by the Jt. Secretary to the Govt. of India which was also not maintained. As informed that restructuring of the Directorate is going on, but for the sake of restructuring, Court's order cannot be ignored.

P.T.O.

*Attested
Advocate*

2
- 37 -


... 2 ...

Once again I may humbly submit that the H.O. letter as stated above bearing the word that '**request made therein cannot be acceded to**' may kindly be withdrawn otherwise Hon'ble Guwahati Bench of CAT may take it otherwise.

This letter may kindly be considered as a request letter and may be considered ~~with~~ merit.

Thanking you,

Yours faithfully,



(P. K. DAS)
ENFORCEMENT OFFICER
GUWAHATI

**DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA**

6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.

F.No : A-14/4/05

Date : 21.03.2007

ESTABLISHMENT ORDER NO. 04/12007

Consequent upon reorganization/restructuring of the various offices of the Directorate, the following postings/transfers of the Enforcement Officers are hereby ordered with immediate effect and until further orders.

Sl.No.	Name of the Officer (S/Shri)	From	To
1.	A.K. Choudhary	Agra	Hqrs.
2.	K.C. Abraham	Delhi Zone	Hqrs.
3.	C. Ramakrishna	Bangalore	Hyderabad
4.	Smt. M. Sreedevi	Trivandrum	Cochin
5.	George Verghese	Trivandrum	Cochin
6.	M. Gangadharan	Bangalore	Cochin
7.	A.K. Butyal	Srinagar	Chandigarh
8.	J.P. Mishra	Hqrs.	Chandigarh
9.	A.K. Mathur	Agra	Lucknow
10.	Kamal Singh	Hqrs.	Lucknow
11.	A.M.G. Wasnik	Delhi Zone	Mumbai
12.	T. Sarvanan	Bangalore	Chennai
13.	F. Kader Mydeen	Chennai	Bangalore
14.	R. Chandrasekharan	Chennai	Bangalore
15.	S.K. Ghosal	Guwahati	Kolkata
16.	Anil Rishiraj	Mumbai	Nagpur
17.	B.J. Pereira	Mumbai	Nagpur
18.	R. Raghunathan	Mumbai	Indore
19.	N. Subudhi	Delhi Zone	Bhubaneswar
20.	D.N. Poddar	Kolkata	Patna
21.	S. Balakrishnan	Calicut	Madurai
22.	S. Vijaychandran	Chennai	Calicut
23.	P.K. Suman	Ahmedabad	Jaipur
24.	R.N. Madan	Delhi Zone	Srinagar

*Attested
by
Advocate*

*28 April 2007
and 29 April*

*7
Not in front*

*Technical
30/3/07*

-39-

25.	N. Dhaka	Delhi Zone	Srinagar
26.	A. Kaushal	Delhi Zone	Jalandhar
27.	D.S. Roy	Kolkata	Guwahati
28.	R.S. Manku	Hqrs.	Delhi Zone

This issues with the approval of the Director of Enforcement, and compliance of the above orders be forwarded to Head Office by 31.03.2007.


(Y.P. SINGH)
DEPUTY DIRECTOR(ADMN.)

Copy to:-

1. The Deputy Directors, Directorate of Enforcement, all Zones.
2. The Assistant Directors, Directorate of Enforcement, All Sub-Zones.
3. Individual concerned.
4. Personal File/Service Book of the individual concerned.
5. Pay & Accounts Officer, Pay & Accounts Office, Department of Revenue, Ministry of Finance, New Delhi.
6. Assistant dealing with Seniority>Returns.
7. PA to DE/SDE(I)/SDE(A)/SDE(Mumbai)/DE(YPS)/DD(AKS)/DLA(G)/DLA(S)/all ADs (Hqrs. Office).

तारीख Date of application for the copy.	संख्या सूचित करने की तिथि तारीख Date fixed for notifying the requisite number of stamps and folios.	देने की तारीख Date of delivery of the requisite stamps and folios.	प्रतिनिधि देना भी Date on which the copy was ready for delivery.	तारीख Date of making over the copy to the applicant.
20/12/02	20/12/02	20/12/02	21/12/02	21/12/02

- 40 -

Annexure-14

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) NO. 3577 OF 1999

Shri Bhagwan Menghani
Senior Accounts Officer,
Office of the Inland Water Authority of India,
Ministry of Surface Transport,
Government of India,
Parameswari Building,
5th Floor, Chatribatri, A.T. Road,
Guwahati - 781 001.

..... PETITIONER

-VERSUS-

1. Union of India,
Through Secretary to the Govt. of India,
Ministry of Surface Transport,
Government of India, Parameswari Building,
5th Floor, Chatribari, A.T. Road,
Guwahati - 781 001.

2. The Chairman,
Inland Waterways Authority of India,
B-109/112
Commercial Complex, Section 18,
NOIDA (UP).

3. Deputy Secretary,
Inland Water Ways Authority of India,
Minister of Surface Transport,
Government of India,
Head Office B/109-112,
Commercial Complex, Section-18
(Dist. Gautam Budh Nagar)
PIN 201301, Uttar Pradesh.

4. Shri S. Jayaraman,
Chief Accounts Officer,
Inland Water Ways Authority of India
B-109-112, Commercial Complex,
Section 18, Noida,
Uttar Pradesh - 201301.

..... RESPONDENTS

21/12/02
Shri S. Jayaraman
Advocate

P R E S E N T
THE HON'BLE MR. JUSTICE D. BISWAS

For the petitioner : Mr. B.K. Sarma,
Mr. M. Chanda, Advocates.

For the respondent : Mr. C. Choudhury,
C.G.S.C.

Date of hearing : 16.12.2002

Date of Judgment and Order : 16.12.2002

JUDGMENT AND ORDER
(ORAL)

Heard Mr. B.K. Sarma, learned Counsel for the petitioner assisted by Mr. M. Chanda, learned counsel and also Mr. C. Choudhury, learned Central Government Standing Counsel for the Union of India.

2. This petition has been filed controverting the legality and validity of the order of transfer dated 11.6.1999 (Annexure-5) and consequent release order of the same date. By the aforesaid order of transfer the petitioner who was serving as Senior Accounts officer in the Head Quarter Office at Noida was transferred to Guwahati. The challenge is on the ground that the advertisement issued pursuant to which the petitioner was appointed was meant for staff in the Head Quarter of the Inland Waterways Authority of India which is at Noida. According to Shri B.K. Sarma, learned Senior Counsel the petitioner pursuant to the above advertisement offered his candidature and on selection and appointment joined the post at Noida with the expectation that he would be allowed to continue there till superannuation. Besides, Shri Sarma, further pointed out that the petitioner in a departmental proceeding initiated against the respondent No.1 deposed against the latter. It was on his evidence that

[Handwritten signature]

the respondent No.4 was imposed with a penalty in that departmental proceeding. Out of vengence, the respondent No.4 initiated the proposal for transfer of the writ petitioner to Guwahati in his personal file which is contrary to the procedure of office administration.

3. Materials on record clearly justify the above submission of the writ petitioner. The advertisement (Annexure-1) and the order of penalty imposed on the respondent No.4 vindicate the grounds on the premises of which the writ petition has instituted.

4. It would appear that the order of the writ petitioner was issued on 11.6.1999 and the petitioner assumed duties at Guwahati without loss of time. By now he has completed three years. Therefore, it would be of no consequence at this belated stage to interfere with the order of transfer which has been complied with.

5. ✓ Shri Sarma submitted that the office Memorandum dated 14th December, 1993 provides for transfer and posting of civilian employee of the Central Government posted in the States and Union Territories of North Eastern Region to posting of his choice. The relevant provisions of the aforesaid office Memorandum, Shri Sarma, submit to render the writ petitioner eligible for reconsideration for his choice posting. The relevant provision of the office memorandum dated 14th December, 1983 is quoted below :-

"1) Tenure of posting/deputation :-

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible."

6. There was no dispute at the bar that the aforesaid memorandum is applicable in respect of the Inland Waterways Authority of India and hence, on completion of two years in the North Eastern Region the petitioner is entitled to consideration for posting to a place of his choice. Infact, the respondent authority has also given choice of posting to other employees, namely, Shri M.K. Saha, Director, Shri S.K. Sharma, Senior Accounts Officer and Shri Mahesh Kumar, U.D.C. In the facts and circumstances of the case, this Court is of the opinion that the petitioner's case for transfer to a place of his choice (Noida) is just and proper.

7. This writ petition is disposed of with the direction to the respondents, particularly, Respondent No.2, the Chairman, Inland Waterways Authority of India to consider the representation of the writ petitioner submitted on 10.6.2002 in accordance with the provisions of the Memorandum dated 14th December, 1983 and pass appropriate orders for his transfer to a place of his choice (Noida) within a period of two months from the date of receipt of a copy of this judgment.

The petitioner is permitted to submit a copy of this Judgment along with other necessary documents to the Chairman immediately.

Sd/- S. S. Sanyal
Secretary

P N 22778
20/12/02

RECEIVED TO BE KEPT COPY

Kishor Kumar Sanyal

Date 21/12/2002

Secretary (Copying Section)

Cachat High Court

Amended U/S 76, Act I, 1973

21/12/02

27 JUN 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

IN THE MATTER OF :

O.A. No.85 of 2007

Shri P.K. Das

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

- AND -

IN THE MATTER OF :

Written statement submitted by the Respondent

Nos. 1 to 4

BRIEF HISTORY

At the outset it is respectfully submitted that there existed no ground for the applicant to move this O.A. before the Hon'ble Tribunal wasting its valuable time as earlier also on similar grounds an O.A.No.184 of 2006 was filed by the applicant and as such it is hit by principle of Resjudicata. The learned Tribunal vide its order dated 1st August, 2006 while disposing of the said O.A. had directed that all the representations filed by the applicant shall be considered by the Respondent No.2 with all sympathy and pass appropriate order and communicate the same to the Applicant within three months from the date of receipt of the order. The said order was complied with and

Filed by R. Respondent -

Moham Rao Nairah 64

Through: M. V. Ahmed, G. G. R.
25/6/07

it was conveyed to the applicant vide letter dated A-14/4/2005-PT.II dated 07.02.2007 that the Director of Enforcement had taken into consideration, the representations submitted by the applicant for transfer from Guwahati to Kolkata, but in view of the ongoing process of restructuring of the Directorate, the request made therein cannot be acceded to. The Director of Enforcement had sympathetically considered and did not outrightly reject the applicant's request for transfer, which he was empowered to do. The restructuring process of deployment of staff at new offices opened at seven cities is still continuing and would take some more time for completion.

WRITTEN STATEMENT

The humble answering respondents submit their written statement as follows:

- 1.(a) That I am the Asst. Director, Directorate of Enforcement, Rajesh Rd. Guwahati.
Representing and Respondents No. 1 to 4 in the above case and I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

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

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

(e) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

PARAWISE REPLY:-

2. With reference to the contents in paragraph 1 of the application, the answering respondents beg to submit that so far as the O.M. mentioned in the paragraph are concerned the same stipulate that the posting in North East Region shall be for fix tenure of two years for the officers who have rendered more than ten years of service, however, the period of leave, training etc. in excess of 15 days per year will be excluded in counting the tenure period. The applicant is working in Guwahati office from 1.11.2004 and has availed leave for 407 days during the period. Hence he has not completed the required tenure of two years.

3. That with regard to the statements made in paragraphs 2, 3, 4.2, 4.4, 4.5, 4.7 to 4.9, 4.11, 4.12 of the application, the answering respondents do not admit anything except those based on record and legal foundation, and the applicant is put to the strictest proof thereof.

4. That with regard to the statements made in paragraphs 4.3 of the application, the answering respondents beg to state that the applicant joined Directorate of Enforcement, Kolkata on 09.02.1972 and was never transferred out of Kolkata till July, 1996 when he was transferred to Delhi Zonal Office. The applicant worked for a very brief period at Delhi Zonal Office as he worked only for less than ten months and was transferred back to Kolkata where he continued till June, 1997. Thus the applicant has almost worked continuous at his choice station i.e. Kolkata from 09.02.1972 to 08.10.2004 barring a short stint at Delhi Zonal office i.e. a period of almost 32 years until he was transferred to Guwahati in October 2004. It is to be mentioned here that the applicant is an executive officer and have all India transfer liability. Thus in a situation where executive officers had to undergo transfers as a matter of policy; to work for such a long period at one station was nothing short of luxury for the applicant.

5. That with regard to the statements made in paragraph 4.6 of the application, the answering respondents beg to submit that part of the reply has been forwarded in

paragraph 4.3 submitted that grievances of employees have to be seen in the context of then responsibilities and the exigencies of their employment and effective functioning of the Directorate which has an all India jurisdiction. It is the responsibility of the Directorate to ensure that its offices in difficult areas function and officers drawing good salaries from Government are placed where there is work further the grievance of the officer has to be seen in the context of the ground situation. It is humbly submitted that Guwahati has sufficient medical facilities available in any State Capital.

6. That with regard to the statements made in paragraph 4.10 of the application, the answering respondents beg to submit that the contents of this paragraph are not admitted save and except what appears from records. Regarding his representations for transfer the matter has already been settled by complying orders dated 01.08.2006 passed in O.A. No.184/2006 for considering all the representations filed by the Applicant and pass appropriate order.

7. That with regard to the statements made in paragraph 4.13 of the application, the answering respondents beg to submit that the Director of Enforcement had sympathetically considered prayer of the applicant and did not out rightly reject the applicant's request for transfer which he was empowered to do; however the request

was not acceded to only in view of the ongoing process of restructuring of the Directorate.

8. That with regard to the statements made in paragraph 4.14 of the application, the answering respondents beg to submit that the comments of this paragraph are elaboration of Paragraph 1 of the O.A., reply to which has already been furnished. The applicant has failed to mention that period of leave, training etc. in excess of 15 days per year will be excluded in counting the tenure period of two years.

9. That with regard to the statements made in paragraph 4.15 of the application, the answering respondents beg to submit that the respondents did not have any intention or need to hide any fact from the Learned Tribunal. The Tribunal in its order dated 1st August, 2006 while disposing of the O.A.184/2006 had directed that all the representations filed by the applicant shall be considered by the respondent No.2 with all sympathy and pass appropriate order and communicate the same to the applicant within three months from the date of receipt of the order. The said order was complied with to the satisfaction of the learned Tribunal. The contention of the applicant that benefit of choice posting cannot be denied on extreme medical grounds in the light of O.M. dated 14.12.1983, 01.12.1988 and 22.07.1998 is incorrect. The said Office Memorandum clearly provide that "Period of leave, training, etc. in excess of 15 days per year will be

70

7

excluded in counting the tenure period of 2/3 years". Hence the said instructions do not discriminate between the nature of leave and any leave which is in excess of 15 days is to be excluded in counting of tenure period without any exception to medical leave.

10. That with regard to the statements made in paragraph 4.16 of the application, the answering respondents beg to submit that the applicant is reiterating that he has completed two years service in the North East which is absolutely false and the comments have been given in the aforesaid paragraph.

11. That with regard to the statements made in paragraph 4.17 of the application, the answering respondents beg to submit that the process of restructuring is still continuing and it is not the applicant alone whose request for transfer is pending. The applicant's contention that the respondents are being vindictive for the reason that the applicant had filed an O.A. as well as Contempt Petition is vehemently denied, as the same is only applicant's imagination. The fact that the applicant has in this paragraph prayed for directing the respondents to keep vacant one post of Enforcement Officer at Kolkata is an acknowledgement of fact that the process of restructuring is continuing.

12. That with regard to the statements made in paragraph 4.18 of the application, the answering respondents beg to submit that the judgment is quoted out

of context as it deals with completion of fixed tenure of two/three years in North Eastern region while the applicant has not completed mandatory two years in Guwahati for posting of station of choice. The said judgment would have been relevant only if it dealt with or stipulated that medical leave could be included in counting the tenure period of 2/3 years in respect of officials working in North East for posting to a station of their choice as far as possible.

13. That with regard to the statements made in paragraphs 4.19 and 4.20 of the application, the answering respondents beg to submit that while the process of restructuring is still in progress and the matter already decided in O.A. No.184/2006 and subsequent contempt petition, the petition filed by the applicant is premature and deserves to be dismissed.

GROUND:-

14. That with regard to the statements made in paragraphs 5.1 and 5.2 of the application, the answering respondents beg to submit that the said O.M. also provide that "Period of leave, training etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years". The applicant is yet to complete the tenure of two years in North Eastern region for availing benefit of the said Memorandum. The applicant does not have a right to be transferred on medical grounds; however the Respondents have adopted a sympathetic approach and already informed

that at the moment request for transfer cannot be acceded to due to ongoing process of restructuring.

15. That with regard to the statements made in paragraph 5.3 of the application, the answering respondents beg to submit that the petitioner would be extended all consideration due to him as per the policy of Government of India in relation to officers posted in the north east.

16. That with regard to the statements made in paragraph 5.14 of the application, the answering respondents beg to submit that the applicant's transfer from Guwahati has to be followed by a replacement for which somebody has to be transferred from other Zonal/Sub-Zonal offices. The Directorate cannot follow pick and choose policy particularly for transfer to North Eastern region. Therefore, to adopt a fair policy any transfer to Guwahati should be part and linked to ongoing process of restructuring.

17. That with regard to the statements made in paragraph 5.5 of the application, the answering respondents beg to submit that the reply has already been furnished in paragraphs 7 and 8.

18. That with regard to the statements made in paragraph 5.6 of the application, the answering respondents beg to submit that the process of restructuring does not end with transfer of 28 officers vide Establishment order No.04/2007 dated 21.03.2007. The restructuring process is

in full swing and another round of transfers are to follow soon.

19. That with regard to the statements made in paragraph 5.7 of the application, the answering respondents beg to submit that there are five posts of Enforcement Officer lying vacant at Kolkata Zonal office and reply to this paragraph has already been furnished in paragraph 5.4 of this reply.

20. That with regard to the statements made in paragraph 5.8 of the application, the answering respondents beg to submit that the respondents are aware of the complications, which arise particularly on account of its impact on family life due to transfers of executive staff. The respondents are already dealing with a number of representations received from other executive staff. It is however reiterated that once an officer joins a service like that of this Directorate he has to be prepared to be posted anywhere in India in accordance to the Government policy.

21. That with regard to the statements made in paragraph 5.9 of the application, the answering respondents deny the same as specifically stated in the above paragraphs and also it is a repetition of the same story.

22. That with regard to the statements made in paragraph 5.10 of the application, the answering respondents beg to submit that the applicant does not have

a right to be transferred on medical grounds; however the respondents have adopted a sympathetic approach and already informed that at the moment request for transfer cannot be acceded to due to ongoing process of restructuring.

Therefore, while the process of restructuring is still in progress and the matter is already decided in O.A.No.184/2006 and subsequent contempt petition, the petition filed by the applicant is premature and deserves to be dismissed.

23. The respondents beg to submit that the instant application is devoid of any merit and is liable to be dismissed for the ends of justice.

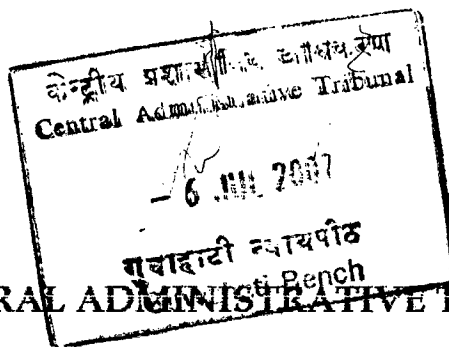
VERIFICATION

I, Mohan Rao Navale son of Shripad Rao Navale, ~~aged about 57 years, working as Assistant Director, Directorate of Enforcement, Rajguda Road, Bye Lane No 1, House No 20, Guwahati~~ being duly authorized and competent to sign this verification, do hereby solemnly affirm and verify that the statements made in Paras 1 to 20 are true to my knowledge, belief and information and those made in Paras 4 are derived from the records/facts etc, and the rest are humble submissions before the Hon'ble Court and I have not suppressed any material facts.

And I sign this verification on this the 25th day of June 2007 at Guwahati.

Mohan Rao Navale
Signature

(M. R. NAVALE)
Assistant Director
Directorate of Enforcement (FBMA)
Govt. of India, Guwahati.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Filed by the applicant - 76
Through:- S. N. Saha
Advocate
06/09/2007

In the matter of: -

O.A. No. 85 of 2007

Shri Prabir Kumar Das._____

..... 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 in reply to the statements pertaining to the "brief history" the applicant begs to state that he approached this Hon'ble Tribunal through OA No. 184/2006, praying for a direction upon the respondents to transfer him at Kolkata i.e. home town, considering of health and the interest of his family members including his old aged ailing mother, ailing wife and two children. However, said OA No. 184/2006 was disposed of on 01.08.2006 by the Hon'ble Tribunal with the direction to the Respondent No. 2 to consider representation of the applicant with all sympathy and pass appropriate order and communicate the same to the applicant within three months from the date of receipt of this order. Thereafter, the

respondent No. 2 after elapse of six months time issued the impugned order dated 07.02.2007 ignoring prayer of the applicant for transfer at Kolkata on extreme health condition and thereby the case of the applicant was not sympathetically considered as directed by this Hon'ble Tribunal. It is pertinent to mention here that case of the applicant for transfer at Kolkata was not considered sympathetically on the plea that the process of restructuring of the Directorate is going on but the respondent issued order of transfer and posting dated 21.03.2007 (Annexure- 13 of the OA) transferring in as much as 24 officers from different parts of the country (one officer from Guwahati to Kolkata), as such rejection of transfer of the applicant at Kolkata on the ground of restructuring of the Directorate is self contradictory stand on the part of the respondents, as such the impugned order dated 07.02.2007 is arbitrary, malafide and liable to be set aside and quashed.

2. That the applicant denies the statements made in para 1, 2, 3, 4 and 5 of the written statement save and except which are borne out of record and states that he has compelled to avail leave of 306 days (not 407 days as stated by the respondents in the written statement) on extreme medical ground and as per direction of the specialist Doctors of B.M. Birla Heart Research Centre wherein third Angio Plasty Operation of the applicant was performed on 22.06.2005. Therefore, availing of 306 days of leave by the applicant was under compelling circumstances on medical ground and applicant cannot be held responsible for availing such leave. Moreover, applicant is still under constant medical treatment, as such he deserves transfer at Kolkata by the respondents as a special case but the respondents knowing fully well the health condition of the applicant intentionally harassing the applicant and compelling him to face much more difficulty to lead his day to day life at Guwahati. It is also relevant to mention here that applicant has joined at Guwahati on 01.11.2004 and has completed more than 2 years 8 months at Guwahati i.e. 8 months over and

above of his fixed tenure of 2 years at NE Region, as such he is entitled to be posted at Kolkata in the light of O.M dated 14.12.1983, 01.12.88 and 22.07.98 as well as on extreme humanitarian ground.

3. That the applicant categorically denies the statements made in para 6, 7, 8, 9, 10, 11, 12, and 13 of the written statement save and except which are borne out of record and begs to state that the respondents have not denied the contention of the applicant that inasmuch as 28 officers have been transferred vide order dated 21.03.2007 in spite of ongoing restructuring process of Directorate and there are inasmuch as 5 posts are still lying vacant at Kolkata, therefore there is no difficulty on the part of the respondents to transfer the applicant at Kolkata in any of the vacant post. Therefore, the Hon'ble Tribunal be pleased to direct the respondents to transfer the applicant against any one of the post lying vacant at Kolkata in the light of the O.M dated 14.12.1983, 01.12.88 and 22.07.98 as well as on extreme humanitarian ground since the process of restructuring of Directorate has no bearing in transferring the applicant at Kolkata.

It is also relevant to mention here that the applicant has less than 3 years of service in his credit and as per 5th Central Pay Commissions recommendation central Govt. employees are entitled for choice station posting or retention at the same place of posting who have less than 3 years of service at his/her credit, as such applicant is entitled to the benefit of 5th CPC recommendation in case of his posting at Kolkata.

4. That the applicant categorically denies the statements made in paragraph 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the written statement save and except which are borne out of record and further begs to submit that the applicant deserved sympathetically consideration regarding his transfer at Kolkata on extreme health ground but he has been denied such consideration instead of 5 posts of Enforcement Officers are still lying vacant at Kolkata. As such it can rightly be concluded that applicant has

been discriminated in the matter of his transfer at Kolkata, therefore the Hon'ble Tribunal be pleased to direct the respondents to transfer the applicant at Kolkata against any one of the post lying vacant at Kolkata in the light of the O.M dated 14.12.1983, 01.12.88 and 22.07.98 as well in the light of the recommendation of the 5th Central Pay Commission.

5. That in the facts and circumstances, the applicant humbly submits that he reiterates the submissions made in the Original Applicant and further begs to state that he is entitled to the reliefs prayed for and the Original Application deserves to be allowed with costs.

VERIFICATION

I, Shri Prabir Kumar Das, Son of Late Pradyut Kumar Das, aged about 57 years, working as Enforcement Officer, Office of the Assistant Director, Directorate of Enforcement, Guwahati Sub-Zonal Office, Bye-Lane No. 1, House No. 20, Rajgarh Road, Guwahati- 3, do hereby verify that the statements made in paragraph 1 to 5 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 5th day of July 2007.

Prabir Kumar Das.