

50

13

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No. OA.152/2007

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

E.P/M.A No.....

1. Orders Sheet.....04.....Pg.1.....to.12.....
2. Judgment/Order dtd. 11.12.2009.....Pg.1.....to. 6. Allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....152/2007.....Pg.1.....to. 66
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
- ✓ 7. W.S.....Pg.1.....to. 14
- ✓ 8. Rejoinder.....Pg.1.....to. 6
9. Reply. to the Rejoinder.....Pg.1.....to. 18
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendement Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Shalita
04.10.17

ORDER SHEET

Original Application No. 152/07

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(S) Surendra Kedia VS Union of India & Ors

Advocate for the Applicant(S) Mr. M. Chandra, S. Nath
& V. Dutt

Advocate for the Respondant(S) All. Case Mr. H. Das...

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

Application is in form
No. C.F. for Rs. 10/-
dated vide IPO/ED
346/654/88
dated 2.6.07

Q. Registrar
No 36ps

13.6.2007

The Applicant is working as Head Assistant in the office of the DGAR, Headquarter, Shillong. Applicant's grievance is that he has not been absorbed yet while three other identically placed in Headquarter, Shillong/ Aggrieved by the same, Applicant approached this Tribunal in O.A. No. 334/1999. This Tribunal vide order dated 4.4.2001 dismissed the O.A. but directed that, "However, the rejection of this application shall not preclude the authority to consider the case of the applicant within the parameter of law if such applications are made in change of situation." The matter was taken before the Hon'ble High Court and the Hon'ble vide its judgment dated 19.7.2005 passed in W.P.C. No. 143(SH)/2002 directed the Respondent No.2 to "consider and take an appropriate

Contd...

decision therein taking into considerations the observations made above" within a period of two months from the date of receipt of the copy of the order. Till such time the service of the Applicant was directed to be continued.

In furtherance of that order the Respondents have passed Annexure-12 order dated 26.10.2005 rejecting the claim of the Applicant. Thereafter, a COP No.11(SH)/2006 was filed before the Hon'ble High Court wherein the High Court has passed an order dated 28.5.2007 closing the COP. The operative portion of the said order is quoted below:-

"The view taken by the respondents authorities leading to pass the aforesaid order, we are of the opinion that the authorities have complied with the order and direction issued by this Court in the aforesaid writ petition. If the petitioner is still aggrieved by the aforesaid order, he may seek proper remedy before the appropriate forum, if so advised. But in the facts and circumstances of the case, we do not find that the present contempt petition is maintainable."

Heard Mr.M.Chanda, learned counsel for the Applicant. Mrs.M.Das, learned Addl. C.G.S.C. represented the Respondents. The contention of the learned counsel for the Applicant is that that Applicant is totally discriminated in not considering his case for absorption alongwith other similarly

15.2.2007
19.7.07
19.9.2007

Wps submitted
by the Respondents.
Copy served page
1 to 14.

Dis.

On the prayer of Mr M. Chanda,
learned counsel for the applicant three
weeks time allowed to file rejoinder. List
the matter on 11.10.07. The interim
order shall continue.

[Signature]
Vice-Chairman

nkmm

19.9.07.
Pl. comply.

[Signature]

11.10.07 No rejoinder has been filed in this case, as
yet.

Call this matter on 20.11.07 awaiting
rejoinder from the applicant.

Mrs M. Das, learned Addl. Central govt.
standing counsel undertakes to file appearance
memo in this case for record.

Interim order to continue till next date.

Order dt- 19/9/07
issuing to both
the parties.
16/10/07.

Rejoinder not
filed.

10.10.07.

pg

[Signature]
(Khushiram)
Member(A)

[Signature]
(Manoranjan Mohanty)
Vice-Chairman

11.10.07.
Please comply.

20.11.2007

No rejoinder has been filed in this
case as yet. Mr. M. Chanda, learned
counsel appearing for the Applicant
undertakes to file rejoinder by 26th
November, 2007, only after serving a copy
of the Addl. Standing Counsel for Union of
India appearing for the Respondents in
this case.

Call this matter for hearing on 11th
January, 2008.

Interim order shall continue till the
next date.

11.10/07
to both
parties.

10/10/07

Rejoinder not
filed.

19.11.07.

Rejoinder not
filed.

10.1.08.

[Signature]
(Khushiram)
Member(A)

[Signature]
(M.R. Mohanty)
Vice-Chairman

Notes of the Registry

Date

Order of the Tribunal

Contd
13.06.2007

3
situated persons and the stand taken by the Respondents that there is no vacancy is not correct. Learned Addl.C.G.S.C. wanted to get instruction on the matter. Let it be done.

Issue notice to the Respondents. Post the case after four weeks.

In view of the fact that there was an interim order granted by the Hon'ble High Court, by way of an interim order this Court directs that Applicant shall not be disturbed from his present place of posting till the next date.

Post on 13.07.2007.

Vice-Chairman

/bb/

Notice & order
Sent to D/Section
for issuing to
resp. nos. 1, 2 by
regd. A/D post.

13.7.07.

Counsel for the respondents has submitted that the written statement has filed to-day. Respondent is directed to receive the same. Let it be brought on record, otherwise it will be in order. Interim order shall continue. Post the matter 26.7.07.

Vice-Chairman

lm

① Service report
awaited.

26.7.07

Counsel for the applicant wanted rejoinder. Let it be done within 2 weeks.

Post on 13.8.2007 for order.
order shall continue.

Vice-Chairman

order dt. 13/7/07 issuing
to both the parties.

COPY of the order
Dtd 13.06.07
Served on by
Mrs M. Dm
21.6.07

D/No-632 to 633

Dt= 29/6/07

12.07.07

19/7/07

11. 01.2008

In this case reply and rejoinder have already been filed. Subject to the legal pleas to be examined at the final hearing, the case is admitted and Call for hearing on 12.02.2008.

16.1.08

Rejoinder filed
by the Applicant.
Copy served.

lm

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

12.02.2008

Mr M.Chanda, learned counsel for the applicant is present. Mrs M.Das, learned Addl. Standing counsel for the Respondents being absent,

/ This case stands adjourned to be taken up on 18.03.2008.

11-2-08
Ready for hearing.
lm

The case is ready
for hearing.

17.3.08

pg

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

18.03.2008

Call this matter on 24.03.2008.

lm

The case is ready
for hearing.

20.3.08

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

24.03.2008

Call this matter on 16.05.2008
for hearing.

(M.R.Mohanty)
Vice-Chairman

The case is ready
for hearing.

15.5.08

lm

C.A. 152/07 6

16.05.2008 Mrs. M. Das, learned Addl. Standing counsel appearing for the Union of India seeks permission to file reply to the rejoinder, in course of the day. She is permitted to do so. Mr. M. Chanda, learned counsel for the Applicant seeks an adjournment. Prayer is allowed. Call this matter on 26.6.2008 for hearing.

19.5.08

Reply to Rejoinder
submitted to Respondents.
Copy received.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

As,

The case is ready
for hearing.

25.6.08

26.06.08

Mr M. Chanda, learned counsel for the Applicant is present. However, Mrs M. Das, learned Addl. Standing counsel for the Respondents is absent.

Call this matter on 09.07.2008 for hearing.

(M.R. Mohanty)
Vice-Chairman

pg

09.07.08

Mrs U. Dutta is present representing the Applicant. Mrs M. Das, learned Addl. Standing counsel is on accommodation.

Call this matter on 25.08.2008.

(R.C. Panda)
Member(A)

(M.R. Mohanty)
Vice-Chairman

pg

The case is ready
for hearing.

22.08.2008

O.A. NO. 152/2007 7-

25.08.2008

On the prayer of the learned Counsel for the parties, call this matter on 04.09.2008.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

nkm

25
3.9.08.

lm

04.09.2008

On behalf of Mrs. M. Das, learned Addl. Standing Counsel appearing for the Union of India, prayer is made for adjournment. Accordingly, case is adjourned to 31st October, 2008 for hearing.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

lm

31
30.10.08

31.10.2008

Call this matter on 04.12.2008 for hearing.

(S.N. Shukla)
Member(A)

(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

pg

31
3.12.08

04.12.08

Call this matter on 27.01.2009 for hearing.

(S.N. Shukla)
Member(A)


The case is ready for hearing.

lm

23
23.1.09

8¹ 0A-152/07
27.01.2009

Call this matter on 05.03.2009 for
hearing.


(M.R. Mohanty)
Vice-Chairman

pg

- 9 -

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Shri Surendra Kshir

O.A. No.152 of 2007

Applicant

Versus

Union of India & others

Respondents

Order dated 25.02.2009

25.2.09

Copy of the
order Dtd 25.2.09
sent to the D/Sec.
for issue the due
to the Applicant
as well as to the
Respond No 1 in 2
by Post.

cm

MNO. 624 to 626

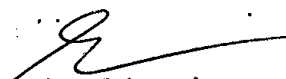
Dt 25.2.2009

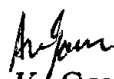
The case is ready
for hearing.

26.3.09.

27.03.2009

On the prayer of Learned Counsel
appearing for the Respondents, case is
adjourned to be taken up on 19.05.2009.


(Khushiram)
Member (A)


(A.K. Gaur)
Member (J)

/bb/

The case is ready
for hearing.

18.5.09.

19.05.2009 Mr. M.Chanda, learned counsel
appearing for the Applicant is present.

It is reported that Mrs. M. Das, learned
Addl. Standing Counsel appearing for the
Respondents is sick.

Call this matter on 25.06.2009.


(N.D. Dayal)
Member(A)


(M.R. Mohanty)
Vice-Chairman

10

10-

O.A.No.152/2007

25.06.2009

Call on 20.07.2009 for hearing.



(M.R.Mohanty)
Vice-Chairman

cm

20.07.2009

Mrs. U.Dutta, learned counsel for the Applicant is present. On behalf of Mrs.M.Das, learned Addl. Standing counsel for the Govt. of India, an adjournment is sought.

the case is ready
for hearing.

3
03.08.09.

Call this matter on 04.08.2009 for hearing.


(M.K.Chaturvedi)
Member (A)
(M.R.Mohanty)
Vice-Chairman

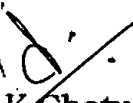

/bb/

the case is ready
for hearing.

04-08-2009

On the prayer of Mr M.Chanda, learned counsel for the Applicant, call this matter on

09.09.09 10.09.2009.


(M.K.Chaturvedi)
Member(A)
(M.R.Mohanty)
Vice-Chairman

10/09/09 (M.K.)
10/09/09 (M.R.)

10/09/09 (M.K.)
10/09/09 (M.R.)

O.A. 152 of 07

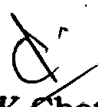
10.09.2009

Mrs. U. Dutta, learned counsel for the Applicant prays for an adjournment. Prayer is allowed.

Call this matter on 09.11.2009.

The case is ready for hearing.

M
6.11.09


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/lm/


09.11.2009


Due to general strike call by ULFA, none appears for parties.

Adjourned to 16.11.2009

The case is ready for hearing.

M
13.11.09



(Madan Kumar Chaturvedi)
Member (A)

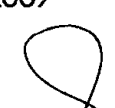

(Mukesh Kumar Gupta)
Member (J)

nkm

16.11.2009

On the request of Mrs. M. Das, learned Sr. CGSC, list this matter on 01.12.2009


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)


/pb/

The case is ready for hearing.

M
30.11.09

01.12.2009

On the request of proxy counsel for Respondents matter is adjourned to 03.12.2009.

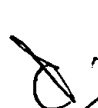

(Madan Kumar Chaturvedi)
Member (A)

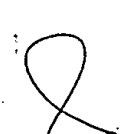

(Mukesh Kumar Gupta)
Member (J)

/pb/

03.12.2009

On the request of Mrs. M. Das, learned Sr. CGSC, list on 04.12.2009


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/pb/

O.A. No. 152/2007

04.12.2009

Heard Mr M. Chanda, learned counsel
for applicant and Mrs M. Das, learned Sr.
C.G.S.C. for respondents.

For the reasons recorded separately,

O.A. is allowed. No costs.

Madan Kumar Chaturvedi
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Received
for Mrs H Das
for C.S.C.
Kazetika
23.12.09

23/12/09

Judgment / Final order
dated 4/12/09 sent by me
D/Section for issuing the
all the respondents by post
and sent both the parties

vide No. = 12972 & 12973

dated 24.12.09

14

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.152 of 2007

Date of Order: This the 4th day of December 2009

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri Surendra Kshir,
S/o Shri Kul Bahadur Chetri,
Head Assistant,
Office of the Director General of Assam Rifles
Headquarters (Medical Branch),
Shillong.

..... Applicant

By Advocate Mr M. Chanda

- versus -

1. The Union of India, represented by
Secretary to the Government of India,
Ministry of Home Affairs,
North Block, New Delhi-110001.
2. The Director General
Assam Rifles,
Shillong-793011.

..... Respondents

By Advocate Mrs M. Das, Sr. C.G.S.C.

.....

10.11.2009

ORDER (ORAL)MUKESH KUMAR GUPTA, JUDICIAL MEMBER

In this second round of litigation, Surendra Kshir, Head Assistant, Office of the Director General of Assam Rifles, Headquarters (Medical Branch), Shillong, challenges validity of order dated 26.10.2005 with all consequential benefits.

2. Admitted facts are that, earlier he approached this Tribunal vide O.A.No.334/1999 seeking permanent absorption in said office. Said O.A. was dismissed vide order dated 04.04.2001 (Annexure-10). Challenging validity of said order, Writ Petition (C) No.143(SH)/2002 was preferred before the Hon'ble High Court, Shillong Bench. Vide order dated 19.07.2005, order passed by this Tribunal was set aside with following observation:

"Thus we are unable to agree with the findings of the learned CAT that, there is no illegality and/or abuse, misuse of the discretionary power by the respondents in non-absorbing the petitioner in the DGAR at Shillong, while absorbing three other persons, similarly situated with that of the petitioner, completely overlooking the principles laid down in Article 14 and 16 of the Constitution of India. We are also, unable to accept the procedure adopted by the learned CAT in arriving at the decision, that the Respondents have correctly applied their discretion in considering the case of the writ petitioner. It is a clear case, where discretion has been erroneously applied by singling out the petitioner for discriminatory treatment, by refusing to treat similarly with the persons similarly situated.

That being the position, the impugned judgment and order dated 4.4.2001 passed by the CAT in original Application No.334 of 1999 (Annexure-20) is not sustainable in law and therefore the same is hereby set aside and quashed.

Consequently, the impugned order dated 28.9.99 (Annexure-16) passed by the authority rejecting the representation dated 10.9.99 submitted by the petitioner is also quashed, holding the same to be violative of Article

8


14 and 16 of the Constitution of India, on the ground of erroneous exercise of discretionary power by overlooking the relevant facts into consideration, as well as for the fact that persons similarly situated were not similarly treated, inasmuch as, those three persons, viz. Smt. Aparna Chakraborty, Smti Anjali Dey and Smt Meera Thapa and the petitioner belong to the same class of employees and they are entitled to get similar treatment when the same being denied in case of the writ petitioner, the discretion of the appointing authority cannot be said to be applied fairly and in a just manner. In the result, the writ petition is allowed and the rule is made absolute.

However, in the attending facts and circumstances of the case, we deem it fit and proper to remit the matter back to the Respondent No.2 i.e. the Director General, Assam Rifles, Shillong, Meghalaya. The said authority would consider and take an appropriate decision therein, taking into consideration the observations made above. As the controversy relates to the permanent absorption of the petitioner in the office of the Director General, Assam Rifles, Shillong, it is further ordered that the Respondent No.2 would pass appropriate order within a period of two months from the date of receipt of the certified copy of this judgment and order. The petitioner is directed to serve a certified copy of this order before the Respondent No.2 within a period of four weeks from the date of passing of this order.

Till such order is passed by the authority the service of the petitioner at Head Quarter, DGAR, Shillong shall continue."


(emphasis supplied)

3. In purported compliance of aforesaid direction, respondents passed order dated 26.10.2005 (Annexure-R). Contention raised by applicant is that though specific direction of the Hon'ble High Court had been to consider applicant's case in terms of observations made with reference to three other persons namely, S/Smt Aparna Chakraborty, Anjali Dey and Meera Thapa, who belong to the same class of employee and thus entitled to similar treatment, which had been grossly overlooked and similar treatment denied to applicant. Not even a word has been said by the respondents vide impugned order dated 26.10.2005 on this aspect.



4. Respondents have filed their reply and contested the claim stating that civilian clerks working in Assam Rifles are appointed in two distinct cadres i.e. DGAR cadre and Unit cadre. Separate recruitment and promotion rules are applicable to them. Government of India had taken a policy decision in 1989 to combatise the entire ministerial staff or posts held by civilians. Those civilians who did not opt for combatisation were to continue in the civilian posts, which deem to continue as personal to them until they superannuate. In compliance of Hon'ble High Court's order dated 19.07.2005, respondents have passed afresh appropriate order. Contempt Petition preferred by him had been dismissed holding that directions were fully complied with. Applicant was directed to submit requisite medical documents in order to establish that his father was ailing. Learned counsel for respondents pointed out that said order of the Hon'ble High Court initially had not been complied with but subsequently it was complied with and applicant was allowed to continue in said post on year to year basis, purely on humanitarian grounds. Since there is no provision to absorb a unit cadre civilian clerk in DGAR cadre, necessary relief as prayed for cannot be allowed. Further, applicant has no legal right to seek directions for absorption to DGAR cadre.

5. We have heard learned counsel for the parties, perused the pleadings and other material placed on record. Question which arises for consideration is whether directions contained vide order dated 19.07.2005 of the Hon'ble Gauhati High Court have been complied with by passing order dated 26.10.2005 or not. Thus, it would be expedient to notice complete text of order dated 26.10.2005, which reads thus:



"ORDER BY IC-16289X LIEUTENANT GENERAL
BHOPINDER SINGH, AVSM, VSM, DIRECTOR GENERAL
ASSAM RIFLES IN THE CASE OF SHRI SURENDRA
KSHIR, UDA OF ASSAM RIFLES

1. In deference to the Hon'ble Guwahati High Court Order dated 19.07.2005, the representation of Shri Surendra Kshir dated 16.06.1999 has been considered afresh.

2. Whereas Shri surendra Kshir, UDA has requested for permanent absorption in the DGAR cadre primarily on the grounds of ill health of his father- Ex Sub Major (Honorary Captain) Kul Bahadur Chhetri.


3. Whereas in the Assam Rifles, civilian clerks are appointed in two cadres i.e. DGAR cadre and unit cadre. The terms and conditions of employment in both cadres are entirely different. Further, due to combatisation of the Force, the civilians staff presently held on the strength of the Force are continuing to hold the said post as personal to them till their superannuation. Accordingly, no posts are available for further absorption of any civilian in the DGAR cadre. Therefore, Shri Surendra Kshir cannot be permanently absorbed in the DGAR cadre.

4. Notwithstanding the same, considering the ill health of his father, who needs constant attendant cadre, as advised by the medical authorities, purely on humanitarian grounds I, hereby, direct that the individual be permitted to continue to be posted at Shillong to attend to his ailing father for one year. His posting will be reviewed every year from the date of issue of this order and a decision regarding further retention or otherwise will be taken on the basis of medical documents/condition of his father.

Signed at Shillong on this twentysixth day of October 2005."

(emphasis supplied)

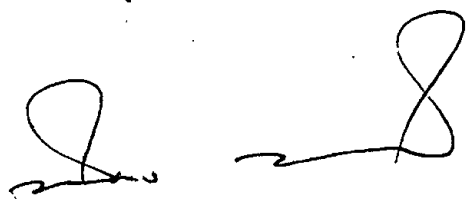
6. Emphasis was laid by applicant that there is no consideration in the eyes of law and order dated 26.10.2005 was merely an eye wash, which cannot be sustained. We have read and re-read said order dated 26.10.2005. In our considered view, the complete text of said order as noticed hereinabove would reveal that respondents have not averred even a word about the manner in which said three persons, as required by Hon'ble High Court, had been dealt



with and how applicant's case was distinguishable and not comparable. In this view of the matter we have no hesitation to conclude that order dated 26.10.2005 is a sham order. There is no consideration of the direction of the Hon'ble High Court. Respondents have utterly failed to pay consideration to various aspects of the matter, which they were legally required to address. It is not in dispute that order of High Court has attained finality. Once these are the facts, respondents had no option but to comply with direction of the Hon'ble High Court, which in our considered view have not been attended at all. In this view of the matter order date 26.10.2005 is rendered unsustainable in the eyes of law and accordingly quashed and set aside. This will not preclude respondents to consider the direction of Hon'ble High Court and pass appropriate orders.

7. O.A. is allowed. No costs.


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER


(MUKESH KUMAR GUPTA)
MEMBER (JUDICIAL)

12 JUN 2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

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

O. A. No. 152 /2007

Shri Surendra Kshir

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant was initially appointed as L.D.A in the Assam Rifles and he was posted in one of the Units i.e. 16 AR (Assam Rifles) at Nagaland. He was thereafter transferred under the 20 AR at Manipur and he is at present working as Head Assistant in the Headquarters at Shillong on attachment from the 20 AR.

19.09.1989- Ministry of Home Affairs, Govt. of India, issued sanction of President for combatisation of civilian staffs of Assam Rifles. Applicant did not submit any option, as such he remained as Civilian Staff. (Annexure- 1)

20.09.1996, 01.12.96- Applicant and his father prayed for absorption of the applicant under establishment of DGAR, Shillong on the ground of serious ailment of father of the applicant. (Annexure- 2 series)

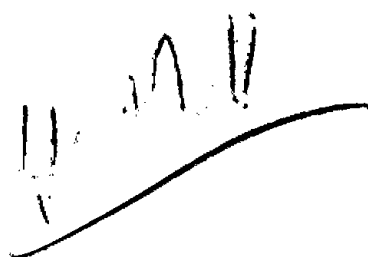
31.01.1997- Respondent authority rejected prayer of the applicant on the ground of combatisation of Force. (Annexure- 3)

08.07.1997- Applicant again submitted application for his absorption at HQ, DGAR, Shillong on the ground of further deterioration of his father's health condition. (Annexure-4)

08.10.1997- Applicant was informed that no absorption is being carried out in HQ, DGAR, Shillong, he may submit application as and when called for. (Annexure- 5)

26.06.97, 09.09.96, 18.02.97- Three similar situated LDA/UDA were absorbed in the HQ, DGAR, Shillong. (Annexure- 6 series)

25.05.1998- Applicant again applied for regular absorption referring absorption of three similarly situated LDA/UDA. However, his application was rejected on the ground of combatisation of Force. (Annexure- 7 Series)



Surendra Kshir

- 20.08.1999- This Hon'ble Tribunal disposed of OA No. 253/99, preferred by the applicant, with the direction to dispose of his representation.
- 10.09.1999- Applicant submitted detailed representation as directed by this Hon'ble Tribunal. (Annexure- 8)
- *28.09.1999- Respondents rejected prayer of the applicant with a further direction to release the applicant immediately. (Annexure- 9)
- 04.04.2001- Applicant approached this Hon'ble Tribunal through OA No. 334/99 challenging the order dated 28.09.99, the said OA was dismissed. (Annexure- 10)
- 19.07.2005- Applicant approached the Hon'ble Gauhati High Court by filing WP (C) No. 3326/01 [renumbered as WP (C) No. 143 (SH)/02]. Hon'ble High Court quashed the order dated 28.09.99 on the ground that respondents failed to treat similarly situated persons similarly, as such respondents violated Article 14 and 16 of the Constitution of India and remitted the matter back to the respondents to take an appropriate decision for permanent absorption of the applicant. (Annexure- 11)
- 26.10.2005- Respondent No. 2 rejected claim of the applicant for permanent absorption in the HQ, DGAR, Shillong on the same plea of combatisation of Force. It is pertinent to mention here that Hon'ble High Court quashed the same plea of the respondents and that has attained finality, as such impugned order dated 26.10.05 is malafide and same is liable to be set aside and quashed. (Annexure- 12)
- 28.05.2007- Applicant preferred Contempt Petition before the Hon'ble Gauhati High Court, which was closed with liberty to the applicant to seek remedy at appropriate forum. (Annexure- 13)
- 31.05.2007, 01.06.07- Respondents directed the applicant to submit documents relating to health condition of father of the applicant for review of posting of the applicant at HQ DGAR, Shillong. (Annexure- 15 series)

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 order bearing letter No. Rec (Adm-IV)/S Kshir-UDA/ dated 26.10.2005 (Annexure- 12).

Surender Kshir

2. That the Hon'ble Tribunal be pleased to direct the respondents to absorb the applicant in the establishment of Headquarter, Director General of Assam Rifles, Shillong on permanent basis in the light of the direction passed by the Hon'ble Gauhati High Court in it's judgment and order dated 19.10.2005 in WP (C) No. 143 (SH)/2002.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned order bearing No. Rec (Adm-IV)/S Kshir-UDA/ dated 26.10.2005 (Annexure-12) till disposal of the Original Application and further be pleased to direct the respondents to allow the applicant to continue to work in HQ office, DGAR, Assam Rifles, Shillong till disposal of Original 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.

Surendra Kumar

12 JUN 2007

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. 152/2007

• Shri Surendra Kshir : Applicant.

-Versus-

Union of India & Ors. : Respondents.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.	---	Application	1-14
2.	---	Verification	-15-
3.	1	Copy of letter dated 19.09.1989.	16-17
4.	2 (Series)	Copy of application dated 20.09.96 and 01.12.1996.	18-20
5.	3	Copy of letter dated 31.01.97.	-21-
6.	4	Copy of letter dated 08.07.97.	-22-
7.	5	Copy of reply dated 08.10.97.	-23-
8.	6 (Series)	Copy of order dated 26.06.97, 09.09.06 and 18.02.97.	24-28
9.	7 (Series)	Copy of application dated 25.05.98 and letter dated 21.07.98.	29-31
10.	8	Copy of representation dated 10.09.99.	32-34
11.	9	Copy of order dated 28.09.99.	-35-
12.	10	Copy of judgment and order dated 04.04.01.	36-39
13.	11	Copy of judgment and order dated 19.07.05.	40-56
14.	12	Copy of impugned order dated 26.10.05.	-57-
15.	13	Copy of order dated 28.05.07.	58-60
16.	14	Copy of judgment dated 18.11.98.	61-64
17.	15 (Series)	Copy of letter dated 31.05.07 and 01.06.07.	65-66

Filed By:

S. Nam.

Advocate

Date: - 012-06-07

Surendra Kshir

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 152 /2007

BETWEEN:

Shri Surendra Kshir
S/o- Sri Kul Bahadur Chetri
Head Assistant,
Office of the Director General of
Assam Rifles Head Quarters
(Medical Branch), Shillong.

-----Applicant.

-AND-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Home Affairs,
North Block, New Delhi- 110001.
2. The Director General,
Assam Rifles,
Shillong- 793 011.

..... Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the impugned order bearing No. Rec (Adm-IV)/S Kshir-UDA/ dated 26.10.2005 (Annexure-12) and also praying for a direction upon the respondents to absorb the applicant permanently in the Office of the Director General, Assam Rifles, Shillong in the light of the direction passed by the Hon'ble Gauhati High Court on 19.07.2005 in WP (C) No. 143 (SH)/2002.

2. Jurisdiction of the Tribunal:

Surendra Kshir

Filed by:-
Applicant:-
Through:-
S. Nath
Advocate 12/06/07

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

3. Limitation:

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

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant was initially appointed as L.D. Assistant in the Assam Rifles and he was posted in one of the Units i.e. 16 AR (Assam Rifles) at Nagaland. He was thereafter transferred under the 20 AR at Manipur and from 05.05.1995 he is working in the Headquarters at Shillong on attachment from the 20 AR.
- 4.3 That it is stated that on 19.09.1989 the Ministry of Home Affairs, Govt. of India, New Delhi, through the Under Secretary of the said Ministry has communicated the sanctions of the President of India vide letter No. 27011/44/89-PP.1 dated 19.09.1989 for combatisation of the Ministerial and other civilian staff of the Assam Rifles organization and as per para 2 of the said letter the existing incumbents were asked to give option if they desire for combatisation within a period of 3 months. It was also specified in the said letter that those who do not opt for combatisation, will continue in the civilian posts until they go on superannuation under the existing conditions of service.

Surendra Kalai

The applicant however did not submit any option for combatisation and as such he remained in the civilian side of the Assam Rifles.

A copy of the letter dated 19.09.89 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 1.

- 4.4 That your applicant begs to state that the existing civilian staff of the Assam Rifles are divided into two separate cadres, one is Headquarters cadre and the other is Unit cadre. Pursuant to introduction of the combatisation policy civilian staff who are combatised are posted in the Unit cadre, but in Headquarter combatised persons are not posted except on temporary attachment. In fact the organization proposes to have cent percent combatised force in the units in future.
- 4.5 That your applicant begs to state that on 05.05.1995 he was transferred to the Headquarter at Shillong on attachment from the 20 Assam Rifles Unit of Manipur and since then he has been working in the Headquarter with the entire satisfaction of his superior officers. He was brought to the Headquarter with the assurance that he would be absorbed against the strength of the Headquarter in future.
- 4.6 That your applicant begs to state that his father was also an Officer of the Assam Rifles and retired from service as Honorary Captain. After his retirement he settled at Shillong being his home town. In the month of January, 1996, he suddenly fell seriously ill and had to be admitted in the hospital almost in an unconscious state with serious cardiological complains. After prolonged specialized treatment, he some how survived, but the condition of his health did not improve and had to remain all through in bed under constant nursing and medical assistance. Since there is none to look after him at his home except the applicant and his old and ailing mother both the applicant and his father applied before the Director General, Assam Rifles on 20.09.96 and 01.12.96 respectively praying for

Surendra Kishin

absorption of the applicant under the establishment of the Director General Assam Rifles at Shillong.

Copies of the application dated 20.09.06 and 01.12.96 are annexed herewith for perusal of Hon'ble Tribunal as Annexure - 2 (Series).

- 4.7 That your applicant states that the authority thereafter on 31.01.97 sent a reply to the applicant and intimated that due to combatisation of the Force, absorption in the establishment of the Director General, Assam Rifles at Shillong is not being considered.

A copy of the letter dated 31.01.97 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- 3.

- 4.8 That your applicant begs to state that in the meantime condition of his father deteriorated, he again submitted an application before the authority on 08.07.97 praying for absorption in the Headquarter, Shillong on the aforesaid ground of his father's illness, but the authority by a letter dated 08.10.97 informed that presently absorption is not being carried out in establishment of the DCAR and has further informed that application may be submitted for absorption as and when called for by the authority.

Copy of the letter dated 08.07.97 and reply dated 08.10.97 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 4 and 5 respectively.

- 4.9 That your applicant states that in the meantime two separate order on 26.06.97 and 18.02.97 were passed by which the authority has absorbed two civilian staff viz; Smti Anjali Dey and Smti. Mira Thapa at the Headquarter without taking the plea of 'Combatisation'. Both Smti Anjali Dey and Smti Mira Thapa were later on shown absorbed against the substantive vacant posts of the Headquarter as per Gradation list. It is pertinent to mention

Surendra Kishor

5
28

here that the authority earlier on 09.09.96 passed similar order absorbing Smti Aparna Chakraborty.

Copies of the order dated 26.06.97, 09.09.96 and 18.02.97 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 6 (Series).

- 4.10 That your applicant states that referring to the orders of absorption of Smti. Anjali Dey, U.D.A, Smti Mira Thapa, L.D.A and in view of the deteriorating health condition of his father, the applicant submitted another application to the authority and prayed for consideration of his regular absorption in the Headquarter, but the authority did not consider his case although there are sufficient number of vacancies and passed the order dated 21.07.98 on the ground that due to combatisation of the Force, there will be no further absorption in the DGAR establishment.

Copies of the application dated 25.05.98 and letter dated 21.07.98 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 7 (Series).

- 4.11 That your applicant finding no other alternative approached this Hon'ble Tribunal by filing an Original Application No. 253/1999, which was disposed of 20.08.99 by this Hon'ble Tribunal with the direction to the applicant to submit fresh representation giving details of his claim and also with the direction to the respondents to re-examine the case of the applicant afresh and to pass a reasoned order within a period of three months from the date of the representation.

- 4.12 That your applicant pursuant to the order dated 20.08.99 passed in OA No. 253/1999 submitted a detailed representation addressed to the authority, wherein the applicant pointed out in detail the discrimination meted out to him while rejecting his case for absorption. But the authority again in a

Surendra Kishor

similar manner as was done earlier, rejected his representation vide order dated 28.09.99 without passing any reasoned order as directed by this Hon'ble Tribunal and also directed that the applicant should be dispatched immediately to 13 Assam Rifles Unit at Nagaland.

Copies of the representation dated 10.09.99 and order dated 28.09.99 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 8 and 9 respectively.

- 4.13 That your applicant finding no other alternative approached this Hon'ble Tribunal challenging the order dated 28.09.99 and also for a direction upon the respondents to absorb the applicant in the Headquarter of Assam Rifles at Shillong, said Original Application was registered as OA No. 334/1999. However, the Hon'ble Tribunal vide it's order dated 04.04.2001 dismissed the OA No. 334/99 with the observation that the rejection of the application shall not preclude the authority to consider the case of the applicant within the parameter of law if such application are made in change of situations.

Copy of the judgment and order dated 04.04.01 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 10.

- 4.14 That the applicant thereafter approached the Hon'ble Gauhati High Court by filing a writ petition No. 3326/2001 [143 (SH)/2002] challenging the legality and validity of the judgment and order dated 04.04.2001 passed in OA No. 334/1999 by the learned Tribunal and also praying for a direction upon the respondents to recall the order of rejections of regular absorption of the applicant in the Headquarter, DGAR, Shillong. The Hon'ble High Court on 08.05.2001 while issuing notice to the respondents passed an order directing the respondents to allow the applicant to continue to work at Headquarter, Shillong. However, the Hon'ble High Court vide it's judgment and order dated 19.07.2005 allowed the W.P. (C) No. 143

Surendra Kishor

7 50

(SH)/2002 and remitted the matter back to the respondents and observed as follows:

"20. However, in the attending facts and circumstances of the case, we deem it fit and proper to remit the matter back to the respondent No. 2 i.e. the Director General, Assam Rifles, Shillong, Meghalaya. The said authority would consider and take an appropriate decision therein taking into consideration the observations made above. As the controversy related to the permanent absorption of the petitioner in the office of the Director General, Assam Rifles, Shillong, it is further ordered that the Respondent No. 2 would pass appropriate order within a period of two months from the date of receipt of the certified copy of this judgment and order. The petitioner is directed to serve a certified copy of this order before the Respondent No. 2 within a period of four weeks from the date of passing of this order.

Till such order is passed by the authority the service of the petitioner at Headquarter, DGAR, Shillong shall continue."

Copy of the judgment and order dated 19.07.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-11.

4.15 That it is stated that the Respondent No. 2 vide it's impugned order bearing No. Rec (Adm-IV)/S Kshir-UDA/ dated 26.10.2005 rejected the claim of the applicant for permanent absorption in the Headquarter, DGAR, Shillong on the same plea of combatisation of Force, which the respondents has taken all along in their earlier order. In the order dated 26.10.05 it is also stated that the applicant shall be permitted to continue to be posted at Shillong to attend to his ailing father for one year and his posting will be reviewed

Suresh Kshir

every year from the date of issue of this order and a decision regarding further retention or otherwise will be taken on the basis of medical documents/condition of his father.

It is pertinent to mention here that the Division Bench of the Hon'ble Gauhati High Court in its judgment and order dated 19.07.2005 quashed the order dated 28.09.99, passed by the authority rejecting the representation of the applicant, holding the same is violative of Article 14 and 16 of the Constitution of India, on the ground of erroneous exercise of discretionary power by overlooking the relevant facts into consideration as well as for the fact that persons similarly situated were not similarly treated, inasmuch as, those three persons, viz; Smti Aparna Chakraborty, Smti Anjali Dey and Smti. Meera Thapa and the petitioner belong to the same class of employee and they are entitled to get similar treatment; when the same being denied in case of the writ petitioner, the discretion of the appointing authority cannot be said to be applied fairly and in a just manner. In the result, the writ petition was allowed and the rule was made absolute. Thereafter, the respondent No. 2 has no jurisdiction to pass the impugned order 26.10.2005 rejecting the claim of the applicant for permanent absorption, on the same ground that has already been rejected by the Hon'ble High Court and the same has attained finality. It is stated that the applicant is similarly situated staff of Assam Rifles like Smti Aparna Chakraborty, Smti Anjali Dey and Smti. Meera Thapa, who have been permanently absorbed in the Headquarter, DGAR, Shillong but the case of the applicant has been rejected in violation of the principle of equality as enshrined in Article 14 and 16 of the Constitution of India. As such the impugned order dated 26.10.2005 is opposed to the direction passed by the Hon'ble High Court on 19.07.05 and the same is liable to be set aside and quashed.

Copy of the impugned order dated 26.10.05 is enclosed herewith for perusal of Hon'ble Tribunal as
Annexure- 12.

Surendra Kohli

4.16 That it is stated that due to non-compliance of the judgment and order dated 19.07.05 passed in W.P (C) No. 143 (SH)/2002 by the respondent the applicant approached the Hon'ble Gauhati High Court by filing a Contempt Petition No. 11 (SH)/06. However, the Hon'ble High Court on perusal of impugned order dated 26.10.05 closed the said Contempt Petition on 28.05.07 with the liberty to the petitioner to seek proper remedy before the appropriate forum, if so advised.

Copy of the order dated 28.05.07 in COP No. 11 (SH)/06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 13.

4.17 That it is stated that in the judgment and order dated 19.07.2005, the Division Bench of the Hon'ble High Court while quashing the impugned order dated 28.09.99 very categorically held that rejection of the representation of applicant for permanent absorption is violative of Article 14 and 16 of the Constitution of India, on the ground of erroneous exercise of discretionary power for the fact that persons similarly situated were not similarly treated, inasmuch as those three persons viz; viz; Smti Aparna Chakraborty, Smti Anjali Dey and Smti. Meera Thapa and the petitioner belong to the same class of employee and they are entitled to get similar treatment; when the same being denied in case of the writ petitioner, the discretion of the appointing authority cannot be said to be applied fairly and in a just manner. It is categorically stated that the judgment and order dated 19.07.05 passed in W.P (C) No. 143 (SH)/2002 has attained finality for not being challenged, as such the respondents are barred by law of estoppel, res judicata to take the same plea in the impugned order dated 26.10.05, which has been rejected by the Hon'ble High Court on the ground of erroneous exercise of power and violative of Article 14 and 16 of the Constitution of India.

Surendra Kshir

The Hon'ble Apex Court in the case of V.S. Charati -Vs- Hussein Nhanu Jamadar [reported in (1999) 1 SCC 273] has laid down the law that a decision rendered by a Tribunal/Court in absence of challenge becomes final and binding on both the parties and merely because it may be wrong, it would not become nullity. In the instant case of the applicant the respondents did not challenge the judgment and order dated 19.07.05 passed in W.P (C) No. 143 (SH)/2002 before any higher forum as such the dictum laid by the Hon'ble High Court has attained finality. Therefore, the respondents cannot take the same plea vide impugned order dated 26.10.05, which has already quashed by the Hon'ble High Court, as such the impugned order dated 26.10.05 is liable to be set aside and quashed and the Hon'ble Tribunal be pleased to direct the respondents to absorb the applicant permanently in the Headquarter, DGAR, Shillong.

A copy of the judgment and order dated 18.11.98 passed in Civil Appeal No. 1874 of 1984 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-14.

- 4.18 That it is stated that respondents authority vide letter bearing No. Rec (Adm-IV)/S Kshir-HA/198 dated 31.05.2007 issued order for review of posting of the applicant at HQ DGAR. In the said order dated 31.05.07 it has been stated that case for retention of the applicant at HQ DGAR is required to be reviewed every year on the basis of medical documents/condition of his father. Therefore, the applicant has been instructed to submit latest documents for medical treatment of his father by 12 June 2007. Thereafter, another letter under No. 11011/01/95-EST/154 dated 01.06.2007 has been issued on the same ground instructing the applicant to produce documents for medical treatment of his father by 12 June 2007. It is relevant to mention here that the respondent authority in the letter dated 31.05.07 wrongly held that the contempt petition before the Hon'ble

Suresh Kshir

Cauhati High Court has been dismissed, the case for retention at HQ DGAR of the applicant required to be reviewed afresh, although the Hon'ble High Court closed the contempt petition with the liberty to the applicant to approach the appropriate forum. The Hon'ble High Court never upheld contention of the respondents for review of the posting of the applicant at HQ DGAR, Shillong, as such the respondents with a vindictive attitude issued order dated 31.05.07 as well as order dated 01.06.07 with a malafide intention to reject the permanent absorption of the applicant at the Headquarter, DGAR, Shillong in violation of the judgment and order dated 19.07.2005 passed by the Hon'ble High Court and thereby and thereby an attempt is now made to release him from the HQ DGAR, Shillong. Therefore, the applicant is apprehending that he may be released at any point of time from the Headquarter, DGAR, Shillong although he is serving at HQ DGAR, Shillong till filing of this Original Application, as such the Hon'ble Tribunal be pleased to direct the respondents not to release the applicant from his present posting at Headquarter, DGAR, Shillong till disposal of the Original Application.

Copy of the letter dated 31.05.07 and 01.06.07 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 15 (Series).

4.19 That it is stated that the applicant did not challenge the impugned order dated 26.10.2005 before this Hon'ble Tribunal earlier due to pendency of the COP No. 11 (SH)/2006 before the Hon'ble Gauhati High Court (Shillong Bench), as such the Hon'ble Tribunal be pleased to condone delay, if any, in challenging the impugned order dated 26.10.05 before this Hon'ble Tribunal. It is pertinent to mention here that in view of the order dated 31.05.2007 and letter dated 01.06.07, issued by the respondents, further cause of action arises for filing the instant original application.

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

Surendra K. Shie

35

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

- 5.1 For that, the judgment and order dated 19.07.05 passed in W.P (C) No. 143 (SH)/2002 has attained finality, as such the impugned order dated 26.10.05 is arbitrary, malafide and the same liable to be set aside and quashed.
- 5.2 For that, applicant has been meted out with discriminatory treatment in the matter of regular absorption in the Headquarter, DGAR, Shillong, when similarly situated three persons has been regularly absorbed in the Headquarter, DGAR, Shillong.
- 5.3 For that, persons similarly situated were not similarly treated, inasmuch as, those three persons, viz; Smti Aparna Chakraborty, Smti Anjali Dey and Smti. Meera Thapa and the petitioner belong to the same class of employee and they are entitled to get similar treatment; when the same being denied in case of the present applicant, the discretion of the appointing authority cannot be said to be applied fairly and in a just manner.
- 5.4 For that, in the impugned order dated 19.07.05 the respondent No. 2 has taken the same plea for rejection of permanent absorption of the applicant which the Hon'ble High Gauhati Court has set aside and quashed, as such the taking of same plea is not permissible, as because the judgment and order dated 19.07.05 has attained finality.
- 5.5 For that, father of the applicant is bed ridden and deteriorating health condition of the father of the applicant has compelled the applicant to approach the respondent authority for his permanent absorption in the Headquarter, DGAR, Shillong but the same is denied to the applicant.
- 5.6 For that, the authority has not exercised its discretionary power in a reasonable manner and was unfair in not considering the serious illness of

Surendra Mishra

the applicant's father in his old age who also served in Assam Rifles organization and retired.

- 5.7 For that, the applicant being a member of the civilian staff is entitled to be absorbed against the strength of the civilian staff of Headquarter, DGAR.

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 OA Nos. 253/1999 and 334/1999 before this Hon'ble Tribunal and W.P (C) No. 3326/2001 [W.P. (C) No. 143 (SH)/2002] before Hon'ble Gauhati High Court 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 order bearing letter No. Rec (Adm-IV)/S Kshir-UDA/ dated 26.10.2005 (Annexure- 12).

Surendra Kshir

37
8.2 That the Hon'ble Tribunal be pleased to direct the respondents to absorb the applicant in the establishment of Headquarter, Director General of Assam Rifles, Shillong on permanent basis in the light of the direction passed by the Hon'ble Gauhati High Court in it's judgment and order dated 19.10.2005 in WP (C) No. 143 (SH)/2002.

8.3 Costs of the application.

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

9. Interim order prayed for:

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

9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned order bearing No. Rec (Adm-IV)/S Kshir-UDA/ dated 26.10.2005 (Annexure-12) till disposal of the Original Application and further be pleased to direct the respondents to allow the applicant to continue to work in HQ office, DGAR, Assam Rifles, Shillong till disposal of Original 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.	: 346 654/88
ii)	Date of issue	: 02-06-2007.
iii)	Issued from	: G.P.O., Guwahati.
iv)	Payable at	: G.P.O., Guwahati.

12. List of enclosures:

As given in the index.

Surendra Kumar

VERIFICATION

I, Shri Surendra Kshir, S/o- Sri Kul Bahadur Chetri, aged about 39 years, working as Head Assistant, Office of the Director General of Assam Rifles Head Quarters (Medical Branch), Shillong, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 6th day of June 2007.

Surendra Kshir

Annexure - "A".

Annexure-1

L. 27011/44/99-FP.I.

Government of India,
Ministry of Home Affairs.

New Delhi 110001, the 19 Sep 1989.

To

The Director General,
Assam Rifles

Shillong.

Sub:- Combatisation of Ministerial and other civilian
post in the Assam Rifles Hqs. (Head Quarters and Units)

Sir,

I am directed to convey the sanction of the President
to the combatisation by conversion of the civilian posts in
Assam Rifles (Headquarters and Units) under the Assam Rifles
Act, 1941 and Assam Rifles, 1985 with immediate effect
subject to the following terms and conditions :-

- (a) The equivalence of the ranks and pay scales for the
combatise posts shall be as indicated in the
Annexure. This is in supersession of the existing
orders regarding equivalence for ministerial posts.
- (b) On combatisation, the incumbents of the posts who
opt for such combatisation will be governed by the
Assam Rifles Act 1941 and Assam Rifles Rules, 1985 as
amended from time to time for all purposes and the
posts concerned on the civil side shall be deemed
to have been abolished.

(c)

Attested
Sub. Advocate

Annex. 2.

- (c) All future appointments/recruitment against the vacancies in various categories of posts combatised by this sanction shall be in the combatised ranks as per the recruitment rules.

2. The existing incumbents of the posts mentioned in Coo.1 in Annexure will be given option to opt for combatisation with a period of 3 months from the date of issue of this sanction. Those who do not opt for combatisation will continue in the civilian posts until superannuation under the existing conditions of service which will be deemed to continue as personal to them.

3. The expenditure involved shall be met from within the budget grant of the Assam Rifles for the year 1989-90 and subsequent years.

4. This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their U.O. No.5(33) E.III/89 dated 19.7.89 and the Integrated Finance of this Ministry vide their U.O. No. 2605/89-Fin.III(D-I) dated 1.9.89.

Yours faithfully,

SC/- xx xx

(K. S. Parthasarathy).

Under Secretary to the Govt. of India,

Dated 19 Sep 89.

No. 27011/44/89-FP.I.

Copy forwarded to :-

All concerned.

It has been submitted.

Annexure-2 (series)

Annexure - 1

From : Kul Bahadur Chetri,

Sub.Maj (Hon. Capt) (Retd.),

C/O, New Flora Khir, Behind ITH, Syngan,

Shillong - 193006,

East Khasi Hills.

To : Lt. Gen. TPS, Raunt PVSM, VSM,

Director General Assam Rifles,

Shillong - 793011.

East Khasi Hills.

Sir,

Mostly humble and respectfully, I beg to state the following few lines for your kind perusal and orders with a sympathetic view.

That sir, during my last tenure of service in the Assam Rifles Tezu I have performed the duties of JPO ADC to the DGAR (Lt. Gen. P.P. Menon and Lt. Gen. M.K. Lahiri) with their entire satisfaction and retired on 30 Apr. 1988 after completing 34 years service. After retirement I have no problem both physically and mentally. In the month of Jan '1996 I have admitted in the Hospital at about 0330 hours and diagnosed that I have been HTN & Ant. wall Ischaemia (in heart). At the time of hospitalisation only my wife was present and I am in regular medical check up and medication on advice of Doctors till date (Medical discharge certificate attached).

In view.....

Attested
Sub. Advocate

Annex. 6-

In view of above fact and difficulties faced by my wife and realised, both of us asked my son Surendra Kahir, Ministerial staff of 20 Assam Rifles (presently all to that Br. DGAR) to request and appeal for absorption in the establishment of DGAR through proper channel as he is being only feasible and helping hand at the time of we need, but his request have been turned down.

Honourable Sir, after deep thought and hesitation to disturb for your kind diversion towards us which compelled me to write this humble application direct to you as with a folding hands and request before your honour to absorb my son Surendra Kahir in the establishment of DGAR from 20 Assam Rifles on compassionate ground with a sympathetic orders. For this act of kindness I along with my wife will ever be grateful to your kind honour throughout our life. Thanking your in an anticipation.

Yours faithfully,

Kul Bahadur Chetri,
(KUL BAHABUR CHETRI),

Sub-Maj. (Hony. Cspt.) (Retd.).

Date, Shillong,
the 01 Dec. '96

Medical Section,

NO DGAR, Shillong.

20 Sep. '96.

RECOMMENDED BY: _____
RECORDED BY: _____

Illigallia
Medicall
Medicall
Medicall

Shillong District Hospital
Shillong 793011

44
Annexure-3

Annexure - 'A'.

Tele No. 705551. Mahanideshakaya Assam Rifles,
Directorate General Assam Rifles,
Shillong - 793 011.

M/1-M/SK/98/39

31 Jan 97.

Sub Maj (Mony Caot),
Kul Bahadur Chhetri (Retd.),
C/O. Mrs. Flora Kshir.
Behind ITI, Rynjah.
Shillong - 793006.

ABSORPTION IN DGAR.

1. Reference your application dated 01 Dec. 96.
2. It is to inform you that due to combatisation of the
Force, absorption in DGAR Est. permanently is not being
considered.

sd/- Illegible

(S.S. Patil),

Lt. Col.

Offg. Dy. Director (A),

For Director General Assam Rifles.

Attested
Sub.
Achruak

Annexure - 4

Annexure-4

TO

~~Sir~~

Directorate General Assam Rifles,
(A Branch),

Shillong - 793011.

(Through proper channel).

Sub :- REQUEST FOR ABSORPTION IN DGAR, SHILLONG.

Sir,

I have the honour to state the following few lines
for your perusal and kind orders please.

That Sir, I have been on attachment to this Dte (Medical
Branch) from 20 Assam Rifles wef 05 May '95 vide order No.
A/1-A/47-77/Part-I dated 11 Jul '95. Prior to my posting
to this Dte I have served in 16 Assam Rifles from 20 Jun 88
to May 93 and in 20 Assam Rifles from Jun 93 to Apr 95.

That Sir, my father (Ex. Sig. JCO/Ex-ADC to DGAR)
who has retired as Hony Capt from this Force since 1987
has permanently settled in Shillong. Due to his old age he
often remain sick and has to be hospitalised quite often.
Sir, there is no male members at home to look after my old
parents and all the burden is fully on me. Keeping in view
of the above fact, I therefore, request to your kind honour
to kindly absorb me in this Dte so that I can look after
them. Further it will avoid my mental agony and I will be
able to discharge my duties to the fullest capabilities of
mine to the satisfaction of my superiors.

For this act of kindness I shall ever remain grateful
to you Sir,

Thanking you Sir,

Yours faithfully,

sd/- Illegible.

(Shri Surendra Kshir, UDC),

Medical Branch,

HQ. DGAR, Shillong.

Dated : 08 Ju.. 97.

RECOMMENDATION OF THE BRANCH OFFICER.

Recommended for sympathetic consideration
as the case is genuine and deserving.

sd/- Illegible.

(S.K. Suri),

Col.

DD (Medical).

*Attested
Advocate*

Annexure - 'E'.

Annexure-5

N/1-N/97/07.

Dated : 08 Oct. 97.

'A' BRANCH, SEC II

ABSORPTION IN DGAR.

1. Please ref to :-

(a)

(b) Med Br ION R. VIII.13011/Med-97 dated 08 Jul 97.

(c)

(d)

2. Presently absorption is not being carried out in
Estt. of DGAR. However, applications may be submitted for
absorption in Estt. of DGAR as and when called for by this Dte.
The indls may be informed accordingly.

3. Application are returned herewith.

sc/- x x x.

(R. S. Dhull).

Col.

Enclos - One.

By. Director (A).

*Attested
SAC
Advocate*

Annexure-6 (series)

1. The additional Accounts Officer,

Annexure - 'G'.

(General Accounts Officer),

Directorate General Assam Rifles,

DIRECTORATE GENERAL ASSAM RIFLES : SHILLONG.

ORDER.

No. I.11033/6/81-EST/243. Dated Shillong, the 26 Jun '97.

1. The Accounts Officer, Range,

1. Smti. Anjali Dey, Upper Division Assistant of

5 Bn. Assam Rifles, C/o. 99 APO is hereby transferred

and appointed temporarily until further orders as Upper

Division Clerk in the Directorate General Assam Rifles,

Shillong in the scale of pay of Rs. 1200-30-1560-EB-40-

2040/- per month plus other allowances as admissible under

the rules with effect from the forenoon of 25 June 97 in an

existing vacancy.

SC/- Illegible.

(B. S. Jaikaria),

Comdt. (SQ).

OC IMTO, DGAR.

Memo. No. I.11033/6/81-EST/243(A) Dated Shillong, the 27 Jun

1997.

Copy to :-

1. The Accounts Officer, Establishment Officer,

Pay and Accounts Officer, Assam Rifles,

Shillong - 793003-

Attested
for
Advocate

2.....

Annex. C

2. The additional Accountant General,
(Central Arunachal Pradesh),
Lachatellette Building,
Shillong - 793003.
3. Commandant
5 Bn Assam Rifles,
C/O. 99 APO.
4. HQ Arunachal & Assam Range,
Assam Rifles, C/O. 99 APO.
5. 'A' Branch, DGAR, Shillong-11- for info wrt. their ION No.
A/1-A/256-83/84 dt. 10 Jun 97.
6. Est. Branch II (SB) Section) - Joining report dated 25 Jun.97.
DGAR, Shillong-11. and undertaking dated 25 Jun 97.
submitted by Smt. Anjali Dey, UDA
(now UDC) is enclosed for your
further action please.
7. Est. Branch III (Bill Section) - 2 copies.
DGAR, Shillong- 11.
8. Smt. Anjali Dey, UDC., Est. Branch, DGAR, Shillong-11.
9. Circulation file.
Shillong- 793003.
10. Office copy.
Shillong- 793003
sc/- Illegible.
(S. P. Chahal).
Capt.
Establishment Officer.
Shillong-11.
Circulation file.
Office Copy.

- 26 -

Annexure - 6 (series)

Annexure - 2.

DIRECTORATE GENERAL ASSAM RIFLES SHILLONG.

ORDER.

R. I. 11033/80-EST/22-224. Dated Shillong, the 09 Sep. 96.

Smti. Aparna Chakraborty, Lower Division Assistant of Assam Rifles Signal Unit, Shillong is hereby transferred and appointed temporarily until further orders as Lower Division Clerk-cum-typist in the Directorate General Assam Rifles, Shillong in the scale of pay of Rs. 950-20-1150-EB-25-1500/- per month plus other allowances as admissible under rules with effect from the forenoon of 26 August, 1996 against the existing vacancy.

sd/-

(Uttam Paders)
Comdt. (SG).

OC IMTO (DGAR).

Mem.No. I.11033/4/80-EST/224(A) Dated Shillong, the 09 Sep. 96.

Copy to :-

1. The Additional Accountant General, (Central & Arunachal Pradesh) Bachstellette Building, Shillong- 793003.
2. The Accounts Officer, Pay and Accounts Office Assam Rifles, Shillong- 793003.
3. The Commandant, Assam Rifles Signal Unit, Shillong-793011.
4. Est. Branch II (SB Section), DGAR, Shillong-793011.
5. Est Branch III (Bill Section) DGAR, Shillong-793011-2 Copies.
6. Smti. Aparna Chakraborty, LDC-Cum-Typist, DGAR, Shillong-11.
7. ADG's DTE, Shillong-11.
8. Circulation file.
9. Office Copy.

sd/ Illegible.

(R. S. Pillai),

By: Comdt.
Establishment Officer.

*Attested
Smt.
Advocate*

- 27 -
23
24

50

Annexure - 'H'

Annexure - 6 (series)

~~XX~~
DIRECTORATE GENERAL ASSAM RIFLES, SHILLONG.

ORDER R.D.E.R-

I. 11032/4/85-EST/230 Dated Shillong, the 18 Feb. '97.

Smti. Mira Thapa, Lower Division Assistant of Bir
Maintenance Transport Organisation, Assam Rifles, Happy Valley,
Shillong is hereby transferred and appointed temporarily until
further orders as Lower Division Clerk-cum-Typist in the Dire-
ctorate General Assam Rifles, Shillong in the scale of pay of
Rs. per month plus other allowances
as admissible under rule with effect from the afternoon of
10 February, 1997, against the existing vacancy.

SC/-

(Uttam Praders),

Commandant (SCS).

OC AMTO (DGAR).

Memo. No. I.11032/4/85-EST/230(A) Dated Shillong, the 18 Feb. 97.

Copy to -

1. The additional accountant General

(Central and Arunachal Pradesh).

Lachattalin Building,

Shillong - 793003-

2. The Accounts Officer,

Pay and Accounts Office,

Assam Rifles, Shillong- 793003

3.....

*Attest
Smt.
Advocate*

Annex. H.

3. The Officer Commanding,

Assam Rifles - Air Maintenance Transport Organisation,

Assam Rifles, Shillong - 793-007.

4. "A" Branch, DGAR, Shillong - for information with reference to their letter No.

A/1-1/89/MT/96/55 dt.15 Jan 97.

5. EST Branch-11 (SB section),

DGAR, Shillong-11. - for information. A copy of

undertaking and joining

report is enclosed in original

for your further action.

6. EST Branch III (Bill section)

DGAR, Shillong - 2 copies.

7. Smti Meera Mapa - UDC-cum-Typist.

EST Branch, Shillong-11.

Shillong-11.

9. Circulation file.

10. Office Copy.

SC/- Illegible.

(R.S. Pillai).

Dy. Comdt.

Establishment Officer,

for OC SMT (DGAR) 27 Jan

97.

The Accounts Officer,

Pay and Accounts Officer, Assam Rifles,

Shillong - 793003-

Annexure - 'C'.

Annexure-7 (series)

To

Directorate Gen. Assam Rifles,
(A' Branch),
Shillong- 793011.

(Through proper channel).

Sir,

1. I have the honour to state the following few lines for your kind perusal and necessary action please.
2. That Sir, I have been attached to this Dte (Medical Branch) from 20 AR wef 05 May 95. Prior to my attachment to this Dte I have served five years at 16 AR AR and two years at 20 AR. Wherever I have served, I performed my duties to the best satisfaction of my superior and as a recognition of my selfless service I have been awarded with DGAR Honorarium for six times during my ten years of service.
3. That Sir, I applied for my absorption to this Dte on 26 Sep 96 to enable me to look after my old and ailing father who is also an EX-AR JCO. However my request was turned down on the plea that no absorption is being done at present although Smti. Aparna Chakraborty, LDA of 24 ARSU was absorbed in this Dte only few days back. Sir, it is surprise that the following persons have been absorbed from various unit to this Dte after my request was turned down :-

S/No.....

*Attested
Sub-
Advocate*

Annex. J.

S/No. Name.

Date of absorption.

(a) Smti. Kajali Dey, UDA. 20 Nov. 96 -As per seniority
list of DG Assam
Rifles.

(b) Smti. Mera Thapa, LDA. 10 Feb. 97 -fn-

4. That sir, on 08 Jul 97 I have again submitted an
application for the same, but again my application has been
turned down with the same plea.

5. Keeping in view of the above facts, it is once again
requested to your high honour that my case for absorption
may please be reviewed sympathetically and I may be absorbed to
this Dte so that I can look after my old and ailing father
and oblige.

Thanking you sir,

Your faithfully,

sc/- Illegible.

(Shri Surendra Kshir, UDA),

Medical Branch.

Dated 25 May, 98.

RECOMMENDATION OF BRANCH OFFICER.

... is doing excellent

recommended for

....

Annexure-7 (series)

Annexure - K.

1/1-1/SK/98/36.

Dated 01 Jul. 98.

1. BRANCH (SEC. II).

ABSORPTION IN DGAR.

1. Ref your ION No. VIII.13011/5/Med-96/dated 25 May 98.
2. The case for absorption in DGAR Est. in r/o. Shri Surendra Kshir, UDA has been examined. The DG had ruled that due to compatisation of the Force, there will be no further absorption in DGAR Est.
3. The incumbent may please be informed accordingly.

sd/- Illegible.

(S.R. Paul)

CGO.

Attested
Smt.
Advocate

Annexure - 8.

Annexure-8

To
The Directorate General Assam Rifles,
Head Quarters Assam Rifles,
Shillong, Meghalaya.

subject : Reconsideration of Absorption in the Assam Rifles
Director General Assam Rifles consequent upon
the order of Central Administrative Tribunal
Guwahati Passed in O.A. 253 of 1999.

Respected Sir,

With reference to my earlier representation dated 16th June, 1999 regarding the absorption in the Director General Assam Rifles, which was turn down by your order dated 13.7.99. I for the protection of my interest approached the Honourable Central Administrative Tribunal At Guwahati vide O.A. No. 253 of 1999. The Hon'ble Tribunal after hearing directed me to file a fresh representation within four weeks time. On being directed by the Tribunal I most humbly and respectfully I would like to lay down the following few lines for favour of your further consideration and necessary order.

That Sir, I was appointed as Lower Division Clerk in Assam Rifles on 20th June, 1988 and after faithfully completion of my seven years of service in Nagaland and Manipur, I have been attached to this Directorate from 20 Assam Rifles w.e.f. 05th May, 1995.

That Sir, I am a permanent resident of Shillong and at present residing with my family consisting with my parents, wife and one child. My old and ailing father, who was an

employee.....

Attested
Signature
A. K. S. S. S.

Annex. '10.

That Sir, I was in other way out, as I am an employee in Assam Rifles, retired from service as Hony Capt on 30th Apr. 1968 after completed his 33 years of service, have been suffering from heart decessed and at present bed ridden and my wife also suffering from heart decessed from long back, even she cannot attend day to day house hold work since long. My ailing father requires, according to the advice of Doctor, constant attendent to vigil upon him.

Be it mentioned here my family consist of three brothers, my elder brother serving in Agriculture Department outside Shillong and he cannot be posted here as there is no suitable scope for his posting in the Agricultural Department in Shillong, or any part of Meghalaya. My younger brother is an employee in SIB of Border Area, who is also out of Meghalaya and both of them living separately with their family and therefore besides me there are none to look after my old and ailing parents, and my wife who are solely depended upon me. Out of my wedlock a female child was born and my wife due to her ailment unable to look after her I therefore further burdened to look after my minor child for her welfare and education.

That Sir, I personally applied on several occasion for my absorption in Director General Assam Rifles, besides this my father also in order to substantiate my claim has applied on my behalf & for my permanent absorption in the said Director on medical compensate ground but as ill luck would have it, my prayer as well as my father's prayer were turned down, but on the other hand some of the employee whose grounds is far less genuine than of mine was considered for reason not know to me.

That

Handwritten signature/initials

Annex. 'B'.

That Sir, having no other way out, as sincere and faithful Govt. servant and aggrieved by the order from your kind honour I filed the instant case before the Central Administrative Tribunal, Guwahati vide Case No. 04/253 of 1999 dated 20th Aug 1999 for the absorption in Director General Assam Rifles and the Honourable Central Administrative Tribunal, Guwahati after hearing my petition at full length, admitted the petition with a direction to file a fresh representation for reconsideration of my case for absorption in Director General Assam Rifles before your kind honour within 4 (four) weeks from the date of order and the matter will be taken up by this Honourable Court within 2 (two) months from the date of the order. Necessary copy of the order is not ready by the copy Branch of the Honourable Court and the same will be submitted to your kind honour, as when received.

Under the above fact and circumstance, it is therefore requested that your honour may graciously be pleased to look into the matter and after considering the all fact and circumstance, your honour may kind enough to consider my case by absorbing me as a permanent staff at Head Quarter Director General Assam and for that act of kindness as in duty bound shall ever pray.

Dated Shillong,
the 10th Sep. 1999.

Yours faithfully,
Sd/- Illegible.
(Surentra Kshir),
Upper Division Clerk,
HQ DGR (Med Branch),
Shillong, Meghalaya.

~~Annexure 16~~ 58
Annexure-9

~~Annexure~~ Annexure - 9.

RCC. (Actn. IV) / SK / 99 / 63.

Dated 28 Sep. 99.

RECORD BRANCH (ALMA-1E).

RECONSIDERATION OF ABSORPTION IN THE DIRECTORATE GENERAL
ASSAM RIFLES CONSEQUENT UPON THE ORDER OF CENTRAL
ADMINISTRATIVE TRIBUNAL PASSED IN OA 253 OF 1999 :
SHRI SURENDRA KSHIR, UD/.

1. Please refer to representation dated 10 Sep.-99 received from Shri Surendra Kshir UD (copy encl).
2. Request of the incl for absorption in DGAR has been re-examined afresh as per the direction of the Hon'ble Central Administrative Tribunal, Guwahati dated 20 Aug 99. Due to combatization process of the force, DGAR has already given decision that there will be no more absorption in DGAR Establishment from Unit cadre clerical staff which has already been communicated to Med Branch for info of the incl vide our LCN NO. RCC (Actn-IV) / SK / 99 / 56 dt. 13 Jul 99. The case is rejected. Please info the incl. accordingly.
3. You are directed to despatch him to 13 Assam Rifles where stands posted without any further delay.

sd/-

(V. S. Verma),

Lt. Col.

Asstt. Director (Records).

Medical Branch.

Attested
for
Schweat

- 36 -
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

SL.No. 248

Annexure-10

Original Application No.334 of 1999

Date of Order: This the 4th Day of April 2001.

HON'BLE MR.JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN
HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER

Sri Surendra Kshir,
Upper Division Clerk,
Office of the Director General,
Assam Rifles Head Quarters
(Medical Branch), Shillong.

By Advocate Mr.P.K.Roy,

-Vs-

1. Union of India,
through the Secretary to the
Govt. of India, Ministry of Home Affairs,
New Delhi.
2. The Director General,
Assam Rifles, Shillong. Respondents.

By Advocate Mr.B.C.Pathak, Addl.C.G.S.C.

O R D E R.

The legitimacy of the order of the respondents refusing to permanently absorption the applicant Shri Surendra Kahir, UDC in the office of the DGAR is the key question for adjudication. The applicant presently holding the post of UDC in Assam Rifles Head Quarters at Shillong. Initially he was appointed as LDC in Assam Rifles and was posted in one of its units called 16/(Assam Rifles) at Nagaland. Later on he was transferred under the 20 AR at Manipur. He was brought to Head Quarters at Shillong on attachment of 20 AR from 5.5.95. The applicant prayed for his absorption in the office of the Director General, Assam Rifles at Shillong. His application of permanent absorption in DGAR was however, turned down by

contd/-

*Attested
Advocate*

by the more than once. The applicant against one of such rejection moved this Tribunal which was registered in O.A. No.253 of 99. The said application was finally disposed by the Tribunal on 20th August 1999, directing respondents to look into the grievances of the applicant and on consideration thereof to pass a reasoned order. The applicant submitted a representation narrating all the relevant facts.

The respondents rejected the representations for his permanent absorption by order dated 28.9.99 in the office of the DGAR, the relevant part of which are reproduced below:-



"Request of the indl. for absorption in DGAR has been re-examined afresh as per the direction of the Hon'ble Central Administrative Tribunal, Guwahati dated 20 Aug.99. Due to combatisation process of the Force, DGAR has already given decision that there will be no more absorption in DGAR Establishment from Unit Cadre clerical staff which has already been communicated to Med Branch for info. of the indl. vide our ION No.RCC(Admn-IV)/SK/99/56 dated 13 Jul.99. The case is rejected. Please info the indl. accordingly."

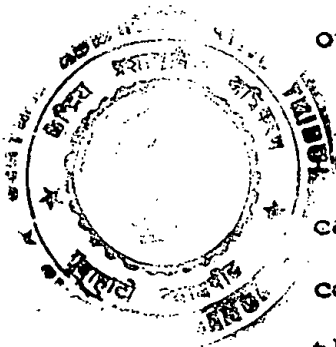
Hence this application.

The respondents submitted the written statement and stated that the Assam Rifles was having two tier type of clerical staff i.e. one HQ DGAR cadre and the another unit cadre. The staff appointed against the vacancy of DGAR were posted with DGAR only and they were not liable to be transferred to other units and fms. On the other hand, the staff appointed against the unit cadre had a liability to serve in the units/est/fms of Assam Rifles. In the case of Shri Surendra Kshir, he was appointed against unit cadre vacancy and the terms and conditions applicavle for his appointment was well known to him as already communicated

contd/-

in his appointment is well known to him as already communicated in his appointment order No.A/1-A/17/II/211 dated 03 Jun 88 and A/1-A/89 dated 21 Jun 89. The respondents also pleaded that pursuant to introduction of the combination policy civilian staff who were combatised were posted in the unit cadre, but in the Headquarters, combatant persons were not posted except on temporary attachment was not correct. However, it was pleaded that there was no civilian clerk so far had been combatised. Since the intake of civilian clerks both in DGAR cadre and unit cadre was totally stopped due to combatisation process of Force, the vacancies those arose in DGAR establishment due to wastage were filled by posting of combatant clerks from unit cadre. They were posted back to units/ other units after completion of normal tenure in HQ DGAR.

Mr.P.K.Roy, learned counsel for the applicant submitted that the respondents though ordered to consider the case of the applicant fairly the said respondents did not consider the same justly and fairly. Mr.Roy submitted that three of such employees in like settings were absorbed by the respondents who were also likewise situated. Mr.Roy in support of the contentions referred to the order Annexure G dated 26.6.97, Annexure H, dated 18.2.97 and Annexure I dated 9.9.96 by which Shri Anjali Dey, Smti Mira Thapa, Smt. Aparna Chakraborty were transferred and temporarily appointed in the DGAR. Mr.Roy submitted that all three persons were absorbed by the respondents therefore, exclusively as personal grounds, precisely the grounds as which the applicant also sought for the absorption. In the written statement submitted by the respondents it transpired that Smti Mira Thappa, Aparna Chakraborty were considered



-4-39-

taking into considerations their domestic problems. No such records were however, cited as regards the case of the absorption of Smti A.Chakraborty. We have given our anxious consideration on the issue. The subject of absorption of the employees belongs to the area of administrative discretion. It is for the administration to appreciate the balancing factors and take the appropriate decision; in the decision making process there is likely hood of impreciseness in the margin of appreciation for which there should be some room for play within the joints. On consideration of all the aspects of the matter, we do not find any illegality and or abuse misuse of the discretionary power by the Respondent. We also could not discern any arbitrariness in the decision making process of the Respondents in absorbing the aforementioned three individual officers in the DGAR.

In the circumstances we do not find any merits in this application. Accordingly the same is dismissed. However, the rejection of this application shall not preclude the authority to consider the case of the applicant within the parameter of law if such applications are made in change of situations.

Interim order if any stands automatically vacated.
The application is thus dismissed. No costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Copy

प्रमाणित प्रतिलिपि

Section Officer

अनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकार
Guwahati Bench, Guwahati

गुवाहाटी न्यायालय, गुवाहाटी

26/9/2011

- 30 - 40 -

Annexure-11

67

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

SHILLONG BENG

WRIT PETITION(C) NO. 143(SH)/2002.

Sri Surendra Kshir.

..... Petitioner.

- Versus -

Union of India & Ors.

..... Respondents.

B E F O R E

HON'BLE MR. JUSTICE B. LAMARE
HON'BLE SMT. JUSTICE ANIMA HAZARIKA

For the Petitioner : Mr. H.S. Thangkhiew.
-Advocate.

For the Respondents : Mr. S.C. Shyam.
-Addl.C.G.S.C.

Date of Hearing : 1.6.05

Date of Judgment : 17.7.05

Asst
Attestd
Adv.
Advocate



JUDGMENT AND ORDER (CAV)

64

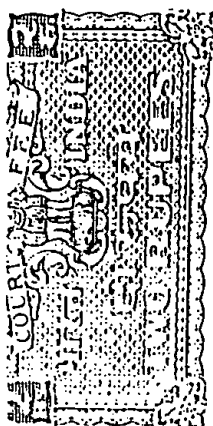
1. Heard Mr.H.S. Thankiew, learned Counsel for the petitioner and Mr. S.C. Shyam, Learned Additional Central Govt. Standing Counsel for the respondents.

2. The writ petition has been filed by the petitioner assailing the order dated 4th April, 2001 passed by the learned Central Administrative Tribunal (CAT in short), Guwahati Bench in OA No. 334/99, dismissing the application preferred by the applicant/petitioner.

3. The sole question involved in this case is regarding the legality and validity of the order dated 28.9.99 (Annexure-16) passed by the Respondents No.1 and 2, refusing the petitioner's prayer for permanent absorption in the Office of the Director General, Assam Rifles at Shillong.

4. Briefly stated, the petitioner's case is as follows -

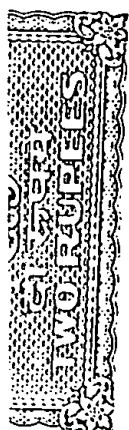
The petitioner is an Upper Division Clerk in Assam Rifles and is posted at Headquarter, Shillong. He was discharging his duties at Headquarter, Shillong since 5.5.95. Petitioner's father was also an officer of the Assam Rifles and retired from service as Honorary Captain. After his



5

retirement he settled at Shillong being his home town. In the month of January, 1996 his father suffered from serious cardiological complaints and therefore the presence of the petitioner was necessary to look after his father, since there was none at his home except his old and ailing mother. Therefore, both the petitioner and his father applied before the Director General, Assam Rifle on 20.9.96 and 1.12.96 respectively praying for absorption of the petitioner under the establishment of Director General, Assam Rifles(DGAR in short), Shillong. The same was rejected by order dated 31.7.97 on the ground that it was not possible due to combatisation of the Force.

5. The learned counsel appearing on behalf of the petitioner submitted that on 19.9.89, the Ministry of Home Affairs, Govt. of India, New Delhi, through the Under Secretary of the said Ministry has communicated the sanction of the President of India vide letter No. 27011/44/89-pp.1 dtd. 19.9.89 for combatisation of the Ministerial and other civilian staff of the Assam Rifles Organization and as per para 2 of the said letter the existing incumbents were asked to give option, if they desire for combatisation within a period of 3 months. It was also specified in the said letter that those who do not opt for combatisation, will continue in the civilian posts

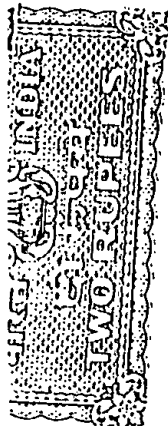


-43-

until they go on superannuation under the existing conditions of service. The petitioner however, did not submit any option for combatisation.

6. Therefore, challenging the said order dated 31.7.97, by which petitioner's prayer for permanent absorption at the Office of the DGAR was rejected, the petitioner moved the CAT, which was registered as OA No.253/99. The said application was finally disposed of by the Tribunal on 20th August, 1999, directing respondents to look into the grievances of the applicant/petitioner and on consideration thereof to pass a reasoned order. Accordingly, the petitioner again submitted a representation before the respondent authority narrating all the relevant facts of his grievances. It may also be pertinent to mention herein, that, existing civilian staff of the Assam Rifles are divided into two separate cadres-one is Head quarters cadre and the other is Unit cadre. The petitioner was appointed in the Unit Cadre at 16 AR(Assam Rifles) at Nagaland. Pursuant to introduction of the combatisation policy, civilian staff who are combatised are posted in the Unit cadre. In Head quarter combatised persons are not posted, except on temporary attachment.

7. However, by order dated 28.9.99, the respondents authority rejected the representation of the petitioner, whereby he prayed for permanent



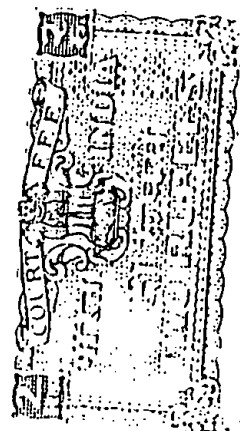
- 44 -

absorption in the office of the DGAR at Shillong. Relevant portion of the order dated 28.9.99 is reproduced herein below;-

"Request of the indl. for absorption in DGAR has been re-examined afresh as per the direction of the Hon'ble Central Administrative Tribunal, Guwahati dated 20 Aug, 99. Due to combatisation process of the Force, DGAR has already given decision that there will be no more absorption in DGAR Establishment from Unit Cadre clerical staff which has already been communicated to Med Branch for info. of the indl. vide our ION No.RCC(Admn-IV)/SK/99/56 dated 13 Judl.99. The case is rejected. Please info the indl. accordingly."

8. The said order dated 28.9.99 was again challenged by the petitioner before the CAT by filing an application which was registered as OA 334/99.

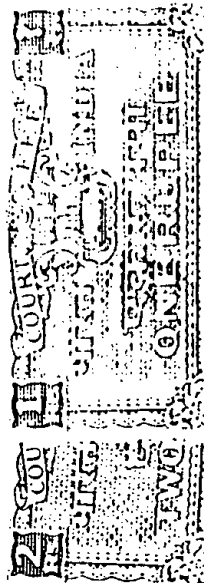
9. The learned Tribunal after hearing the counsel appearing on behalf of the parties and on perusal of the pleadings of both the parties by a detailed order dated 4.4.2001 dismissed the application filed by the applicant/petitioner.



- 45 -

10. This instant writ petition has been preferred against the said order dated 4.4.2001 as well as the order dated 28.9.99, whereby petitioner's prayer for absorption in the office of the DGAR Shillong has been **rejected by the** authority.

11. It has been submitted on behalf of the petitioner that the learned Tribunal has disregarded the fact that three other persons similarly situated with the petitioner in service had been absorbed permanently even though the petitioners request for permanent absorption was much earlier to them. The further submission of the petitioner is that the case of the similarly situated persons have been considered by the authority in an arbitrary and discriminatory way, thereby prejudicing the petitioner's genuine grievances, which fact the learned Tribunal failed to appreciate, rather the Tribunal passed the impugned order by observing that, "subject of absorption of the employee belongs to the area of administrative discretion. It is for the administration to appreciate the balancing factors and take the appropriate decision." Tribunal did not find any arbitrariness in the decision making process of the **authority in absorbing those** individual officers in the DGAR. Thus, finding **no merit**, the Tribunal **dismissed the application** filed by the petitioner.



- 46 -

69

1. Mr. S.C. Shyam, learned Addl. C.G.S.C. appearing on behalf of the respondents submitted that that a detail affidavit in-opposition has been filed on behalf of the Respondents in this case. We have heard Mr. Shyam, also perused the affidavit-in-opposition filed by the respondents.

Relevant paragraphs 2, 6 and 8 of the affidavit-in-opposition are quoted below :-

"2. That with regards to averments made in para 4 of the writ petition, the deponent begs to submit that the Assam Rifles is having two tier system of clerical cadre i.e. Headquarters DGAR cadre and Unit Cadre. The staffs appointed against the vacancy of Headquarter DGAR cadre are posted within Headquarter DGAR only and they are not liable to be transferred to Units and other lower formations of the Assam Rifles. On the other hand, the staff appointed against the Unit cadre has a liability to serve anywhere in Units/other formations of Assam Rifles. In case of the writ petitioner, it is stated that the petitioner was appointed against Unit cadre vacancy and the terms & conditions applicable for his appointment is well known to him. And the same is already mentioned in his appointment letter, which was well known to him as per his appointment order. Therefore, the petitioner is liable to be transferred to any other Unit of the Force after completion



70

of tenure in a Unit. That the contention of the petitioner that "pursuant to introduction of the combatisation policy, civilian staff who are combatised are posted in the Unit cadre, but in Headquarter DGAR, combatant persons are not posted, except on temporary attachment" is totally incorrect. In fact, no civilian clerk has so far been combatised. Since, the intake of civilian clerks both in Headquarter DGAR cadre and Unit cadre is totally stopped due to combatisation process of the Assam Rifles, the vacancies arising in Headquarter DGAR cadre due to wastage on retirement/discharge of civilian clerks are being filled up by posting of combatant clerks from Unit cadre. They are posted back to Units information on completion of their normal tenure in Headquarter DGAR..

That the unit cadre and the DGAR cadre are having a distinct identity and their pay scales and charter of duties are entirely different. The distinction can be made on the basis of two following aspects;-

a) The qualifications for appointment in HQ DGAR cadre and in unit cadre are different.

b) The nature of duties and responsibilities of the of the UDA's and LDA's at HQ DGAR is of a higher order than that those of the units.



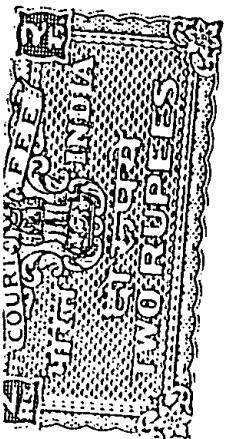
- 48 -

71

As such the absorption from unit cadre to in HQ DGAR cadre is not resorted to after the combatisation of the force unless there are extreme compassionate grounds only.

"6. That with reference to averments made in para 9 of the writ petition, the deponent herein begs to submit that the cases quoted by the petitioner, were considered by the competent authority on the merits of each case and if the case was found fit then only the absorption in HQ DGAR cadre was ordered. That the absorption has been done till 1989 and after that no absorption has been done except the two cases quoted by the petitioner. These two cases had personal, Medical/Other problems, which were considered, and when it was found that the absorption is the last resort then only it was ordered. That the petitioner has annexed various noting sheets (page 69 to 76 of the writ petition). It is clearly evident that only two cases on compassionate grounds were considered and here as, many other cases were rejected.

That Smt Anjali Dey, UDA has been absorbed in Headquarter DGAR cadre with effect from 15 June, 1997 on medical grounds, due to acute Kidney problems. This is evident from the photocopy of noting sheets annexed at page 69 of the writ petition.



- 49 -

72

That Smt Meera Thapa, LDA has been absorbed in the establishment of Headquarter DGAR cadre with effect from 18 Feb 97, on compassionate grounds. Her case was rejected in 1996 however, Director General Assam Rifles considered her case and after due consideration only he directed the absorption. The direction given by the Director General were was under :-

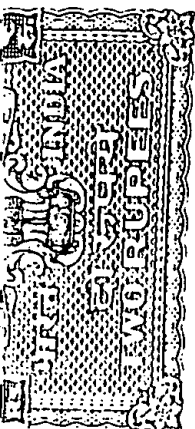
"Grant of extension does not seem to an answer to the problem faced by this widow. Transfer of her eldest unmarried daughter who is also looking after her widow mother and three younger brother/sister will undoubtedly create innumerable problems. Either we should absorb her against the staff of DGAR or let her continue here till she gets married/one of her brother finishes his studies and gets a job to look after his widowed mother."

Sd/- DGAR.

(Page 74 to 76 of the writ petition refers).

That it is apparent from the directions of DGAR that the above order of absorption was given only when it was inescapable necessity of the employee.

That thereafter-strict directions were given that no more civilian employees will be absorbed in Headquarters DGAR cadre. It is pertaining to mention here that along with the



- 11 - 50 -

X3

case of the petitioner, cases of **Shri Rajen** Verghese UDA, **Shri Prasanta Mondal** UDA, and **Shri Parimal Biswa** LDA were also **processed for** absorption in HQ DGAR. However, none of the cases of persons named above were approved. After the policy of combatisation the absorption from Unit cadre to DGAR cadre was stopped. As an exception only **two cases of** lady employees were considered and approved after taking into account the **extreme** compassionate grounds stated by them."

"8. That with reference to averments made in para 11 of the writ petition, the deponent begs to submit that the **contention of** the petitioner is false and incorrect. The petitioner was not absorbed in Headquarters DGAR Cadre because the direction of combatisation of force have been received and the civilian employee cannot be absorbed until and unless there are **sufficient and cogent** reasons for doing so. The **petitioner** was temporary attached to HQ DGAR, Shillong taking into consideration his personal problems and on completion of tenure he was transferred to his parent unit. That the contention of the petitioner that transfer is a **punishment** is highly incorrect and misleading. The transfer is a incident of service and a **person is** transferred after he has **completed his normal** tenure. That the **representation** submitted by



12
-51-

24

the petitioner was duly considered like his other representation and was found to be lacking substance and thus rejected. The petitioner could not be absorbed in Headquarter DGAR cadre because he being a unit cadre staff has a liability to serve anywhere in the Unit formation, wherever ordered on transfer."

13. However, in the course of argument, counsel appearing on behalf of the petitioner, has drawn our attention to the letter dated 8.10.97 (Annexure-6 to the writ petition), whereby, the respondent authority has informed the petitioner as follows :-

"Presently, absorption is not carried out in Esstt. of DGAR. However, application may be submitted for absorption in Esstt. of DGAR as and when called for by this Deptt. The individual may be informed accordingly."

14. The learned counsel appearing on behalf of the petitioner, also drawn our attention to the representation dated 10th September, 1999 (Annexure-'D' to the writ petition), wherein the petitioner has stated as follows :-

"That Sir, I am permanent resident of Shillong and at present residing with

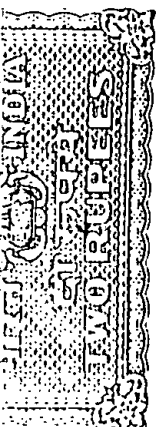


- 52 -

25

my family consisting with my parents, wife and one child. My old and ailing father, who was an employee in Assam Rifles, retired from service as Hony, Capt. on 30th Apr, 1988 after completed his 33 years of service, have been suffering from heart decease and at present bed ridden and my wife also suffering from heart decease from long back, even she cannot attend day to day house hold work since long. My ailing father requires, according to the advice of Doctor, constant attendant to vigil upon him."

"Be it mentioned here my family consist of three brothers, my elder brother serving in Agriculture Department outside Shillong and he cannot be posted here as there is no suitable scope for his posting in the Agricultural Department in Shillong, or any part of Meghalaya. My younger brother is an employee in SIB of Border Area, who is also out of Meghalaya and both of them living separately with their family and therefore besides me there are none to look after my old and ailing parents, and my wife who are solely dependent upon me. Out of my wedlock a female child was born and my wife due to her ailment unable to



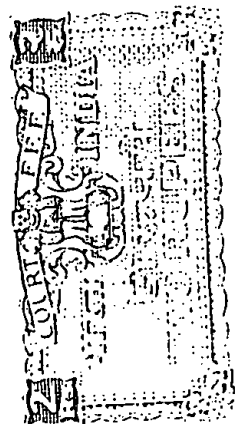
-H- 53-

76

look after her. I therefore further
burdened to look after my minor child for
her welfare and education.

15. We have given our most anxious
consideration to the submission advanced by the
learned counsel for the parties. From the facts
narrated above, it comes out that, similarly
situated persons, three in number, have already
been absorbed, after being transferred and then
temporarily appointed in DGAR, before their
permanent absorption, admittedly on compassionate
ground, that too after receipt of the letter
No.27011/44/88-FP.I dated 19.9.89, whereas, the
petitioner's case for permanent absorption was not
considered by the authority, even though his
grounds for consideration for permanent absorption
was similar to those three persons, in as much as,
their cases were considered on personal/ Medical/
other problems.

16. It is a settled principle of law that,
subject of absorption of the employees belongs to
the area of administrative discretion. High Court,
in exercise of power under Article 226 of the
Constitution, can only interfere in a matter which
is violative of the principles of natural justice;
it can also interfere, when a decision suffers
from the vice of perversity as well as for taking
irrelevant consideration into account. If the

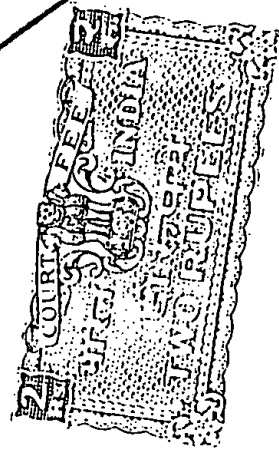


- 54 -

Decision making process is seemingly arbitrary, capricious or based on extraneous consideration, the said discretionary power of the administration can be corrected by way of judicial review. The Court is not concerned with the decision, but on the decision making process only.

17. Thus, we are unable to agree with the findings of the learned CAT that, there is no illegality and/or abuse, misuse of the discretionary power by the respondents in non-absorbing the petitioner in the DGAR at Shillong, while absorbing three other persons, similarly situated with that of the petitioner, completely overlooking the principles laid down in Article 14 and 16 of the constitution of India. We are also, unable to accept the procedure adopted by the learned CAT in arriving at the decision, that the Respondents have correctly applied their discretion in considering the case of the writ petitioner. It is a clear case, where discretion has been erroneously applied by singling out the petitioner for discriminatory treatment, by refusing to treat similarly with the persons similarly situated.

18. That being the position, the impugned judgment and order dated 4.4.2001 passed by the CAT in original Application No.334 of 1999 (Annexure-20) is not sustainable in law and



-55-

78

therefore the same is hereby set aside and quashed.

19. Consequently, the impugned order dated 28.9.99 (Annexure-16) passed by the authority rejecting the representation dated 10.9.99 submitted by the petitioner is also quashed, holding the same to be violative of Article 14 and 16 of the Constitution of India, on the ground of erroneous exercise of discretionary power by overlooking the relevant facts into consideration, as well as for the fact that persons similarly situated were not similarly treated, inasmuch as, those three persons, viz. Smti Aparna Chakraborty, Smti Anjali Dey and Smt. Meera Thapa and the petitioner belong to the same class of employee and they are entitled to get similar treatment; when the same being denied in case of the writ petitioner, the discretion of the appointing authority cannot be said to be applied fairly and in a just manner. In the result, the writ petition is allowed and the rule is made absolute.

20. However, in the attending facts and circumstances of the case, we deem it fit and proper to remit the matter back to the Respondent No.2 i.e. the Director General, Assam Rifles, Shillong, Meghalaya. The said authority would consider and take an appropriate decision therein, taking into consideration the observations made

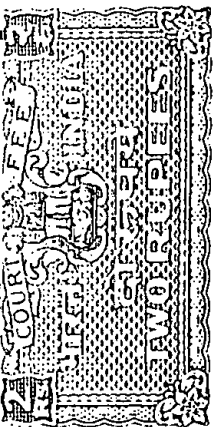
above. As the controversy relates to the permanent absorption of the petitioner in the office of the Director General, Assam Rifles, Shillong, it is further ordered that the Respondent No.2 would pass appropriate order within a period of two months from the date of receipt of the certified copy of this judgment and order. The petitioner is directed to serve a certified copy of this order before the Respondent No.2 within a period of four weeks from the date of passing of this order.

Till such order is passed by the authority, the service of the petitioner at Head Quarter, DGAR, Shillong shall continue.

A

Sd/- A. Hazarika.
Judge.

Sd/- B. Lakshmi
Judge



B. Repalasingh

PL

- 57 -

MAHANIDESHALAYA ASSAM RIFLES
DIRECTORATE GENERAL ASSAM RIFLES : SHILLONG

ORDER

80
Annexure-12

Rec(Adm-IV)/S Kshir-UDA/

Dated: 26 Oct 2005

ORDER BY IC-16289X LIEUTENANT GENERAL BHOPINDER SINGH, AVSM, VSM,
DIRECTOR GENERAL ASSAM RIFLES IN THE CASE OF
SHRI SURENDRA KSHIR, UDA OF ASSAM RIFLES

1. In deference to the Hon'ble Guwahati High Court Order dated 19.7.2005 in WP(C) No 143(SH)/2002 Shri Surendra Kshir Vs Union of India & others dated 19.7.2005, the representation of Shri Surendra Kshir dated 16.6.1999 has been considered afresh.
2. Whereas Shri Surendra Kshir, UDA has requested for permanent absorption in the DGAR cadre primarily on the grounds of ill health of his father- Ex Sub Major (Honorary Captain) Kul Bahadur Chhetri.
3. Whereas in the Assam Rifles, civilian clerks are appointed in two cadres i.e. DGAR cadre and unit cadre. The terms and conditions of employment in both cadres are entirely different. Further, due to combatisation of the Force, the civilians staff presently held on the strength of the Force are continuing to hold the said post as personal to them till their superannuation. Accordingly, no posts are available for further absorption of any civilian in the DGAR cadre. Therefore, Shri Surendra Kshir cannot be permanently absorbed in the DGAR cadre.
4. Notwithstanding the same, considering the ill health of his father, who needs constant attendant care, as advised by the medical authorities, purely on humanitarian grounds, hereby, direct that the individual be permitted to continue to be posted at Shillong to attend to his ailing father for one year. His posting will be reviewed every year from the date of issue of this order and a decision regarding further retention or otherwise will be taken on the basis of medical documents/condition of his father.

Signed at Shillong on this Twenty sixth day of October 2005.

*Attestd
Dy. Sec.
Advocate*

A

(Bhopinder Singh)
Lieutenant General
Director General

Application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamp and folios.	Date on which the copy was ready for delivery.	Date on the copy app
30/5/07	4/6/07	6/6/07	6/6/07	6/6/07

Annexure-13

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

SHILLONG BENCH

CIVIL APPELLATE SIDE

Appeal from contempt petition

No. 11(84)06 of 19

Civil Rule

Smt. Suresh Chandra
u

Appellant

Petitioner

Smt. V. G. Duggal & ans
Versus

Respondent

Opposite-Party

or Appellant Mr. H. S. Dhykhai, Advocate
or Petitioner Mr. L. Khajuria
Mr. P. Dey
Mr. M. Majumdar

or Respondent Mr. S. Deyan etc
or Opposite-Party

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceeding with signatures
1	2	3	4

Attested
Smt. Advocate



Noting by Office or Advocate

Date

Office notes, report, order, or proceeding
with signatures

82

COP No. 11(SH)/06

BEFORE
THE HON'BLE MR. JUSTICE HN SARMA
THE HON'BLE MR. JUSTICE BP KATAKEY

28.05.07

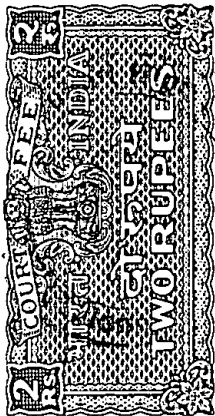
Heard Mr. HS Thangkhiew, learned counsel for the petitioner and Mr. S. Shyam, learned CGC appearing for the Union of India.

Alleging non-compliance of the direction given in the order dated 19.7.05 by this Court in writ petition being WP © No. 143(SH)/02 by the respondents authority, the present contempt petition under Section 12 of the Contempt of Courts Act, 1971 has been initiated by the writ petitioner. In the aforesaid order, the Division Bench of this Court in paragraph 20 directed as follows :

“ However, in the attending facts and circumstances of the case, we deem it fit and proper to remit the matter back to the Respondent No.2 i.e. the Director General, Assam Rifles, Shillong, Meghalaya. The said authority would consider and take an appropriate decision therein, taking into consideration the observations made above. As the controversy relates to the permanent absorption of the petitioner in the office of the Director General, Assam Rifles, Shillong, it is further order that the Respondent No.2 would pass appropriate order within a period of two months from the date of receipt of the certified copy of this judgment and order. The petitioner is directed to serve a certified copy of this order before the Respondent No.2 within a period of four weeks from the date of passing of this order.

Till such order is passed by the authority, the service of the petitioner at Head Quarter, DGAR, Shillong shall continue.”

On receipt of the copy of the present petition, an affidavit-in-opposition on behalf of the respondents has been filed. Referring the statements made therein, Mr. Shyam, learned CGC submits that the order of this Court has been complied with and a speaking order was passed by the concerned authority on 26.10.05. In the said



Presented by Office of Advocate Date

Office notes, reports, orders, etc. placed
with signature

83

order, the respondents authority in paragraphs 3 and 4, indicated as follows :

"3. Whereas in the Assam Rifles, civilian clerks are appointed in two cadres i.e., DGAR cadre and unit cadre. The terms and conditions of employment in both cadres are entirely different. Further, due to combatisation of the Force, the civilians staff presently held on the strength of the Force are continuing to hold the said post as personal to them till their superannuation. Accordingly, no posts are available for further absorption of any civilian in the DGAR cadre. Therefore, Shri Surendra Kshir cannot be permanently absorbed in the DGAR cadre.

4. Notwithstanding the same, considering the ill health of his father, who needs constant attendant care, as advised by the medical authorities, purely on humanitarian grounds I, hereby, direct that the individual be permitted to continue to be posted at Shillong to attend to his ailing father for one year. His posting will be reviewed every year from the date of issue of this order and a decision regarding further retention or otherwise will be taken on the basis of medical documents/condition of his father."

1/ The view taken by the respondents authorities leading to pass the aforesaid order, we are of the opinion that the authorities have complied with the order and direction issued by this Court in the aforesaid writ petition. If the petitioner is still aggrieved by the aforesaid order, he may seek proper remedy before the appropriate forum, if so advised. But in the facts and circumstances of the case, we do not find that the present contempt petition is maintainable. //

Accordingly, this contempt petition stands closed.

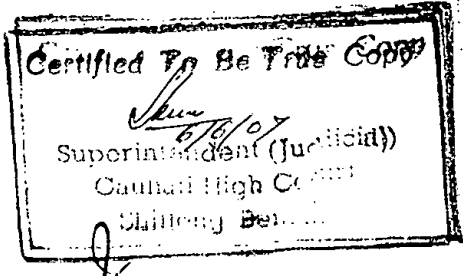
Delr.
JUDGE

Delr.
JUDGE

Upadhaya.



Stamp:
RECEIVED BY
6/10/07
6/10/07



the Forest (Conservation) Act, 1980 nor did any other law authorise the Hon'ble Supreme Court to pass the said order nor could the Hon'ble Supreme Court pass the said order on the general ground that the said order protected forest and environment which fell within the Directive Principles of State Policy finding place in Part IV of the Constitution of India which only allowed the competent legislature to enact laws for enforcing the said Directive Principles and which did not by themselves have the force of law under which the Hon'ble Court could pass the order in question dated 4-3-1997^{††}."

Again the petitioners aver in para 26 thus:

"BECAUSE an ad hoc order like the order in question passed by the Hon'ble Supreme Court on 4-3-1997^{††} infringing the fundamental right of the petitioners under Article 19(1)(g) of the Constitution of India could not be passed by the Hon'ble Supreme Court even in PUBLIC INTEREST LITIGATION, because the only manner permitted by the Constitution for interfering with the fundamental right of a citizen under Article 19(1)(g) was by passing some law under Article 19(6) of the Constitution and any interference with such right in any other way, including by an order under public interest litigation would amount to an amendment of Article 19(6) of the Constitution for making which amendment a special procedure under Article 368 of the Constitution had been provided and the Hon'ble Supreme Court, it is respectfully submitted, could not bring about such amendment by merely passing some order in a PUBLIC INTEREST LITIGATION."

3. The relief claimed by the petitioner, in this petition, is as follows:

"(i) to issue a writ of mandamus or writ, direction or order in the nature thereof or any other writ, direction or order directing the respondents not to interfere with the fundamental right of the petitioners to continue to run and operate their sawmills as licensed operators thereof as has continuously been shown in the respondents' own records for the last several years and to grant/renew their licences for the year 1998 without, in any manner, being influenced by the orders passed by the Hon'ble Supreme Court dated 12-12-1996[†] and 4-3-1997^{††} in Writ Petition (Civil) No. 202 of 1995, *T.N. Godavarman v. Union of India*.

(ii) to grant such further or other order as the Hon'ble Court may deem fit to pass in the special circumstances of this case.

(iii) to award costs of this petition to the petitioners."

4. After hearing Mr Sharma, learned counsel for the petitioners, it is obvious that the petition is misconceived and based on a total misconception. It is an obvious attempt to question the correctness of the orders of this Court through a writ petition under Article 32, which is not permissible. The objection with regard to the office report is also not tenable. Filing of such a petition is an abuse of the process of the Court and waste of time of the Court. We do not find any merit in this petition which is dismissed with costs assessed at Rs 10,000.

Att. Adv.
Advocate

5. The costs shall be deposited in the account of the Supreme Court Legal Services Committee within four weeks.

Court Masters

Annexure-1A

(1999) 1 Supreme Court Cases 273

(BEFORE SUJATA V. MANOHAR AND G.B. PATTANAIK, JJ.)

V.S. CHARATI

Appellant;

Versus

HUSSEIN NHANU JAMADAR (DEAD) BY LRS.

Respondent.

Civil Appeal No. 1874 of 1984[†], decided on November 18, 1998

A. Tenancy and Land Laws — Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) — S. 43-1B — Overrides preceding provisions of the Act

B. Tenancy and Land Laws — Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) — Ss. 43-1E, 43-1B and 32-G — Right of landlord, if a member of armed forces, to terminate tenancy under S. 43-1B — Bar under S. 43-1E against applicability of Ch. III-AA if land purchased by the tenant before commencement of Amendment Act of 1964 — Word 'purchased' in S. 43-1E — Held, refers to completed purchase — A tenant who is only a deemed purchaser cannot seek operation of bar under S. 43-1E so as to claim that the landlord is not entitled to invoke S. 43-1B for terminating the tenancy

C. Judgment — A decision rendered by a Tribunal/Court in absence of challenge becomes final and binding on both the parties and merely because it may be wrong, it would not become a nullity — Res judicata — Judgment unopposed becomes final and binding

The respondent-tenant became a deemed purchaser under Section 32(1) of the Bombay Tenancy and Agricultural Lands Act by virtue of dismissal of appellant-landlord's application under Section 31(1) for recovery of possession of the land. But subsequent proceedings under Section 32-G taken for determination of purchase price was dropped by the Agricultural Lands Tribunal on ground that since the appellant was a minor at the time of his filing the application under Section 31(1) the respondent could not purchase the land. The order of the Tribunal was not challenged by the respondent and as such it became final and binding on the parties. After commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1969, the tenant was also given an additional opportunity to give intimation under Section 32-F(1-A) but the same was not availed by him. On attaining majority (after introduction of Chapter III-AA in the Act) the appellant joined the armed forces and served a notice in 1972 terminating the tenancy of the respondent under Section 43-1B(2). In the proceedings which took place thereafter, his application was allowed by the Sub-Divisional Officer. An appeal from this order to the Additional Commissioner was dismissed. The respondent-tenant thereupon moved the High Court by way of a writ petition which was allowed. Allowing the appeal of the landlord-appellant

Held:

Section 43-1B overrides the preceding provisions of the Act in view of the non obstante clause contained therein and therefore, in spite of dismissal of the original

[†] From the Judgment and Order dated 8-10-1980 of the Bombay High Court in S.C.A. No. 4762 of 1976

application under Section 31(1), it was open to the appellant to invoke Section 43-1B.

Section 43-1E will come into operation only in those cases where there is a completed purchase in favour of the tenant. It will not protect a tenant who is only a deemed purchaser, but in respect of whom proceedings under Section 32-G have not been completed. The appellant, therefore, in the present case, did not lose his rights under Chapter III-AA because the proceedings under Section 32-G had been dropped, and the tenant remained only a deemed purchaser and could not be called a purchaser as contemplated under Section 43-1E. Therefore, the bar under Section 43-1E against applicability of Chapter III-AA (which includes Section 43-1B) will not operate in favour of the respondent. (Paras 7 and 8)

Bhimrao Tatoba Sawant v. Heramb Anant Patwardhan, AIR 1986 Bom 408, approved

It is not possible to accept the contention of the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G and that its order was bad in law. The order of the Tribunal having not been challenged by the respondent, it became final and binding on both the parties. A decision, simply because it may be wrong, would not thereupon become a nullity. It would continue to bind the parties unless set aside. The effect of the decision on the parties, therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 32-G being dropped, he cannot now contend that the decision has no legal effect or that the proceedings under Section 32-G ought to have been completed and, therefore, he should be looked upon as a purchaser. (Para 9)

Nago Dattu Mahajan v. Yeshodabai Huna Mahajan, (1976) 78 Bom LR 427, referred to R-M/TZ/20455/C

Advocates who appeared in this case:

S.V. Deshpande, Pramit Saxena and Suhas, Advocates, for the Appellant;
P.R. Ramasesh and Ms Promila Chaudhary, Advocates, for the Respondent.

Chronological list of cases cited

on page(s)

1. AIR 1986 Bom 408, *Bhimrao Tatoba Sawant v. Heramb Anant Patwardhan* 276b-c
2. (1976) 78 Bom LR 427, *Nago Dattu Mahajan v. Yeshodabai Huna Mahajan* 277d

ORDER

1. The appellant is the landlord. He has claimed that in a partition effected in the year 1956 in the joint family of which he was a member, an area admeasuring 1 acre 19 gunthas out of Revision Survey No. 8 of Village Kudnoor in Gadhinglaj Taluka came to his share. This land is agricultural land of which the original respondent was a tenant at the material time.

2. On the coming into force of the Bombay Tenancy & Agricultural Lands Act, 1948, the appellant filed an application under Section 31(1) read with Section 29 of the said Act for possession on the ground that he bona fide required the land for personal cultivation. Although the appellant was a minor at the time of the application, he chose to exercise his rights under Section 31(1). This application was ultimately dismissed by the Mamlatdar on 29-5-1957 on the ground that under Section 31-B, there is a prohibition against termination of tenancy if such termination would result in contravention of the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947. Therefore, by virtue of the dismissal of the appellant's application under Section 31(1), under the

provisions of Section 32(1), the respondent became a deemed purchaser of the said land on the postponed date 29-5-1957, the latter being the date on which the application of the appellant was dismissed.

3. Thereafter proceedings under Section 32-G were taken for determination of purchase price. These proceedings, however, were dropped by the Agricultural Lands Tribunal on 31-5-1961 on the ground that the appellant was then a minor and the tenant could not purchase the land. The tenant did not take any steps to challenge the decision of the Tribunal dated 31-5-1961.

4. On 20-10-1964, by Maharashtra Act 39 of 1964, Chapter III-AA was added in the said Act to confer certain benefits on the members and ex-members of the armed forces. Under this Chapter, Section 43-1B provides, inter alia, that it shall be lawful for a landlord at any time after commencement of the said Amendment Act, to terminate the tenancy of any land and obtain possession thereof, but of so much of such land as will be sufficient to make the total land up to the ceiling area. Under sub-section (4) of Section 43-1B, nothing in the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947 shall affect the termination of any tenancy under this Chapter. The "landlord" for the purposes of this Chapter is defined in Section 43-1A as a person who is, or has ceased to be, a serving member of the armed forces. The appellant, in the present case, joined the armed forces on 20-11-1965 after he attained majority on 7-11-1965. He served on 11-4-1972 a notice terminating the tenancy of the respondent under Section 43-1B(2). In the proceedings which took place thereafter, his application was allowed by the Sub-Divisional Officer on 31-3-1975. An appeal from this order to the Additional Commissioner was dismissed on 25-4-1976. The respondent-tenant thereupon moved the High Court by way of a writ petition which has been allowed by the impugned judgment and order dated 8-10-1980. Hence, the present appeal.

✓ 5. The short question that requires consideration is whether in view of the dismissal of the original application filed by the appellant-landlord under Section 31(1) on 29-5-1957, it was open to the appellant to avail of the provisions of Chapter III-AA. Under Section 43-1B, it is provided that notwithstanding anything contained in the foregoing provisions of this Act, but subject to the provisions of this section, it shall be lawful for a landlord (a member or ex-member of the armed forces) at any time after the commencement of the Tenancy and Agricultural Lands (Amendment) Act, 1964 to terminate the tenancy of any land and obtain possession thereof in the manner set out in the section. Section 43-1B, therefore, overrides the preceding provisions of the said Act. Section 43-1E which forms a part of Chapter III-AA, provides as follows:

✓ "43-1E. Nothing in this Chapter shall apply in relation to land, which before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964 is purchased by any tenant under the provisions of Chapter III."

6. According to the appellant, Section 43-1E will come into operation only in those cases where there is a completed purchase in favour of the tenant. It will not protect a tenant who is only a deemed purchaser, but in respect of whom proceedings under Section 32-G have not been completed. The appellant therefore contends that as a member of the armed forces, he can avail of Chapter III-AA and Section 43-1B forming a part thereof, to terminate the tenancy of the respondent and obtain possession of the said land. According to the respondent, Section 43-1E will protect him against Chapter III-AA provisions because he has become a deemed purchaser on 29-5-1957.

7. This issue came up for consideration before a Division Bench of the Bombay High Court in the case of *Bhimrao Tatoba Sawant v. Heramb Anant Patwardhan*¹. While considering the scheme of Chapter III-AA, the Bombay High Court held that Section 43-1E would come into operation only if there has been, so to say, a completed purchase of the land by the tenant under the provisions of Chapter III. It will not be possible to introduce, while interpreting that section, the theory of "deemed purchase" and its ineffectiveness under certain circumstances. What is material is that the vested rights flowing from the purchase of the land by the tenant under Chapter III should not be disturbed. If the rights of the tenant as a purchaser have not been crystallised, the landlord belonging to the armed forces can claim benefit of the provisions of Chapter III-AA. In the present case, as Section 32-G proceedings were dropped, the rights of the respondent-tenant as a purchaser have not been crystallised. The very purpose of introducing Chapter III-AA by the Amending Act of 1964 is to give additional benefits to those landlords who are members of the armed forces. The High Court has rightly observed in connection with Chapter III-AA as follows:

"All these provisions would be set at naught if we accept the contention of Shri Bhonsale that under Chapter III a tenant would be the purchaser in every case except where the purchase has become ineffective under Section 32-G(3) or Section 32-F. It is material to note that wherever the purchase has become ineffective under these two provisions, it is the landlord who had a first preference to get possession of the land. This right has been conferred on the landlord under Section 32-P. What is important is that under that section the landlord, whether he is a member of the armed forces or not, is entitled to have his first preference. It would thus mean that the provisions of Chapter III-AA could not be implemented to the benefit of the landlord belonging to the armed forces if we record a finding that prior to the introduction of Chapter III-AA on the statute-book the tenant should be held to have become the owner except under the two contingencies covered by Sections 32-G(3) and 32-F. In our opinion, the interpretation sought to be put by Shri Bhonsale on Section 43-1E would take away all the benefits which the legislature intended to confer on the landlords who

have been serving as members of the armed forces. *It is material to note that Section 43-1E uses the words 'purchase by the tenant'. It appears that the legislature has purposefully chosen not to use the words 'deemed to have been purchased by the tenant' under Chapter III. The words 'purchased by the tenant' will have to be interpreted in such a manner that the intention of the legislature to give additional benefits to the landlords belonging to the armed forces is implemented. This is permissible if there is no violence to the language used by the legislature and the meaning of the phrase 'purchased by the tenant' can be properly understood as not to cover 'deemed to have been purchased by the tenant'.*" (emphasis ours)

8. The appellant, therefore, in the present case, did not lose his rights under Chapter III-AA because the proceedings under Section 32-G had been dropped, and the tenant remained only a deemed purchaser and could not be called a purchaser as contemplated under Section 43-1E.

✓ 9. It is submitted by the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G. Its order of 31-5-1961 is bad in law. He relied upon a decision of the Bombay High Court in the case of *Nago Dattu Mahajan v. Yeshodabai Huna Mahajan*² where this Court had held that under Section 31, the landlords have a choice to avail of one of the two provisions of resumption, namely, either Section 31(1) or Section 31(3). No landlord can avail of both the provisions. Learned counsel for the respondent, therefore, contends that in the present case, the appellant having exercised his choice under Section 31(1), could not have urged in the proceedings under Section 32-G his disability as a minor under Section 31(3). The order of 31-5-1961 of the Agricultural Lands Tribunal, however, was not challenged by the respondent. The order of 31-5-1961 has become final and the decision rendered by the Agricultural Lands Tribunal as between the appellant and the respondent is binding on both the parties. A decision, simply because it may be wrong, would not thereupon become a nullity. It would continue to bind the parties unless set aside. The effect of the decision of 31-5-1961 on the parties, therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 32-G being dropped, he cannot now contend that the decision has no legal effect or that the proceedings under Section 32-G ought to have been completed and, therefore, he should be looked upon as a purchaser.

10. The appellant has also drawn our attention to Section 32-F(1A) under which, if a tenant holding land from a landlord who was a minor has not been given intimation at the commencement of the Bombay Tenancy and Agricultural Lands Amendment Act, 1969, but being in possession of the land on such commencement, is desirous of exercising the right conferred on him under sub-section (1), he may give such intimation to the landlord and the Tribunal within a period of two years from the commencement of the

Act. Therefore, the tenant was given an additional opportunity to give intimation after the commencement of the Amendment Act of 1969. Even this opportunity was not availed of by the tenant. The respondent has thus continued as a tenant. His tenancy can be terminated under Section 43-1B.

11. In the premises, the High Court was not right in coming to the conclusion that the application of the appellant was barred under Section 43-1E. We, therefore, allow this appeal, set aside the impugned judgment and order of the High Court and restore the order of the Sub-Divisional Officer as confirmed by the Additional Commissioner. There will, however, be no order as to costs.

(1999) 1 Supreme Court Cases 278

(BEFORE K. RAMASWAMY AND G.T. NANAVATI, JJ.)

U.P. SECRETARIAT U.D.A. ASSOCIATION

THROUGH ITS JOINT SECRETARY, G.C. SRIVASTAVA
AND OTHERS

Petitioners;

Versus

STATE OF U.P. AND OTHERS

Respondents.

SLP (C) No. 25086 of 1996[†], decided on January 27, 1997

A. Service Law — Seniority — Criteria — Length of service — Seniority from the date of officiation on temporary appointment/promotion — Non-permissibility, except when appointment is made in accordance with rules

B. Service Law — Promotion — Quota rule — Breach — When not inferable — Inaction to fill up vacancies by direct recruitment and appointment in officiating capacity of promotees on such posts made — Breach of quota, held, not inferable — Hence, promotees' claim for grant of promotion from the date of promotion rejected — Further held, they are entitled to seniority according to their fitment under quota-rota rule — Seniority — Inter se — Direct recruits and promotees — Quota rule — If breached when promotees appointed on vacancies meant for direct recruits when direct recruitment not taking place

Held:

Merely because temporary appointment or promotion came to be made, seniority cannot be counted from the date of officiation except when the appointment was made in accordance with rules. Though appointment is temporary, if it was made in accordance with rules and to a substantive vacancy, seniority will be counted from the date of temporary promotion. Necessarily, the quota and rota require to be maintained so as to give effect to the object envisaged under the rules. Mere inaction cannot be made the ground to contend that the quota rule was broken down. It is not in dispute that appointments have been made in officiating capacity against the vacancies reserved for direct recruitment though no recruitment had taken place. They are not according to the rules and within the quota. Direct recruitment is to be treated from the date on which a candidate actually joined the service, though vacancies did exist prior to that. As a consequence, the promotees

[†] From the Judgment and Order dated 2-7-1996 of the Allahabad High Court in W.P. No. 6200 of 1993

are also required to be fitted into the service from the date when they are entitled to fitment in accordance with the quota and rota prescribed under the rules. (Para 2)

Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348, applied

O.P. Singla v. Union of India, (1984) 4 SCC 450 : 1984 SCC (L&S) 657, cited

K-O-M/LJFS/17476/CL

Petition dismissed

Advocates who appeared in this case :

Gopal Subramaniam, Senior Advocate (R.N. Keswani and Santosh Kumar, Advocates, with him) for the Petitioners;

A.K. Srivastava, Advocate, for the Respondents.

Chronological list of cases cited

on page(s)

- (1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348, *Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra* 279f, 279f-g, 280b
- (1984) 4 SCC 450 : 1984 SCC (L&S) 657, *O.P. Singla v. Union of India* 279f

ORDER

1. This special leave petition has been filed against the order of the Division Bench of the Allahabad High Court, made on 2-7-1996 in Writ Petition No. 6200 of 1993. When the direct recruits had filed the special leave petition, this Court by order dated 20-11-1996 dismissed the same. Shri Gopal Subramaniam, learned Senior Counsel for the petitioners, who are now promotee UDCs in the U.P. Secretariat Services contends that the learned Judges have given their reasoning at pp. 58 and 59 thus:

"From the aforesaid decisions of the Hon'ble Supreme Court, it is evident that the initial appointment of the promotees on officiating basis was not in accordance with the Rules, 1942, rather it was dehors the Rules. The contention of the petitioner that the quota as envisaged in Rule 21 of the Rules, 1942, has broken down or collapsed simply for the reason that due to certain administrative difficulties neither the selection for direct recruits nor the selection by promotion against the vacancies took place in the selection years with effect from 1971 to 1978, and hence according to the decision of the Hon'ble Supreme Court in *O.P. Singla v. Union of India*¹ and *Direct Recruit Class II Officers' case*² the petitioners (promotees) should not be pushed down before the appointees from the other sources inducted into the service on later date (*proposition E of the Direct Recruit Class II case*²) appears to be misconceived. Petitioners were not at all prejudiced because of non-selection during the aforesaid period for the reasons that the direct recruitment also did not take place during the aforesaid period and that the petitioners in accordance with the seniority on the post of LDA were given officiating promotion on the post of UDA against the vacancies existing in their quota or otherwise. In view of the aforesaid position, it

¹ (1984) 4 SCC 450 : 1984 SCC (L&S) 657

² *Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348

Rec(Adm-IV)/S Kshir-HA / 198

Annexure-15 (series)

Dated: 29 May 2007

88

RECORDS BRANCH (ADM-IV)

REVIEW OF POSTING AT HQ DGAR

1. Please ref DGAR Order No Rec(Adm-IV)/S Kshir-UDA/ dated 26 Oct 2005.
2. As per Para 4 of above DGAR order, case for retention at HQ DGAR in respect of Shri Surendra Kshir, HA of LPAO is required to be reviewed every year on the basis of medical documents/condition of his father. Hence, his case for review was processed during Oct 2006 as per above DGAR order. But the review was held up in view of his pending Contempt Petition No 11(SH)/2006 before Guwahati High Court (Shillong Bench). Since, the contempt petition of the indl has been dismissed by the Hon'ble Court on 28 May 2005 thereby upholding above DGAR order. the case for retention at HQ DGAR of above indl is required to be reviewed afresh in the light of above DGAR order.
3. In view of above, you are requested to instr indl to submit latest docus for med treatment of his father by 12 Jun 2007 without fail for our further action.
4. If the reqd docus are not submitted by the indl on due date, his case for review will be processed to the competent auth treating that the indl is unable to submit the docus.
5. Please confirm receipt.

Get the signature
of the indl on
this letter

(Ajay Kumar)
Li
SO-3(Records)

Est Branch

Copy to:-

LPAO

for info.

Law Branch

for info w.r.t. your Branch ION No. 11018/79/2001-Law/885 dated 29 May 07.

Attested
Adv.
Advocate


ESTABLISHMENT BRANCH(SB)REVIEW OF POSTING AT HO DGAR

89

1. Ref Rec Br (Adm IV) ION No. Rec (Adm-IV)/S.Kshir-11A/198 dated 31 May, 2007 addressed to this Branch and copy to you and Law Branch.

2. In terms of para (3) of Rec Br ION quoted under ref, you are requested to instruct Smt Surendra Kshir, HA of your branch to submit the latest documents for medical treatment of his father by 12 June, 2007 without fail and forward the same direct to Rec Branch (Adm IV) on the stipulated date which is urgently required in the light of the circumstances as stated in the ibid ION for their necessary action under intimation to this branch and Law branch of this Dir.

3. Please accord priority.


(M S Malara)
Dy Comdt
SO-2 (EST)

4. UPAO

Copy to :

1. Record Branch (Adm -IV) -for info w.r.t. your ION No. quoted under reference as stated in para I above please.
2. Law Branch -for information please.

*Indl to Sign here
as he has seen
this letter for his
further help
if any.*

*Shirish
11/6/07*

*Post Office
instruct him to
submit the same.*

*SSIC
CS/06*

Alise

*Attest
for
signature*

13 JUL 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO. 152/2007

Shri Surendra Kshir

..... Applicant

Versus

Union of India & Others

..... Respondents.

WRITTEN STATEMENT FILED BY THE RESPONDENTS

1. That the respondents have received copy of OA and gone through the same and understood the contentions made thereof. Save and except the statements, which are not specifically admitted herein below, all other averments and contention may be deemed to be denied.

2. Before adverting parawise reply of the OA the respondents for easy understanding of the case briefly state facts of the case, which may be treated as a part of the Written Statement.

That in the Assam Rifles, civilian clerks were being appointed in two distinct cadres i.e., DGAR cadre and unit cadre. The terms and conditions of employment in both cadres are entirely different as the two cadres are governed by separate Recruitment and Promotion Rules. That the subject applicant in the instant application was appointed in Jun 1988 as LDA in Unit Cadre of Assam Rifles. That in the appointment letter No. A/I-A/17/II/211 dated 03-06-1988 and order No. A/1-A/89 dated 21 Jun 1989 it is clearly stated that the applicant was liable to be posted where ever Assam Rifles unit are located in India. Thereafter, on compassionate ground he was attached with HQ DGAR w.e.f. 05 May 95. On completion of his normal tenure when the individual was posted to 20 Assam Rifles, he applied for absorption in the DGAR Cadre. The application for permanent absorption was duly considered and rejected since during the year 1989 Ministry of Home Affairs has decided to combatise the entire ministerial post held by civilian. That those civilians

Received
1/10/07

67-
Filed by: -
The respondents
Through:-
Manjinder Das
Addl. C.S.I.C
Guwahati

who did not opt for combatisation were to continue in the civilian posts which deem to continue as personal to them until superannuation under the existing conditions of service. Being dissatisfied with the rejection of his application and his transfer to unit (his cadre vacancy), the individual filed an application OA No. 334/99 before CAT, Guwahati Bench challenging the rejection of his application for absorption in the DGAR cadre. The CAT, Guwahati Bench on merit dismissed the application of the individual vide order dated 04-04-2001 holding,

“It is for the administration to appreciate the balancing factors and take the appropriate decision; in the decision making process there is likely hood of impreciseness in the margin of appreciation for which there should be some room for play within the joints. On consideration of all aspects of the matter, we do not find any illegality and or abuse misuse of the discretionary power by the Respondent. We also could not discern any arbitrariness in decision making process of the Respondents in absorbing the aforementioned three individual officers in the DGAR.....”.

3. Being aggrieved, the individual challenged the CAT, Guwahati order by filing a writ petition No. 3326/2001 renumbered as WP(C) No. 143(SH)/2002 at Gauhati High Court, Shillong Bench. The matter was disposed of on 19.07.2005 wherein the Hon'ble High Court directed the DGAR to pass afresh appropriate order in the matter within a period of two months from the date of receipt of the order. Accordingly, impugned order dated 26.10.2005 was passed by the Director General Assam Rifles in deference to the Hon'ble High court order dated 19.07.2005 wherein the individual was permitted to continue to be posted at Shillong to attend to his ailing father. It was further directed by the DGAR that his posting to DGAR will be reviewed on yearly basis from the date of issue of the order and a decision regarding his further retention at Shillong or otherwise will be taken on the basis of medical documents/condition of his father.

4. Aggrieved by the DGAR order dated 26.10.2005, the petitioner filed a contempt petition No. 11(SH)/2006 against Secretary Home and DGAR alleging non compliance of High Court order dated 19.07.2005 in WP(C) No. 143(SH)/2002. On 12.06.2006, the Hon'ble High Court issued notice to the answering respondents returnable in 04 weeks. The respondents filed a detailed Affidavit, a certified true copy thereof is placed as **Annexure-R/1 to this affidavit**. The Hon'ble High Court having perused the same was satisfied that the authorities have complied with the order and

the directions issued by the court in the writ petition. The said contempt case came up for final hearing on 28.05.2007 and Division Bench of Gauhati High Court, Shillong Bench closed the contempt case by holding that the same was not maintainable.

A true copy of notice dated 12.06.2006 is attached herewith and marked as ANNEXURE - R/1 to this written statement.

A true copy of letter No. A/I-A/17/II/211 dated 03-06-1988 is attached herewith and marked as ANNEXURE - R/2 to this written statement.

A true copy of order No. A/1-A/89 dated 21 Jun 1989 is attached herewith and marked as ANNEXURE - R/3 to this written statement.

It is stated that based on conditional order of DGAR dated 26-10-2005 the individual was asked to submit medical documents in respect of his ailing father on expiry of 01 year of service in DGAR. But in spite of repeated reminders individual failed to submit requisite medical documents. Instead he filed the instant Original Application No. 152/2007 for absorption in the DGAR cadre and obtained stay vide CAT, Guwahati bench interim order dated 13.06.2007 wherein it has been directed that the applicant shall not be disturbed from his present place of posting till the next returnable date.

Preliminary Objection:

5. That Shri Surendra Kshir, UDA (now HA), the applicant in the subject case has no legal right to transfer to the DGAR cadre having been recruited and appointed against the Unit cadre civil appointment in Assam Rifles since the two cadres are distinct and governed by separate Rules for Recruitment, appointment and promotion.

(a) Because the OA No. 334/99 earlier filed by the applicant in the Hon'ble CAT, Guwahati Bench already stood dismissed vide order dated 04.04.2001 on merit and no new facts have been placed on record giving fresh cause of action to the Applicant.

(b) Because the Applicant challenged the aforesaid Hon'ble CAT, Guwahati Bench order dated 04.04.2001 in the High Court. And in deference to the Hon'ble Gauhati High Court, Shillong Bench order dated 19.07.2005 in

WP(C) No. 143(SH)/2002, an order was passed by the DGAR on 26.10.2005 wherein it was directed that the applicant be permitted to continue to be posted at Shillong to attend to his ailing father. It was further directed by the DGAR that his posting to DGAR will be reviewed on yearly basis from the date of issue of the order and a decision regarding his further retention at Shillong or otherwise will be taken on the basis of medical documents/ condition of his father. That no medical documents in respect of his allegedly ailing father has been submitted by the applicant.

(c) Because of the contempt petition No. 11(SH)/2006 arising out of WP(C) No. 143(SH)/2002 has been closed vide order dated 28.05.2007 wherein the Division Bench of Gauhati High Court, Shillong Bench held that the same was not maintainable.

(d) Because there is no provision to absorb a unit cadre civilian to DGAR cadre as the DGAR has ruled out any further absorption of civilians in the DGAR cadre. In this connection reliance may be placed on **U.P. Vs. Gobardhan Lal - 2004(11) SSC 402** wherein it was held that an employee cannot continue in one place indefinitely and transfer is inherent in service conditions unless contra to that is included in the conditions. The employee can file representation against the transfer to be decided by higher authorities for redressal, if needed. So far the official status such as seniority, scale of pay and secured emoluments are not affected adversely, the employee cannot quarrel against his transfer orders. No legally enforced rights are available to the employee except in cases of proved mala fide transfer orders.

In this regard reliance may also be placed on the Hon'ble Apex Court Judgment pronounced in **J K Bansal, Major General Vs. Union of India and Others**, reported in 2005(7) SCC 227.

(e) Because of non submission of medical documents by the applicant in respect of his ailing father on expiry of 01 year from the DGAR order dated 26.05.2005 which has been upheld by the Division Bench of Gauhati High Court, Shillong Bench in Contempt petition No. 11(SH)/2006 vide order dated 28.05.2007.

(f) Because the applicant has been promoted from UDA to Head Assistant and the said post (HA) is applicable only to unit cadre civilian employees.

Parawise reply:

6. That in reply to the averments made in Para 1 of the original application, it is ~~stated~~ stated that there is no legal right vested in the Applicant to seek directions for absorption to DGAR cadre. Further absorption of civilians in the DGAR cadre is rule out based on Govt of India, MHA letter No. A. 27011/44/99-FP.I. dated 19.09.1989 (Annexure-1 of original application refers) since all posts have been combatised. However, an order was passed by the DGAR on 26.10.2005 in deference to the Hon'ble High Court order dated 19.07.2005 in WP(C) No. 143(SH)/2002 wherein the applicant has been permitted to continue to be posted at Shillong to attend to his ailing father. It was further directed by the DGAR that his posting to DGAR will be reviewed on yearly basis from the date of issue of the order and a decision regarding his further retention at Shillong or otherwise will be taken on the basis of medical documents/condition of his father. That the said concession ought to have met the requirement of the applicant in toto in case his only concern is ^{to} look after his ailing father.

7. That in reply to the statement made in Para 2 and 3 of the original application, it is ~~stated~~ stated that the matter having been already duly considered and decided on merit by the Hon'ble Tribunal and the Hon'ble High Court has attained finality and the applicant cannot be allowed to endlessly continue to re-agitate the issue being as such barred by resjudicata .

8. That with regards to averments made in Para 4.1, 4.2 and 4.3 of the original application, the humble respondents deny the contention of the applicant except to the extent supported by the record. It is categorically denied that the applicant has any right for seeking transfer to a different cadre i.e., DGAR cadre. That the applicant be put to strict proof in support of the same.

9. That in reply to the averments made in Para 4.4 of the original application, it is ~~stated~~ stated that the same are false being deliberate misrepresentation to misguide the

Hon'ble Tribunal. That the contention of the applicant that "pursuant to introduction of the combatisation policy, civilian staff who are Combatised are posted in the Unit cadre, but in Headquarter combatised persons are not posted, except on temporary attachment" is totally incorrect and false. It is submitted that the intake of civilian clerks both in Headquarter DGAR cadre and Unit cadre is totally stopped due to combatisation process of the Assam Rifles, the vacancies arising in Headquarter DGAR cadre due to wastage on retirement/discharge of civilian clerks are being filled up by posting of combatant clerks. That the combatants are liable to serve anywhere on tenure basis. Accordingly, they are transferred out to Units, formation on completion of their normal tenure in Headquarter DGAR. It is reiterated that the entire Force has been combatised and the same is not restricted to Units only as being contended by the applicant.

10. That in reply to the averments made in Para 4.5 of the original application, it is ~~stated~~ that the applicant had once requested for his attachment with Headquarter DGAR on compassionate ground while serving with Unit formation (i.e. 20 Assam Rifles) and the same was accepted. It is categorically denied that any assurance was given to the applicant for his permanent absorption in Headquarter DGAR cadre as being contended and the Applicant be put to strict proof thereof.

11. That in reply to the averments made in Para 4.6 and 4.7 of the original application, it is ~~stated~~ that the matter stated therein are in the personal knowledge of the applicant hence, no comment can be offered. However, the applicant was attached to DGAR on compassionate ground. The representations given by the applicant were duly considered and the applicant was informed accordingly. It is submitted that the Applicant is not the only child of his parents, the Applicant's sole aim is to avoid duties in hard areas and somehow to ensure permanent service at Shillong. The impugned order dated 26.10.2005 having been passed by the Respondents to facilitate attending to his ailing father, no ground is made out in law to insist for his permanent transfer to DGAR cadre.

12. That in reply to the averments made in Para 4.8 of the original application, it is ~~stated~~ that the application for permanent absorption given by the petitioner was duly considered and he was informed the reasons why the absorption cannot be done.

13. That in reply to the averments made in Para 4.9 of the Original Application, it is ~~stated~~ stated that the said case were cited by the applicant in OA No. 334/99 as well as WP(C) No. 143(SH)/2002 and the order dated 26.10.2005 passed by the DGAR in deference to the Hon'ble High Court order dated 19.07.2005 have been found to be just and legal by the Hon'ble Division Bench of the Gauhati High Court.

14. That in reply to the averments made in Para 4.10 of the original application, it is ~~stated~~ stated that due to combatisation of the force as directed by the Ministry of Home Affairs vide letter No. 27011/44/88.FP.I dated 19 Sep 89(Annexure-1 of the Original Application), the DGAR has issued directions that there will be no further absorptions in the Headquarters DGAR cadre. That the contention of the applicant that his application was not considered is false and misleading. The representation of the applicant was duly considered keeping in view the facts stated in the representation and the relevant orders on the subject, the DGAR thereafter directed rejection of the representation. It is further submitted that the acceptance or rejection of representations submitted by other persons does not confer any right in favour of the applicant. Moreso, each case is considered on its peculiar facts, attendant circumstances.

15. That in reply to the averments made in Para 4.11 and 4.12 of the original application; the answering respondents beg to offer no comments being matter of record. However, it is submitted that the decision of Hon'ble CAT was duly complied with and the representation submitted by the petitioner after due consideration was rejected. The order of the respondents produced as Annexure-9 of the original application is a reasoned order and gives out the grounds on which the decision of rejection was based.

16. That no comments are offered in reply to the averments made in Para 4.13 of the original application being matter of record.

17. That in reply to the averments made in Para 4.14 and 4.15 of the original application, the answering respondents categorically deny the contention of the petitioner being false and misstatement of facts. It is reiterated that a speaking order was passed by the DGAR on 26.10.2005 in deference to the Hon'ble High Court, Shillong Bench court order dated 19.07.2005 passed in 143(SH)/2002 wherein it was directed that no posts were available for further absorption of any civilian in the DGAR cadre due to combatisation of the force and therefore the applicant could not be permanently absorbed in the DGAR cadre. He further permitted the applicant to continue to be posted at Shillong to attend to his ailing father. It was further directed by the DGAR that his posting to DGAR will be reviewed on yearly basis from the date of issue of the order and a decision regarding his further retention at Shillong or otherwise will be taken on the basis of medical documents/condition of his father. That the same was upheld by the Division Bench of Gauhati High Court, Shillong Bench vide order dated 28-05-2007 in Contempt Petition No. 11(SH)/2006 (Annexure-13 of Original Application) holding "we are of the opinion that the authorities have complied with the order and direction issued by this Court in the aforesaid writ petition". Hence there is no violation of Article 14 and 16 of the Constitution of India as averred.

18. That in reply to the averments made in Para 4.16 of the original application, it is ~~stated~~ that the Division Bench of Gauhati High Court, Shillong Bench dismissed the said Contempt Petition vide its order dated 28.05.2007 by holding that the same was not maintainable.

19. That the averments made in Para 4.17 of the original application are repetitive and has adequately been commented upon in preceding paragraphs 10 and 14 of this writ statement. It is humbly submitted that the Hon'ble High Court Division Bench while finding the Contempt Petition No. 11(SH)/2006 non maintainable in no uncertain terms opined that the authorities have complied with the order and directions issued by the Court in WP(C) No. 143(SH)/2002. The order having thus attained finality cannot be endlessly re-agitated. Particularly so when Applicant has no legal right to seek transfer/ absorption to a different cadre governed by different rules of recruitment, appointment and promotion.

75

98

20. That in reply to the averments made in Para 4.18, 4.19 and 4.20 of the original application, the answering respondent respectfully submit that based on the directions in DGAR order dated 26.10.2005 (Annexure -12 of the Original Application) the applicant was asked to submit medical documents in respect of his ailing father on expiry of 01 year. Instead he filed Contempt Petition No. 11(SH)/2006 in the Division Bench of Gauhati High Court, Shillong Bench which was held to be not maintainable. Further instead of submitting documents with respect to the medical conditions of his father, he has filed the instant Original Application. This clearly shows his intentions to avoid transfer to different/hard area and to stay somehow or the other permanently at Shillong. That in support of father's illness the Applicant has failed to substantiate with medical documents. In spite of repeated reminders he has failed to submit requisite medical documents.

21. That the averments made in Para 5.1 to 5.7 of the Original Application are repetitive and has adequately been commented upon in preceding paragraphs 6, 10, 14 and 17 of this written statement.

22. That in reply to the statement made in Paragraphs 6 to 9.2 of the original application, it is submitted that the application is not bonafide, no ground in law has been made out by the applicant to establish his right to seek transfer to the DGAR cadre. The case of the Applicant is barred by the principle of resjudicata and as such liable to be dismissed.

23. In view of above facts mentioned herein it is humbly prayed that the present Original Application is not legally sustainable and is liable to be dismissed with cost.



-76-

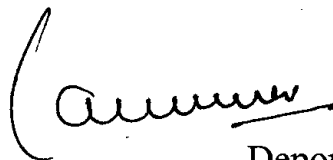
29

VERIFICATION

I, Lt Colonel Sameer Salooja s/o Group Captain S C Salooja aged about 39 years by occupation, Govt Service, presently working as Deputy Chief Law Officer in Headquarter Directorate General Assam Rifles, Shillong – 793011.

That I am the Deputy Chief Law Officer in Headquarter Directorate General Assam Rifles, Shillong and I have received a copy of the petition, understood its contents, and I am well acquainted with the facts and circumstances of the case, and sign this verification on behalf of the respondents.

That the statements made in paragraphs 1, 2, 5, 7 to 12, 14 & 15 are true to my knowledge and that in paragraphs 3, 4, 6, 13, 16 to 18 are matters derived from records and true to my information and knowledge and the rests are my submissions before this Hon'ble Central Administrative Tribunal and I signed this verification this the day of 13th Jul 2007, at Shillong.



Deponent

Lt Col
डे.कनॉड**Dy Chief Law Officer****डप मुख्य विधि अधिकारी****HQ DGAR, Shillong-793011****महानिदेशालय असम राईफल्स, शिल्लिंग-793011**

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND,
MEGHALAYA, MANIPUR AND TRIPURA)
SHILLONG BENCH
CIVIL APPELLATE SIDE

Appeal from contempt petition No. 118406 of 19
Civil Rule

Smt. Suresh Chandra Borah
u

Appellant
Petitioner

Smt. V. G. Duggal & Co Versus

Respondent
Opposite-Party



For Appellant Mr. H. S. Dhyani, Advocate
Petitioner Mr. L. Dhyani
Mr. P. Dhyani
Mr. N. Majumdar

For Respondent
Opposite-Party

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceeding with signatures
1	2	3	4

certified to be true
MD.
13/7/07

- 12 - 78 -

101

Noting by Office or Advocate	Date	Office notes, reports, orders or proceedings with signatures
------------------------------	------	--

Contempt Ptn No.11(SH)06

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

12.06.2006

Heard Mr. N Mozika, learned counsel for the petitioner.

Issue Notice to the respondent No.2 to show cause as to why Contempt proceeding should not be initiated against him for alleged violation of the Judgment and Order dated 19.7.2005 passed by this Court in WP(C) No.143(SH)2002.

Notice is made returnable within four weeks.

Petitioner to take steps within three days.

e s / T. Vaiphei
Judge



True Copy
Min
Superintendent (Judicial)
Gauhati High Court
Shillong Bench.

DGAR
order

Tele No : PABX 23510/231

13
79- ANNEXURE-R/2
Bharat Sarkar
Government of India
Grih Mantralaya
Ministry of Home Affairs
Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
Shillong - 793011

A/I-A/17/II/211

63 Jun 88

✓ Shri Surendra Kshir
S/O SM (Hony Capt) Kul Bahadur Chhetri
Nongrim Hills
Shillong - 3

APPOINTMENT LDA

1. Reference your application dated 25 Apr 88.
2. You have been selected for appointment as Lower Division Assistant in the scale of pay Rs. 950-20-1150-EB-25-1500/- per month plus other allowances as admissible under the existing rules on production of the following documents and satisfactory police verification report etc.
 - (a) A medical fitness certificate from a Civil Surgeon or equivalent at the time of joining.
 - (b) Educational and other certificates as proof of age and qualification etc., in original.
 - (c) A character certificate from Class-I Officer or 1st Class Magistrate at the time of joining the duty.
3. The appointment is purely temporary and may be terminated on one month notice from either side. The appointee is liable to serve anywhere in India where Assam Rifles Units are located.
4. You are hereby directed to report for duty to 16 AR, Ghaspani within 30th June 1988.

Individual
reported at unit
on 20/6/88 (FN)

J K Mohanty

(J K Mohanty)
Lt Col
Assistant Director (A)
for Director General Assam Rifles

Copy to :-

1. HQ Nagaland Range (S) - for information.

Assam Rifles

99 APO

Commandant

16 Assam Rifles

C/O 99 APO

- they are requested to intimate the date of joining of Shri Surendra Kshir in due course to issue formal appointment letter.

प्रधान सहायक पद के अग्रिम परीक्षा
Head Asst 16 Assam Rifles

2- Interview with

2/c

20/6/88

Gupta/

Ajay

13/7/07 25/6

Certified true copy

By Comdt
CO 2 (EST)

CGAR, Shillong

NO. 1 NO. 2 NO. 3 NO. 4 NO. 5 NO. 6 NO. 7 NO. 8 NO. 9 NO. 10

MAGNIFICENT ASSAM RIFLES
DIRECTORATE GENERAL ASSAM RIFLES : SHILLONG-11

ORDER

Dated Shillong, the 9 Jun 89

A/1-A/69

1. Further to this Directorate letter No A/1-A/17/11/211 dated 03 Jun 88.
2. The Director General Assam Rifles is pleased to appoint Shri Surendra Kshir (SP), temporarily as Lower Division Assistant against the existing vacancy of 16 Assam Rifles with effect from the forenoon of 20 June 1988 in the scale of pay Rs 950-20-1150-ER-25-1400/- pm plus other allowances as admissible under the existing rule from time to time.
3. The appointment is purely temporary and may be terminated in one month's notice from either side.
4. The appointee is liable to serve anywhere in India.

1	117
2	27
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	
70	
71	
72	
73	
74	
75	
76	
77	
78	
79	
80	
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	
91	
92	
93	
94	
95	
96	
97	
98	
99	
100	

(J K Lohanty)
Lt Col
Assistant Director (A)
for Director General Assam
Rifles

Dated Shillong, the 21 Jun 89

Memo No A/1-A/89/7

Copy fwd to :-

1. The Pay and Accounts Office
Assam Rifles
Near Laitumkhrah Market
Shillong-3
2. N L Range (S) Assam Rifles
C/O 99 APO
3. 16 Assam Rifles
C/O 99 APO
4. Shri Surendra Kshir, LDA
16 Assam
C/O 99 APO
5. Personal file
6. Office copy

(J S Dhillon)
Major
Joint Assistant Director (A)
for Director General Assam
Rifles

Certificate to be
13/7/07 Certificate to be
13/7/07

By Command

SD 2 (EST)

File in Court on 11/11/08

Court Officer.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

104
Filed by the applicant-
through U. Dutta, advocate
on 11/01/08

In the matter of:-

O.A. No. 152/2007.

Sri Surendra Kshir.

... Applicant

-Versus-

Union of India and Others.

... Respondents.

-And-

In the matter of:-

Rejoinder submitted by the applicant against the written statement submitted by the respondents.

The applicant most humbly and respectfully begs to state as under:-

1. That in reply to the brief facts of the case stated in para 2, 3 and 4 of the written statement and begs to state that applicant has been working in the DGAR, Headquarters, Shillong since 1995 although combatisation of citizen employees were done way back in 1989 i.e. much earlier than his posting at Head quarter office. As such combatisation did not prevent his posting at DGAR Headquarter nor it has barred his absorption thereto which has been done in case of other similarly situated persons.

Further, the order dated 04.04.2001 of the Hon'ble CAT passed in O.A No. 334/1999 as referred to by the respondents has been set aside and quashed by the Hon'ble Gauhati High Court vide its judgment and order dated 19.07.2005 in WP (C) No. 3326/2001 [renumbered as WP (C) No. 143 (SH)/02] wherein it

Surendra Kshir

82

105

has been clearly held by the Hon'ble High Court that the prayer of absorption of the applicant in DGAR office has been refused by completely overlooking the principles laid down in Article 14 and 16 of the Constitution of India and has further observed as follows:-

"..... It is a clear case, where discretion has been erroneously applied by singling out the petitioner for discriminatory treatment, by refusing to treat similarly with the persons similarly situated."

The Hon'ble High Court directed the respondents to allow the petitioner to continue at Head Quarter, DGAR. But even thereafter the respondents issued the impugned conditional order dated 26.10.2005 which is not sustainable in the eye of law, since the said order dated 19.07.2005 of the Hon'ble High Court has attained finality.

As regards the contempt petition as referred to by the respondents, the Hon'ble High Court has closed the contempt petition no. 11 (SH)/2006 on 28.05.2007 granting the liberty to the petitioner to seek proper remedy before the appropriate forum.

Further, since the impugned conditional order dated 26.10.2005 is against the spirit of the judgment and order dated 19.07.2005 of the Hon'ble High Court and unsustainable in the eye of law, so the direction contained in the medical documents in respect of his ailing father on expiry of one year of his service in DGAR is uncalled for.

2. That the applicant categorically denies the preliminary objections raised by the respondents in para 5 (a) to (f) and begs to reiterate that the order dated 04.04.2001 of the Hon'ble CAT in O.A No. 334/1999 has been set aside and quashed by the Hon'ble Gauhati High Court vide its order dated 19.07.2005, thereby holding the action of the respondents to allow the applicant to continue at DGAR which has attained finality. As such, the impugned order dated 26.10.2005 issued by the respondents is against the spirit of the order dated 19.07.2005 of the Hon'ble High Court and hence

Suresh Kumar

not sustainable. Further, while closing the contempt petition no. 11 (SH)/2006 arising out of WP (C) No. 143(SH)/2002, the Hon'ble High Court has granted liberty to the applicant to seek proper remedy before the appropriate forum.

This apart, when the respondents have absorbed other similarly situated persons from unit cadre to DGAR cadre, they do not have any right to discriminate the applicant with an unfettered and unreasonable discretion and the applicant has a valuable right for consideration of his case. The judgments relied on by the respondents in para 5 (d) are distinguished from the instant case in as much as that they do not relate to discriminatory treatments to an employee and as such not applicable in the instant case.

3. That the applicant denies the statements made in para 6, 7 and 8 of the written statement and begs to state that the conditional order dated 26.10.2005 passed by the respondents is ^{not} sustainable for the reasons stated above and the respondents do not have any right to deny the absorption of the applicant at DGAR office, Shillong in a discriminatory manner when they have considered the case of other similarly situated persons.

Further, the plea raised in the written statement by the respondents in support of their action has already been examined by the Hon'ble High Court which has held in clear terms that the said actions are discriminatory and the applicant has been singled out in a discriminatory and the applicant has been singled out in a discriminatory manner. The said decision of the High Court having not been challenged by the respondents, has attained finality and the respondents cannot raise the same plea repeatedly now. As such the agitation of the applicant in this application is not barred by res-judicata as stated by the respondents which has been misconstrued by them. It is their non compliance of the order of the Hon'ble High Court which has led to the filing of the instant Original Application.

4. That the applicant categorically denies the statements made in para 9, 10, 12 and 13 of the written statements and begs to submit

Surendra Kishor

84-
108

that the respondents have absorbed other similarly situated persons at DGAR Headquarter, Shillong and the applicant had also been working there after the combatisation process of the Assam Rifles and as such the respondents cannot say that intake at DGAR office has been stopped and do not have any right to deny the absorption of the applicant at DGAR office on the pretext of combatisation which amounts to mis-representation of facts. It is reiterated that following his posting at DGAR office, the applicant was assured that he would be absorbed in DGAR cadre. Further, the order dated 26.10.2005 issued by the respondents allowing him to continue at DGAR office was pursuant to the direction of the Hon'ble High Court and imposition of condition therein as done by the respondents is opposed to the order of the Hon'ble High Court specially when the applicant's case has been considered in order to facilitate his attending to his ailing father.

5. That the applicant categorically denies the statements made in para 14 and 15 of the written statement and begs to submit that his representation has not been considered by the respondents in the light of the directions passed by the Hon'ble High Court in its order dated 19.07.2005 aforesaid. The contention of the respondents that the decision of the Hon'ble CAT was duly complied with, is not true since the representation of the applicant was rejected once again without passing any reasoned order, violating the direction of the Hon'ble CAT.
6. That the applicant categorically denies the statements made in para 17, 18 and 19 of the written statements and respectfully begs to submit that when some other similarly situated persons have been absorbed in the DGAR cadre even after combatisation of the force, the applicant cannot be singled out to be denied the same privilege in a discriminatory manner which the Hon'ble High Court has spelt out unequivocally in its order dated 19.07.2005. Further, when the Hon'ble High Court has clearly held that the treatment meted to the applicant by denying his absorption in DGAR cadre is violative of Article 14 and 16 of the constitution of India, the

Surendra Kishor

85

5

108

respondents have no right to say that there is no violation of Article 14 and 16 and to sit over the judgment of the Hon'ble High Court. As such the alleged speaking order dated 26.10.2005 is unsustainable and opposed to the spirit of the order of the Hon'ble High Court.

Further, as regards the contempt petition, referred to by the respondents, it is reiterated that the Hon'ble Court while dismissing the said contempt petition only held that there was no deliberate and willful non compliance of the directions contained in the order dated 19.07.2005 and as such granted liberty to his applicant to seek proper remedy before the appropriate forum. The Hon'ble Court has further directed the respondents to allow the applicant to continue in the DGAR which means that the Court has appreciated the valuable legal right of the applicant for his absorption as prayed for, thereby rejecting the contention of the respondents in respect of combatisation, non availability of post in the DGAR cadre. As such, the respondents have no right to argue and adhere to their same contention repeatedly which has already been examined and rejected by the Hon'ble High Court vide its judgment and order dated 19.07.2005 which has attained finality.

7. That the applicant categorically denies the statements made in para 20 and 21 of the written statements and begs to state that those statements being repetitive, have been replied in the preceding paragraph hereinabove.
8. That the applicant categorically denies the statements made in para 22 and 23 of the written statements and most respectfully begs to submit that this application is submitted bonafide which is full of merit and based on the grounds of law as well as fact and as such the application deserves to be allowed with costs.
9. That in the fact and circumstances stated above, the applicant most humbly submits that he is entitled to the reliefs prayed for, and the O.A deserves to be allowed with costs.

Sureshendra Kishor

86 -

6

109

VERIFICATION

I, Shri Surendra Kshir, S/o- Sri Kul Bahadur Chetri, aged about 40 years, working as Head Assistant, Office of the Director General of Assam Rifles Head Quarters (Medical Branch), Shillong, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 9 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 8th day of January 2008.

Surendra Kshir

- 87 -

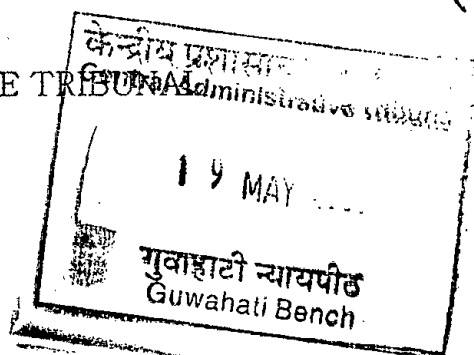
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

File in Court on... 16/5/08

Court Officer.

O.A. NO.152/2007

Sri Surendra Kshir



Applicant

- vs -

Union of India & Others

Respondents

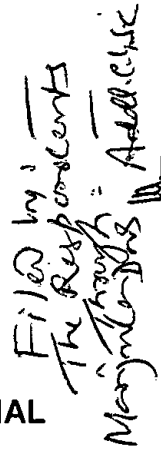
INDEX

Sl.No.	Particular	Annexure	Page No.
1	Reply to the rejoinder	-	1-7
2	Verification	-	8
3	Attachment Order dated 11.7.95	A1	9
4	Posting order dated 3.6.99	A2	10-11
5	Order dated 28.5.07 passed by the Hon'ble High Court Shillong Bench in WP No.11(SH)/06	A3	12-15
6	Promotional order dt. 25.8.06	A4	16-17
7	Certificate dt. 29.8.06	A5	18

Date: 16/5/08

Filed by

Manjula Das
Addl.C.G.S.C.



ॐ नमो भगवते वासुदेवाय
 (HR) १८
 वासुदेवाय नमः
 Director's General
 रितम १८८१
 १८८१/१८८१
 १८८१/१८८१

ORIGINAL APPLICATION NO 152 OF 2007

..... Applicant

..... Respondents

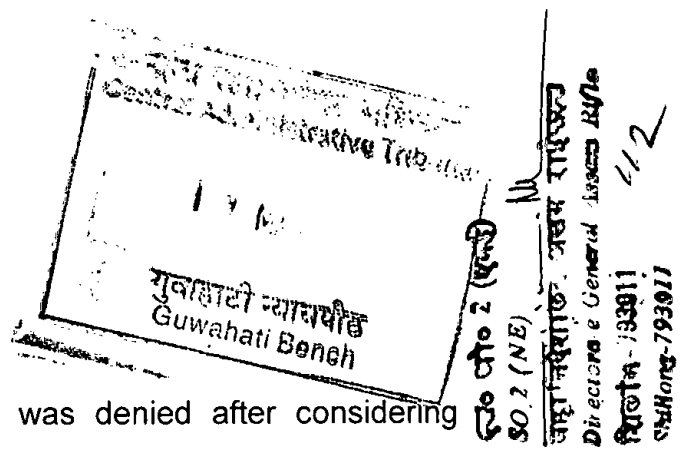
In the matter of :-

Reply to Rejoinder submitted by the Applicant.

The humble Respondents beg to submit the reply as follows:-

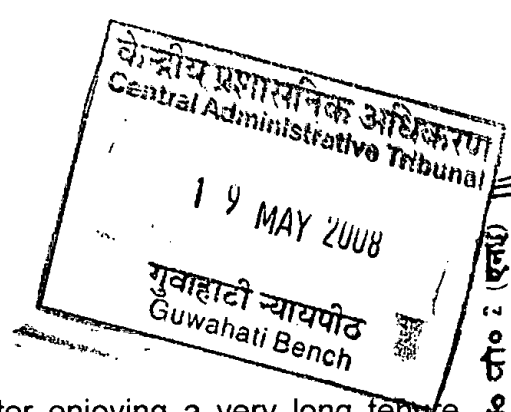
1. That the averment made in Para 1 of the Rejoinder Affidavit it is respectfully submitted that the applicant was given call letter dated 03 Jun 1988 (**ANNEXURE R-2 OF WRITTEN STATEMENT REFERS**) for post of Lower Division Assistant in the existing vacancy of Assam Rifles unit. The applicant was directed to report to 16 Assam Rifles at Ghaspani location. It was clear that the applicant was liable to be posted wherever Assam Rifles unit are located in India. Subsequently his appointment as LDA against 16 Assam Rifles vacancies was regularised with effect from 20 Jun 1988 vide office communication dated 21 Jun 1989 (**ANNEXURE R-3 OF WRITTEN STATEMENT REFERS**). He served with 16 Assam Rifles and 20 Assam Rifles for about 07 years in total, before his attachment with HQ DGAR on 05 May 1995. Thereafter, the applicant was attached with HQ DGAR on 05 May 1995 vide office communication dated 11 Jul 1995 (**ANNEXURE A-1 TO REPLY OF REJOINDER AFFIDAVIT**) clearly stating that he has been attached (not posted in) 'Against the existing vacancy of Unit' and after expiry of tenure at HQ DGAR, Shillong (about 4 years), he was posted to Unit vide office communication dated 03 Jun 1999 (**ANNEXURE A-2 TO REPLY OF REJOINDER AFFIDAVIT**). The individual applied for his permanent

Received
18/02/08



absorption in HQ DGAR, Shillong. The same was denied after considering ongoing combatisation scheme because he was initially appointed as Unit Cadre and not as DGAR cadre, which is totally different and governed by different Recruitment Rules. The applicant was also informed vide office communication dated 08 Oct 1997 that no absorption has been carried out due to process of combatisation of HQ DGAR. Further, as a matter of fact since Oct 1997, no employee of the Assam Rifles Unit Cadre has been permanently absorbed in HQ DGAR cadre.

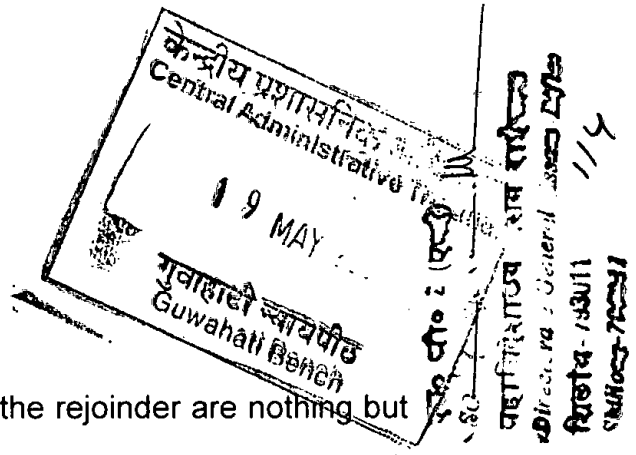
It is respectfully submitted that in difference to the Hon'ble Gauhati High Court Order dated 19 July 2005 passed in WP (C) No. 143 (SH)/2002 (**ANNEXURE 11 OF THE OA**). While disposing the Writ Petition, the Hon'ble High Court remitted the matter back to the respondent i.e. the DGAR with direction to consider and to pass appropriate Order within a period of 02 months from the date of receipt of the certified copy of the judgement and Order. As per the directions of the Hon'ble Court the Director General Assam Rifles vide Order dated 26 Oct 2005 (**ANNEXURE 12 OF THE OA**) passed afresh detail Order on the representation of the applicant dated 16 Jun 1999. Director General Assam Rifles considered the factor of the ill health of the applicant's father, purely on humanitarian grounds issued directions that the applicant is permitted to remain at Shillong to attend his ailing father for one year. The same is subject to review every year and the decision regarding further retention or otherwise will be taken on the basis of medical documents/condition of his father. The non submission of medical documents of his father is a clear cut defiance of the Order passed by the Respondent authority vide Order dated 26 Oct 2005 (**ANNEXURE 12 OF OA THE REFERS**). It is respectfully submitted that the applicant has failed to submit the medical documents of his father despite repeated instructions (**ANNEXURE 15 SERIES OF THE OA**) the applicant has not yet submitted any medical prescriptions/documents or detail of treatment of his father, failing to justify his



further retention in the HQ DGAR, Shillong, after enjoying a very long tenure (from 05 May 1995 to till date, almost long 12 years 05 months) in his total 19 years of service.

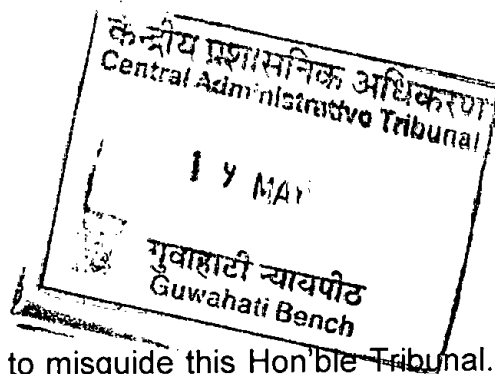
It is further submitted that the father of the applicant is a Retired Subedar Major (Honorary Captain) of the Respondents office and has been drawing regularly monthly pension plus relief-in-pension (presently @ 35 %) and medical allowance in addition to. Therefore, as such he is not dependent to the applicant for any official purposes. The father of the applicant is entitled to get indoor/outdoor facilities of Central Government Hospital/Dispensary under Central Government Health Scheme. **AS A MATTER OF FACT, THE APPLICANT HAS FAILED TO SUBMIT ANY MEDICAL DOCUMENTS, DESCRIPTIONS, HOSPITAL RECEIPTS, AND CERTIFICATES FOR SUCH ALLEGED LONG MEDICAL TREATMENT DESPITE REPEATED INSTRUCTIONS TO DO SO.**

On 28 May 2007 the Contempt Petition No 11 (SH)/06 filed by the applicant was closed by the Order of the Hon'ble Division Bench of Gauhati High Court, Shillong Bench (**ANNEXURE A-3 TO REPLY OF REJOINDER AFFIDAVIT**). While passing the said Order the Hon'ble Division Bench was of the view that "the view taken by the Respondent authorities leading to pass the aforesaid Order, we are of the opinion that the authorities have complied with the Order and direction issued by this Court in the aforesaid Writ Petition. If the Petitioner is still aggrieved by the aforesaid Order, he may seek proper remedy before the appropriate forum, if so advised. But in the facts and the circumstances of the case, we do not find that the present Contempt Petition is maintainable. Accordingly, this Contempt Petition stands closed". The contention of the Petitioner that the Order dated 26 Oct 2005 passed by Respondent authority is against the spirit of the judgement dated 19 Jul 2005 of the Hon'ble High Court is unsustainable in the eye of law is categorically denied being false



and baseless. Rest of the averments in this Para of the rejoinder are nothing but the repetition and the same do not call for any reply.

2. That the averments made in Para 2 of the Rejoinder Affidavit it is respectfully submitted that no absorption had been carried out due to process of combatisation of HQ DGAR. Further, as a matter of fact, since Oct 1997, no employee of the Assam Rifles Unit Cadre has been permanently absorbed in the Headquarters and hence the contention of the application is belied and the same is denied. The contention of the applicant that the Hon'ble High Court directed the Respondents to allow the Petitioner (Applicant) at HQ DGAR is incorrect and the same is denied. In this regard it is submitted that in May 2001, the applicant/Petitioner filed a Writ Petition before the Hon'ble Gauhati High Court, Gauhati Bench, registered as WP © No 3326/2001, which re-numbered as WP © No 143 (SH)/2002 on transfer to Shillong Bench. On 19 Jul 2005 the said Writ Petition No 143 (SH)/2002 was disposed of by the Hon'ble High Court (ANNEXURE 11 OF THE OA). While disposing of the Writ Petition, the Hon'ble High Court remitted the matter back to the Respondent i.e. DGAR with direction to consider and to pass appropriate Order within a period of 02 months from the date of receipt of the certified copy of the judgement and Order. The Hon'ble Court had also made it clear that "till such Order is passed by the authority, the service of the Petitioner at HQ DGAR, Shillong shall continue". Accordingly, in deference to the Hon'ble High Court Order dated 19 Jul 2005, the case of the applicant has been reconsidered by the Respondent authority under existing facts and circumstances and in terms of condition of Recruitment Rules of the applicant. The Respondent authority has clearly mentioned in officer's Order dated 26 Oct 2005 (ANNEXURE 12 OF THE OA) that "no posts are available for further absorption of any civilian in the DGAR cadre" therefore he cannot be permanently absorbed in the said DGAR cadre which is different with Unit cadre in all respects. However, considering the ill health of his father and purely on



17 MAY 2005 (VE)

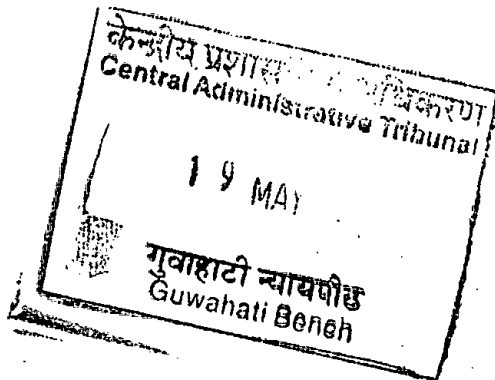
Shillong-793011

deliberate misrepresentation of the facts to misguide this Hon'ble Tribunal. That the contention of the applicant that 'the respondent have absorbed other similarly situated persons at HQ DGAR, Shillong' is totally incorrect and false. In this regard, it is submitted that the intake of civilian clerks both in HQ DGAR and Unit Cadre is totally stopped due to combatisation process of the Assam Rifles, the vacancies arising in HQ DGAR cadre due to wastage on retirement/discharge of civilian clerks are being filled up by combatant clerks. It is further submitted that no absorption of civilian clerks has been carried out due to process of combatisation of HQ DGAR. As a matter of fact, since Oct 1997, no employee of the Assam Rifles Unit Cadre has been permanently absorbed in HQ DGAR.

5. That the contents of Para 5 of the Rejoinder Affidavit are baseless and hence the same are denied. It is respectfully submitted that the averments of the applicant is repetitive and have adequately been commented on Para 1 and 2 of the Rejoinder Affidavit. The averments in this Para are repetition of earlier Paras and reply to averments in Para 1 and 2 supra are reiterated.

6. That the averments made in Para 6 of the Rejoinder Affidavit it is respectfully submitted that the contention of the application is false. He has not been singled out in the course of his posting. All the civilian employees of the Unit Cadre are serving with various units/formations of the Assam Rifles where as he is serving at HQ DGAR for the past 12 years and 05 months. No injustice has been meted out to the applicant as has been contended by the applicant. It is submitted that the applicant in his total 19 years of service has been enjoyed 12 years and 05 months of long tenure at Shillong. As such applicant's contention that applicant is totally discriminated in not considering his case for absorption to DGAR cadre ^{is incorrect.} It is submitted that the question of absorption into DGAR cadre does not arise and the same has also been communicated to him vide Order dated 26 Oct 2005. The rest of the averments made in this Para are nothing but

-94-7



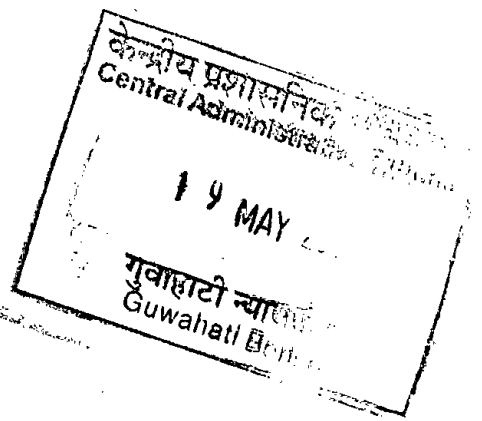
डायरेक्टर
SO. 2 (A)

पञ्चायत निरीक्षण, असम राज्य
Director, Panchayat Supervision, Assam State
दिनांक-19/05/11
Date-19/05/11

repetition of earlier averments and reply to rest of the averments in earlier Paras are reiterated.

7. That in reply to the contents of Paras 7, 8 and 9 are the submissions of the applicant and same do not call for any reply.

8. In view of the facts mentioned herein it is humbly prayed that the present Original Application is not legally sustainable and is liable to be dismissed with cost.

VERIFICATION

I, Lt Col Parameswarappa BG S/o B.T. Govindappa

...aged about 47 years by occupation, Govt service, presently working
as SO 2 (NE) In Headquarters Director

General Assam Rifles, Shillong - 793011.

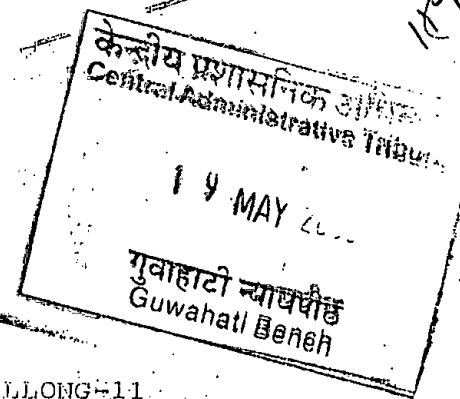
That I am the SO 2 (NE) in Headquarter Director General
Assam Rifles, Shillong and I have received a copy of the petition,
understood its contents, and I am well acquainted with the facts and
circumstances of the case, and sign this verification on behalf of the
respondents.

That the statement made in paragraphs 4 and 6
are true to my knowledge and that in paragraphs
1, 2 and 3 are matters derived from records
and true to my information and knowledge and the rests are my
submission before this Hon'ble Central Administrative Tribunal and I
signed this verification this the day of 14th March 2008, at
Shillong.

Deponent

SO 2 (NE)

परमेश्वरappa बग
Director General Assam Rifles
Shillong-793011
Shillong-793011



DIRECTORATE GENERAL ASSAM RIFLES : SHILLONG-11

ORDER

A/1-A/47-77/Part I

Dated Shillong the 11 Jul 95

1. The following clerical staff are hereby attached with Estt Branch this Directorate for all purpose against the existing vacancy of unit as noted against their names with effective date of attachment:-

- Shri G C Gogoi, UDA - 12 AR 30.6.95
- Shri Surendra Kshir, UDA-20 AR 05.5.95

[Signature]

(G. P. S Bedi)
Col
Dy Director (A)

Copy forwarded to :-

- Estt Branch (Internal)
- HQ Nagaland Range (S)
Assam Rifles
C/O 99 APO
- HQ B Range Assam Rifles
C/O 99 APO
- 12 Assam Rifles
C/O 99 APO
- 20 Assam Rifles
C/O 99 APO
- Q Branch Internal
- Med Branch
- Pers file
- Office copy.

min

certified to be true

[Signature]

Att. to L

सू. जी. 2 (कॉप)
SO 2 (NE)
बहालविदेशाध्य कक्ष राईफल
Directorate General Assam Rifle
शिडॉन-793011
शिडॉन-793011 14/3/08

(9)

- 10 -
Shri Shree...

ANNEXURE - II

ANNEXURE - II

ANNEXURE A-2

120 (113)

Tele No : 705111

Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
Shillong - 793011

Rec(Adm-IV)/Posting/99/24

03 Jun 99

- List - 'A'
- List - 'B'
- List - 'C'
- List - 'E'
- List - 'F'

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal
19 MAY 2000
गुवाहाटी न्यायपीठ
Guwahati Bench

POSTING/TRANSFER : WO(CLK)/UDA

1. Posting/Tr in respect of WO(CLK)/UDA have been finalised by taking into consideration compassionate cases and all other related aspects. Posting from a soft to soft areas have been considered taking into account their past service profile. Posting orders duly approved are ordered as per details given at annex attached to this letter.

2. The mov of all affected staff will be carried out simultaneously as per reporting dates given against each indl. All Rgs HQs/units, whether in hard or soft area will release the indls well in advance so that they can report to their new unit as per date of reporting without awaiting reporting of their relief. Efforts have been made to provide relief. However, vacancy in the HQs/units remaining unfilled will be made up in next lot of posting/granting promotion to feeder rank in due course.

3. No modification, cancellation, retention or holding in obedience of posting issued vide this letter will be entertained.

4. HQ IGAR(W./Ranges/ARTC&S and affected units will render completion report of indls as under :-

Date of reporting

Completion report to be fwd

(a) 30 Jun 99

05 Jul 99

(b) 15 Jul 99

20 Jul 99

(c) 25 Jul 99

31 Jul 99

(d) 01 Aug 99

05 Aug 99

(e) 05 Aug 99

10 Aug 99

(f) 10 Aug 99

15 Aug 99

(g) 15 Aug 99

20 Aug 99

(h) 01 Sep 99

04 Sep 99

5. Please ack and ensure strict compliance.

(K V Nayabrojan)
Maj
Offg Asst Director (R)
for Dy Director (R)

Encl : As above

Copy to :-

List - 'D' - for info and similar action please.

Certified to be true

Att. L

14.3.08

क. व. नयबरोज

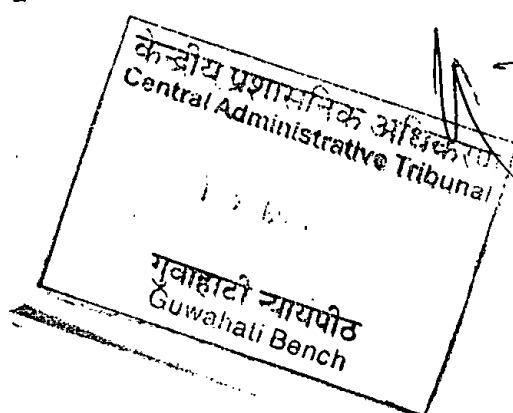
महानिदेशालय असम राईफल

Di. re General Assam Rifles

शिल्लॉन-793011

Telephone-793011

(a)	(b)	(c)	(d)	(e)
31.	C/360582 WO Umesh Jha	2 MGAR	5 AR	15-7-99
32.	C/360280 WO H K Prasad	3 MGAR	8 AR	15-7-99
33.	C/360711 WO S Thakur	4 AR	ARTC&S	15-7-99
34.	C/360509 WO S F Mathur	31 AR	DGAR(A Br)	15-7-99
35.	C/360674 WO N K Deb	31 AR	MR Rg	15-8-99
36.	C/360714 WO K N Joshi	6 AR	DGAR(Q Br)	15-7-99
37.	C/360182 WO K N Gupta	13 AR	ARTC&S	01-9-99
38.	Shri G C Gogoi, UDA	13 AR	ARTC&S	05-8-99
39.	Shri Surendra Kshir UDA	20 AR (Att with DGAR)	13 AR	15-7-99
40.	C/360739 WO GS Gussain	22 AR	ARTC&S	05-8-99
41.	C/360207 WO R B Yadav	12 AR	DGAR(A Br)	15-7-99
42.	C/361208 WO Gopal Ram	12 AR	AC & A Rg	15-7-99
43.	C/360185 WO H R Das	26 AR	3 AR	15-7-99
44.	Shri Basudev Mandal, UDA	26 AR	MLR(N)	15-7-99
45.	C/361031 WO R C Das	27 AR	8 AR	15-7-99
46.	C/360960 WO G Ram	27 AR	3 MGAR	05-8-99
47.	C/360750 WO P S Rautela	23 AR	ARTC&S	15-7-99
48.	C/360722 WO S K Sharma	23 AR	ARTC&S	15-7-99
49.	C/360795 WO S S Datta	23 AR	Tripura Rg	15-8-99
50.	C/360565 WO S N Nair	ARTC & S	Tripura Rg	01-9-99
51.	C/360262 WO H C Pathak	5 DU	27 AR	15-7-99
52.	C/360623 WO S N G Nair	4 DU	DGAR(GS Br)	15-7-99
53.	C/360444 WO K Yasodharan	1 AR	DGAR(Em r Br)	15-7-99
54.	C/360447 WO B K Gogoi	1 AR	ARTC&S	15-7-99
55.	C/360609 WO Umikrishnan	5 AR	31 AR	15-8-99
56.	C/360515 WO K F B Nair	7 AR	9 AR	30-8-99
57.	C/360764 WO R D Sharma	8 AR	DGAR(ORD Br)	15-8-99
58.	C/360637 WO KP Ramchandran Nair	8 AR	Tripura Rg	15-8-99
59.	C/360593 WO G Rajen	7 AR	1 MGAR	15-8-99
60.	C/360156 WO K K Thankachan	9 AR	3 AR	30-6-99
61.	C/360646 WO B K Shill	8 AR	ARTC&S	15-8-99
62.	C/360204 WO Yogeshwar Singh	3 AR	ARTC&S	15-8-99
63.	C/360763 WO R S Yadav	6 AR	29 AR	15-7-99
64.	Shri P K Dutta Guah	10 AR	31 AR	15-8-99
	UDA			



Certified to be true
 14/3/08
 Attested
 को. 2 (क३)
 सु. (६)
 महाप्रबन्धक अवर राईफ
 Director General Asstt Rg
 दिनांक - 33011
 02500-792211

Application for the copy.	Date used for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamp and folios.	Date on which the copy was ready for delivery.	(312) the copy applied
28/5/07	29/5/07	29/5/07 100	29/5/07	29/5/07

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND,
MEGHALAYA, MANIPUR AND TRIPURA)
SHILLONG BENCH
CIVIL APPELLATE SIDE

Appeal from contempt petition No. 118406 of 19
Civil Rule

Smt. Suresh Chandra
u

Appellant

Petitioner

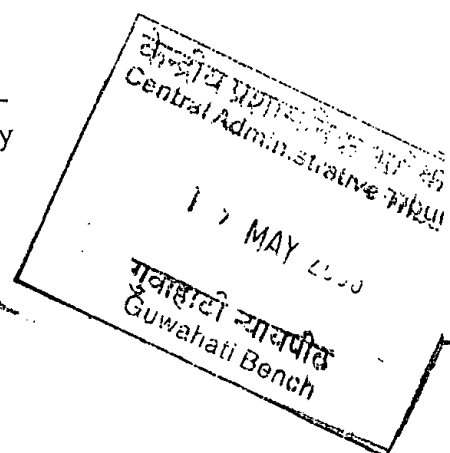
Smt. V. G. Duggal & Co
Versus

Respondent

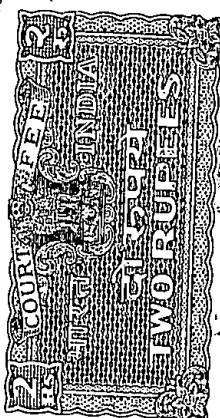
Opposite-Party

For Appellant Mr. H. S. Dhykeho, Advocate
Petitioner Mr. L. Khajuria
Mr. P. Dasgupta
Mr. M. Majumdar

For Respondent Mr. S. Dhyana Ray
Opposite-Party



Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceeding with signatures
1	2	3	4



certified to be true

Att. 14/3/08

को. 2 (एच)
श. 1 (2)
प्रमाणित करने वाले अधिकारी
शिल्लॉग-793011
Shillong-793011

14

102

310
124

COP No. 11(SH)/06

BEFORE
THE HON'BLE MR. JUSTICE HN SARMA
THE HON'BLE MR. JUSTICE BP KATAKEY

28.05.07

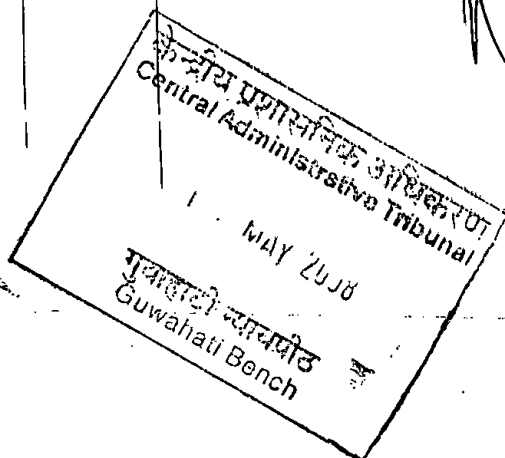
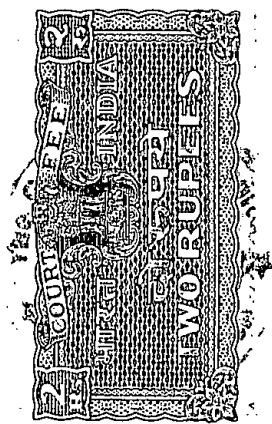
Heard Mr. HS Thangkhiew, learned counsel for the petitioner and Mr. S. Shyam, learned CGC appearing for the Union of India.

Alleging non-compliance of the direction given in the order dated 19.7.05 by this Court in writ petition being WP © No. 143(SH)/02 by the respondents authority, the present contempt petition under Section 12 of the Contempt of Courts Act, 1971 has been initiated by the writ petitioner. In the aforesaid order, the Division Bench of this Court in paragraph 20 directed as follows :

However, in the attending facts and circumstances of the case, we deem it fit and proper to remit the matter back to the Respondent No.2 i.e. the Director General, Assam Rifles, Shillong, Meghalaya. The said authority would consider and take an appropriate decision therein, taking into consideration the observations made above. As the controversy relates to the permanent absorption of the petitioner in the office of the Director General, Assam Rifles, Shillong, it is further order that the Respondent No.2 would pass appropriate order within a period of two months from the date of receipt of the certified copy of this judgment and order. The petitioner is directed to serve a certified copy of this order before the Respondent No.2 within a period of four weeks from the date of passing of this order.

Till such order is passed by the authority, the service of the petitioner at Head Quarter, DGAR, Shillong shall continue."

On receipt of the copy of the present petition, an affidavit-in-opposition on behalf of the respondents has been filed. Referring the statements made therein, Mr. Shyam, learned CGC submits that the order of this Court has been complied with and a speaking order was passed by the concerned authority on 26.10.05. In the said



A.H.L.

को. 1 (क)

80 2 (NE)

वहानि-राख जल राईफल्स

Director General Assam Rifles

शिलांग-783011

Shillong-783011

Noting by Office or Advocate

Date

Office notes, reports, orders, etc. to be prepared
with signature

(209)
125

order, the respondents authority in paragraphs 3 and 4, indicated as follows :

"3. Whereas in the Assam Rifles, civilian clerks are appointed in two cadres i.e., DGAR cadre and unit cadre. The terms and conditions of employment in both cadres are entirely different. Further, due to combatisation of the Force, the civilians staff presently held on the strength of the Force are continuing to hold the said post as personal to them till their superannuation. Accordingly, no posts are available for further absorption of any civilian in the DGAR cadre. Therefore, Shri Surendra Kshir cannot be permanently absorbed in the DGAR cadre.

4. Notwithstanding the same, considering the ill health of his father, who needs constant attendant care, as advised by the medical authorities, purely on humanitarian grounds I, hereby, direct that the individual be permitted to continue to be posted at Shillong to attend to his ailing father for one year. His posting will be reviewed every year from the date of issue of this order and a decision regarding further retention or otherwise will be taken on the basis of medical documents/condition of his father."

The view taken by the respondents authorities leading to pass the aforesaid order, we are of the opinion that the authorities have complied with the order and direction issued by this Court in the aforesaid writ petition. If the petitioner is still aggrieved by the aforesaid order, he may seek proper remedy before the appropriate forum, if so advised. But in the facts and circumstances of the case, we do not find that the present contempt petition is maintainable.

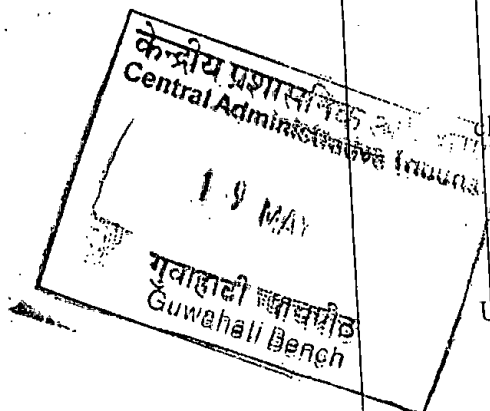
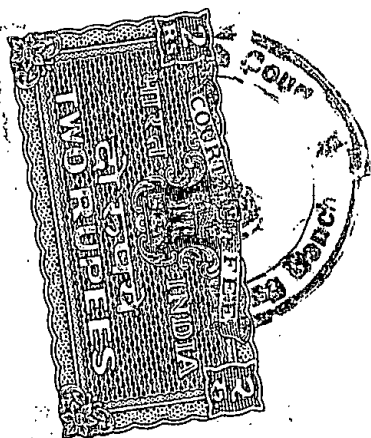
Accordingly, this contempt petition stands

closed.

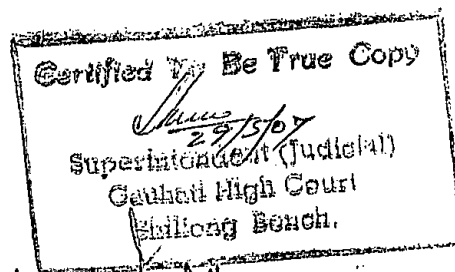
Sd/- B. PRATHEE
JUDGE

Sd/- A. V. S. H. R. S.
JUDGE

Upadhaya.



Typed By.....
Read By.....
Compared By.....



सं. नं. 2 (एक)

S. ()

महान्यायालय असम राईफल्स

Director General Assam Rifles

शिलॉन्ग-793011

Shillong-793011

MAHANIDESHALAYA ASSAM RIFLES

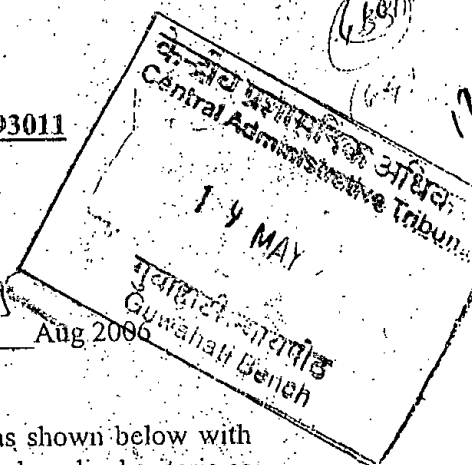
DIRECTORATE GENERAL ASSAM RIFLES SHILLONG - 793011

ORDER

Rec(Adm-FV)/Promotion/251

Dated Shillong, the 23 Aug 2006

ANNEXURE A-4



1. The following clerical staff are hereby temporarily promoted to the rank as shown below with effect from date shown against each individual subject to fulfillment of discipline and medical criteria as mentioned in Appx 'A' to ROI 4/2002:-

S/N	Particulars	Present Pmn/Unit	Date of Promotion	Remarks
-----	-------------	------------------	-------------------	---------

Upper Divisional Assistant (UDA) to Head Assistant

(a)	Smt Shila Chanda, UDA	2 MGAR	To be promoted wef 01 Jan 2006 in situ.	
(b)	Shri Sahar Chandra Kar, UDA	HQ 21 Sect/ 14 AR	To be promoted wef 01 Jan 2006 in situ.	
(c)	✓ Shri Surendra Kshir (ST), UDA	HQ DGAR (UPAO)	To be promoted wef 01 Jan 2006 in situ.	
(d)	Shri Prosanta Mondal (SC), UDA	33 AR/ HQ 21 Sector	To be promoted wef 01 Jan 2006 in situ.	
(e)	Shri Basudev Mondal (SC), UDA	ARTC&S	To be promoted wef 01 Jan 2006 in situ.	
(f)	Shri Ashok Kumar Das (SC), UDA	3 MGAR	To be promoted wef 01 Apr 2006 in situ.	

Hav (Clk) to Nb Sub (Clk)

(g)	361343 Hav (Clk) Purn Singh Jhijariya	HQ 25 Sect	To be promoted wef 01 Aug 2006	
(h)	361344 Hav (Clk) Jagat Singh Sah	4 AR	To be promoted wef 01 Aug 2006	

2. In case any of the above individual is involved in a disciplinary case or placed in low medical category and do not fulfill following discipline criteria, will not be promoted to the aforesaid rank and intimation to this effect will be given to this Directorate for cancellation of promotion order :-

- An individual should not have more than a total of three red ink entries in the entire service, including not more than one red ink entry during last five years.
- No red ink entry has been incurred during last one year.

certified to be true

Lt Col _____

को. नो. 2 (कपी)
अ. (E)

महानिदेशालय असम राईफल
DI. Gen. Hq. Directorate Assam Rifles
शिल्लॉग-793011
कलिंग-793011

3. Option to be exercised within one month from the date of assumption of duty by the individuals for fixation of pay in the new post either straightway from the date of assumption to the new post or from the date of their next increment in the old post vide GID (17) FR-22.
4. Personal occurrences relating to promotion be notified in BRO Part II order allowing them pay and allowances from the date of assumption of duty.
5. The assumption certificate as per Appx K to RO 4/2002 may please be furnished to this Directorate (Adm IV) at the earliest. A copy of the same and option certificate as mentioned in Para 3 above may also be enclosed alongwith the BRO Part II (Doc Group) of this Directorate.
6. Since the latest information regarding discipline and medical criteria is not available in the documents, firms/ests/units are requested to make a fresh check of these aspects before implementing promotion orders in each case. In case any of the above mentioned individuals is found ineligible, Record Branch this Directorate shall be apprised by signal within 72 hours for further clarification.
7. Holding str of Head Assts & Nb Subs of the affected units/firms will be more than the auth due to these promotions. The str is being rationalized separately keeping service/sector profiles of the affected pers in view. Representations on this account be therefore, avoided.
8. Please acknowledge on receipt.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
19 MAY 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

(J S Guleria)
Lt Col
SO-1 (Adm. & Docu)
for DGAR

Forwarded to :-

- HQ IGAR(North)
- HQ IGAR (South)
- HQ 5 Sector
- HQ 9 Sector
- HQ 23 Sector
- HQ 21 Sector
- HQ 25 Sector
- 4 Assam Rifles
- 14 Assam Rifles
- 33 Assam Rifles
- 2 MGAR
- 3 MGAR

c/o 99-APO

सं. २ (२००८)
प्रशासनिक कर्मचारी
Dir. Sec. (Adm. & Docu) E/10
दिनांक - 23/5/08
75021

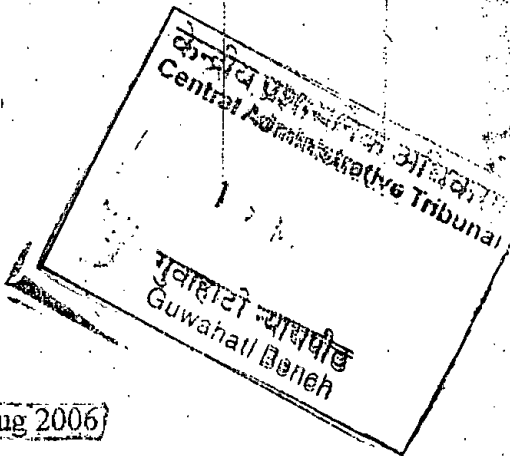
ARTC&S, Dimapur (Nagaland)

HQ DGAR (UPAO)

✓ HQ DGAR (ESH)

OPTION CERTIFICATE

1. I, under the provision of FR-22 (I) (a) (I), read with FR-23 and Govt of India, Ministry of Personnel, Public Grievance and Pension (Department of Personnel & Training), New Delhi letter No. 1/2/88-Esst (Pay-I) dated 25 Mar 1989, do hereby elect to continue in the existing scale of pay of my substantive post until the date of my next increment.
2. The date of my next increment is 01 Sep 2006, raising pay to Rs. 5100/- pm.
3. Existing scale of pay Rs. 4000-100-6000/-



Signature of the individual

No :

Rank : Head Assistant

Name : Shri, Surendra Kshir

Unit : HQ DGAR

Station : Shillong

Dated : 29 Aug 2006

COUNTERSIGNED

29/8/06

खा धाधिकारी
Accounts Officer
यूनिट भेतान और लेखा कार्यालय
Unit-Pay and Accounts Office
महानिदेशालय असम राईफल
Directorate General Assam Rifles
शिल्लॉंग-793011 / Shillong-793011

A.H.K.1

कम. को. 2 (फाई)
801 (A)

महानिदेशालय असम राईफल
Directorate General Assam Rifles
शिल्लॉंग-793011
Shillong-793011