

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

OA 123/08

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BD/11/81/15
SECTION OFFICER (JUDL.)

11.6.2015

8
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application No. 34 of 123/08
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

March 2008 is being considered.

Applicant(s) ... Chandrika Kumari Dey vs Union of India & Ors

Advocate for the Applicant(s) ... M. Chanda, S. N. Bhattacharya

Advocate for the Respondent(s) ... Adv. Case M. I. Ahmed

Isamoo barrister abusid M. I. Ahmed

Notes of the Registry (1) Date Order of the Tribunal

This application is in form
is filed on 11/06/2008 and the service copy is
deposited with IPO/PO on 11/06/2008
No. 39634/296

Dated 11.6.08

11.07.2008 The Applicant (a Superintendent

Registrar of HOC of CWC Organization,
Guwahati) having faced the order of transfer
under Annexure-7 dated 20th June 2008;

Submitted a representation under Annexure-
8 dated 23rd.6.2008. Apprehending transfer,
he also submitted a representation earlier
under Annexure-6 dated 20.6.2008. By filing
of this Original Application under Section

of the Administrative Tribunals Act 1985, the

Applicant has challenged impugned transfer
order (so far it relates to him) on the ground
that the same is an outcome of malafides for
the same was issued in order
to accommodate the Respondents No.5 (in the
post now held by the Applicant) without any
public interest and administrative exigencies.

Contd/-

Contd/-

11.07.2008

The Perusal of impugned transfer order under Annexure-7 dated 20.6.2008 goes to show that the transfer order is to take effect from a future date /31st July, 2008. It also appears from the impugned transfer order under Annexure-7 dated 20.06.2008 and document placed at Annexure-5 dated 19.06.2008 that on the request of the Respondents No.5, the Applicant has been asked to be disturbed under the impugned transfer order.

2. Heard Mr. M.Chanda, learned counsel appearing for the Applicant and Mr. M.U.Ahmed, learned Addl. Standing counsel; on whom a copy of this O.A. has already been served. Mr. M.U.Ahmed, learned Addl. Standing Counsel for Union of India intends to obtain instruction in the matter from the Respondents. He may do so, by 25th July, 2008.

3. Notices be, accordingly, issued to the Respondents, by Speed Post, requiring them to file their reply/written statement/objection by 25th July, 2008. Notices be issued to the rail/air passengers of both India Respondents at the cost of the Applicant.

Mr. M.Chanda, learned counsel appearing for the Applicant undertakes to deposit required postages/cost of the postages in course of the day.

4. Call this matter on 28th July, 2008, when this matter shall be taken up for Admission and for consideration of prayer (made in the O.A.) and for grant of interim orders.

5. Send copies of this order to the Applicant and the Respondents, along with the notices and free copies of this order be supplied to the learned counsel appearing for the parties.

(M. R. Mohanty)
Vice Chairman

Pl. issue Notices to the Respondents at the cost of the Applicant.

Send copies of this order to the Applicants & Respondents for Notices.

Free copies of this order to be supplied to the counsels appearing for the both

Notice & order send to D/Section for issuing to respondents by Speed post AIR at the cost of applicant.

Govt. of India O.A. No. 3098 to 3102

Dt. 11/7/08

Notices be, accordingly, issued to the Respondents, by Speed Post, requiring them to file their reply/written statement/objection by 25th July, 2008. Notices be issued to the rail/air passengers of both India Respondents at the cost of the Applicant.

Mr. M.Chanda, learned counsel appearing for the Applicant undertakes to deposit required postages/cost of the postages in course of the day.

Call this matter on 28th July, 2008, when this matter shall be taken up for Admission and for consideration of prayer (made in the O.A.) and for grant of interim orders.

Send copies of this order to the Applicant and the Respondents, along with the notices and free copies of this order be supplied to the learned counsel appearing for the parties.

By
25.7.08

28.07.2008

Heard Mrs. U. Dutta, learned counsel appearing for the Applicant and Mr. M. U. Ahmed, learned Addl. Standing counsel appearing for the Official Respondents and perused the materials placed on record. Despite notice, no written statement has yet been filed by the Respondents.

Dt. 28.7.08

PL. send copies of this order to the Applicant and to the Respondents in the add. given in OA.

Free copies of the order be handed over to the learned counsels appearing for both the parties.

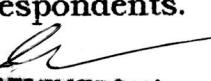
✓
28/7/08

2. Mr. M. U. Ahmed, learned Addl. Standing Counsel states that he has received parawise comments from the Nodal Officer/ Executive Engineer of Middle Brahmaputra Division (of H.O.C/ Guwahati) and that the Official Respondents are in need of one month time to file regular written statement in this case.

3. While allowing the Official Respondents to file their written statement in this case, the impugned order of transfer pertaining to the Applicant (transferring him from H.O.C/ Guwahati to M&A, Guwahati) is stayed ad interim. In the meantime, the Respondents may allow the Respondent No.5 (B.P. Pandey) to join as SE(C) of M&A at Guwahati (on transfer from Silchar); which ad-interim arrangements shall abide by the ultimate decision of the case/ till filing of the written statement(by the Respondents)/ until further orders. While passing these ad-interim orders, liberty is hereby granted to the Respondents to file their written statement at the earliest opportunity and move for vacation/modification of the ad interim orders that has now been passed.

4. Send copies of this order to the Applicant and the Respondents in the address given in the O.A and free copies of the order be handed over to the learned counsel appearing for the both the parties.

5. Call this matter on 28th August, 2008, awaiting written statement from the Respondents.


(KHUSHIRAM)
Member(A)


(M. M. Mohanty)
Vice-Chairman

Copies of order dated 28/7/08 sent to D/Section for issuing to the applicant and to the respondents by post.

And free copies of this order handed over to learned counsel for both the parties.

Copy of D/No. - 3438-3473
DT = 18.8.08

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2010-08-08

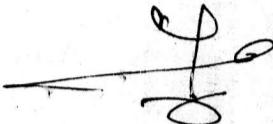
Date of hearing before the learned Counsel for the parties.

W/S Submitted
by the Respondents.

28.08.2008

Heard the learned Counsel for the the parties.

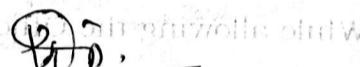
For the reasons recorded separately, this O.A. stands dismissed without being admitted.


[Khushiram]
Member[A]

[M.R. Mohanty]
Vice-Chairman

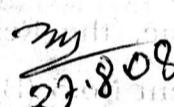
22.8.08

W/S Submitted
by Resp't. Nos. 1, 2 & 3

Copy served. in the aforesaid cm

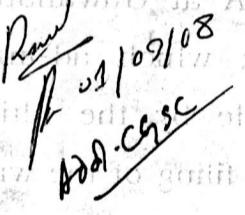
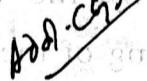


W/S Bileel. in the aforesaid



10.9.08

Copy of the Judgment
Send to the Office
for issue the same to the Appellants
as well as to the Respondents
resp't. nos. 2 & 3 by post, mail and telegraphic
post, or telefax, a/c to the aforesaid dated

or in the aforesaid
to a/c post box A.O. 510 in front of
Court of Law, Dehradoon
dated a/c to the aforesaid

dated a/c to the aforesaid

dated a/c to the aforesaid

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. 123 of 2008

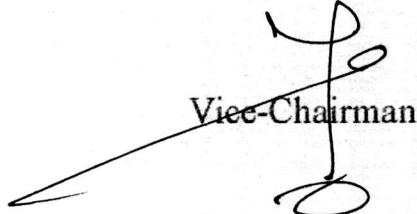
Date of order: the 28th August 2008

Shri Chandra Kumar Lal Das.. Applicant
By Advocates Mr. M.Chanda and Mrs. U. Dutta

Versus
The Union of India & others .. Respondents
By Advocate Mr. M.U. Ahmed, Addl. C.G.S.C.

CORAM: The Hon'ble Shri Manoranjan Mohanty, Vice-Chairman
The Hon'ble Shri Khushiram, Member [A]

1. Whether reporters of local newspapers may be allowed to see the judgment or not? Yes/No
2. Whether to be referred to the Reporters Yes/No
3. Whether to be forwarded for including in the Digest being compiled at Jodhpur Bench and other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No


Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 123 of 2008

Guwahati, this the 28th day of August, 2008

The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
The Hon'ble Mr. Khushiram, Member [Administrative]

Shri Chandra Kumar Lal Das,
Son of Shri Subhadra Lal Das,
Superintending Engineer,
Hydrological Observation Circle,
Central Water Commission
CWC Complex
[Behind Adabari Bus Stand]
Adabari, PO Guwahati University,
Guwahati-781 014.

By Advocates: Mr. M. Chanda
Mrs. U. Dutta

...

Applicant

Versus

1. The Union of India,
Represented by the Secretary
Ministry of Water Resource,
Shram Shakti Bhawan,
New Delhi-110 001.
2. The Chairman,
Central Water Commission,
Govt. of India, Sewa Bhawan,
R.K. Puram, New Delhi-110 066.
3. Chief Engineer,
Central Water Commission,
Brahmaputra and Bark Basin Organisation,
RebekkaVille, Temple Road,
Near Barik Point, Lower Lachumiere,
Shillong-793 001
4. Shri S.K. Choudhuri,
Chief Engineer,
Central Water Commission,
Brahmaputra and Bark Basin Organisation,
Rebekka Ville, Temple road,
Near Barik Point, Lower Lachumiere,
Shillong-793 001.



5. Shri B.P.Pandey,
 Superintending Engineer,
 Meghna Circle,
 Central Water Commission,
 Furkan Mansion Panchyat Road,
 Silchar-788 004, Assam.

Respondents

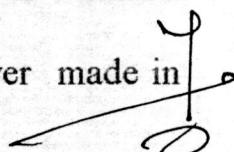
By Advocate Mr. M.U.Ahmed, Addl. C.G.S.C.

O.A.No. 123 of 2008
 ORAL ORDER DATED 28.08.2008

Manoranjan Mohanty, Vice-Chairman:

Applicant; Superintending Engineer of Hydrological Observation Circle of Central Water Commission having headquarters at Guwahati [office located at CWC Complex behind Adabari Bus Stand of Assam]; faced with an order of transfer dated 20.06.2008 [to join as Superintending Engineer of M&B Circle of C.W.C., having headquarters at Guwahati] and the same was to take effect from 31.07.2008 and, by way of filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, he has challenged the said order of transfer.

2. When the matter came up for admission on 11.07.2008, instead of admitting this case, notices were directed to be issued to the Respondents requiring them to file their reply/written statement/objection by 25.07.2008; when the matter was to be taken up for admission and consideration of the interim prayer made in

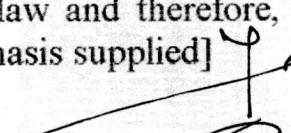


this O.A. Accordingly, notices were issued to the Respondents by Speed Post.

3. When this matter was listed on 25.07.2008, the Respondents, despite receipt of notices, failed to file their written statement/objection and prayed for one month time to file their written statement. While allowing the Respondents, on 28.07.2008, to file their written statement [latest by 28.08.2008] the impugned order of transfer pertaining to the Applicant [transferring him from H.O.C./Guwahati to M&A/Guwahati] was stayed ad interim.

4. The Respondents filed their written statement dated 14.08.2008 [after serving a copy thereof on the Advocate for the Applicant on 14.08.2008] on last 18.08.2008; wherein they have pointed out that by the impugned order of transfer dated 20.06.2008, the Applicant has only been asked to shift his place of posting from one room of the same building to another. It has been stated in para 1.4 of the Preliminary Objection [that has been raised in the said written statement] as follows; -

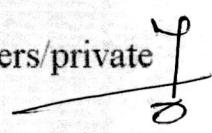
“1.4. That there is no change in the place of transfer of the applicant except that he has to now work on a floor other than the floor he is already working in the same building. The applicant has also not disclosed as to what is the interest he has in continuing on the same post when there is no change in the place and the building. The application of the applicant is more of an emotional outburst than based on facts and merits. Therefore, the application filed by the applicant is nothing but an abuse of process of law and therefore, should be summarily rejected.” [emphasis supplied]



5. It is stated by Mr. M.U. Ahmed, learned Additional Standing Counsel appearing for the Respondents that the Applicant, on facing the impugned transfer, is going from one room of the same office building of CWC Complex [at Adabari Bus Stand] of Guwahati Town to another room of the same building in the same status of SE and as such this is not at all a case even for admission. He also prayed for vacation of the ad-interim order that was passed on 28.07.2008.

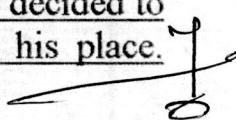
6. In the above premises, we heard Mrs. U. Dutta, learned Counsel appearing for the Applicant and also Mr. M.U. Ahmed, learned Additional Standing Counsel appearing for the official Respondents and also perused the materials placed on record.

7. Applicant has raised a point in this O.A. that, in order to accommodate another Superintending Engineer [who is junior to him/Applicant] named B.P. Pandey [Respondent No.5] at the place of the Applicant, the official Respondents have transferred him [Applicant] from the post of SE [HOC]. In the written statement, the Respondents have pointed out that "in the matter of transfer, the seniority of the officer in the grade in which he is working is not to be considered" and that the Applicant has been asked to face the transfer in question in view of "administrative requirement, exigencies of government work, administrative conveniences, public interest and for better management of the Organisation." The circumstances, leading to issuance of the impugned order of transfer and posting [of the Applicant and the other officers/private



Respondents] on 20.06.2008, has clearly been explained in the written statement filed on 14/18.08.2008 by the Official Respondents; relevant portion of which is extracted below:-

“That Central Water Commission, an attached office of Ministry of Water Resources, Government of India, is an Apex organization in the field of water resources sector. For implementing various schemes and taking up the responsibilities entrusted, it has a number of field organizations all over the country and one such office is called Hydrological Observation Circle situated at Guwahati, which is considered to be one of the bigger field offices in the entire Central Water Commission. It is dealing with hydrological observations, flood forecasting, etc. Also the office of Director [M&A], CWC is situated at Guwahati and is responsible for works of project monitoring and appraisal in all the States in the North East. Both these offices are located at Guwahati in the same building but on different floors. As a policy measure, the transfers/postings in various grades are considered and ordered during the months of April-June every year for which the requests/options from the officers and staff are invited in the months of December-January every year. The rotational transfers are ordered during April-June keeping in view the academic session. During such rotational transfers in the year 2007, the applicant was transferred to Guwahati as SE, HOC, as per his option, he being one of the longest stayees at Delhi. He joined the said post at Guwahati on 12.6.2007. During his incumbency as Superintending Engineer, HOC, Guwahati, it was realized that keeping in view the quantum of work involved in the above Circle, the functioning of the Circle office can be better managed by posting another officer while the services of the applicant could be better utilized at the same place in another unit situated in the same building as Director [Mon], CWC, Guwahati. The matter was considered and discussed at the headquarter office at New Delhi at length with the concerned Member and during the visit of the applicant to the headquarter in the month of May, 2008, he was sounded about his transfer from HOC to Monitoring Unit, CWC, Guwahati. After a decision had been taken in the month of March, 2008 to transfer the applicant from his present posting, it was also decided to find out a substitute who can be posted in his place.



While searching a substitute, the respondents were informed that the respondent No.5, who is already posted in the NE region i.e. Silchar is willing to be transferred to Guwahati as SE, HOC, CWC at his own cost. Accordingly, while considering the rotational transfers, the name of the applicant was considered for transfer from HOC, Guwahati and the request of respondent no.5 was accepted for posting at Guwahati as SE, HOC. Therefore, the above sequence of events shows that a decision to transfer the applicant had already been taken much prior to the request of the respondent No.5. The respondent No.5 was posted, inter alia, due to the reason that he is already posted in the NE region and is well aware about the working conditions in the NE region. [emphasis supplied]

8. In the counter, after giving clear explanations leading to impugned transfer of the Applicant, the Respondents also proceeded to submit as under:-

“It is respectfully submitted that it is the prerogative of the organization to utilize the manpower available at its command in the best possible manner to serve the public interest and the overall interest of the works and the organization.”

9. Mrs. Dutta, appearing for the Applicant, raised a point that since no T.A. etc. are being paid to the Respondent No.5 in the impugned transfer order, it is presumed that his representation under Annexure-5 dated 19.06.2008 submitted at the last moment led to disturbing the Applicant from the present post. Mr. M.U. Ahmed, appearing for the Respondent Department, pointed out that decision to shift the Applicant from present post was taken long back, for which he [Applicant] was sounded during May 2008 [when he visited the Hqrs. of CWC] and that since the Respondent No.5

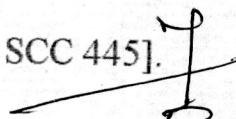
was willing to be posted at Guwahati, a written consent was obtained from him [Respondent No.5] to post him in the place of the Applicant. In fact, the Applicant has disclosed in the O.A. that he was sounded during May 2008 to be shifted from the present place of posting. The Respondent also explained as to why the word "own-cost" was used in the impugned transfer order. Relevant portion of the written statement reads as under:-

"It is also respectfully submitted that the transfer of those officers who have completed their prescribed tenure [2 years in the case of North East and 3 years in the case of other regions] are made in public interest. In all other cases, the transfers ordered at the request of the transferee officers are treated as 'own cost'. For the sake of clarification it is submitted that the officers who are transferred in public interest are paid admissible TTA and allowed joining time, as per the rules. In the case of transfers 'at own cost', the government servant is neither entitled for TTA nor the joining time. Therefore, the term 'own request' or 'own cost' has no other meaning than the one explained above."

10. The stand of the Applicant that 'in order to accommodate another officer [Respondent No.5] at his place, he has faced transfer and that amounts to mala fides' is not sustainable on fact as explained & discussed in the foregoing paragraphs. That apart, law is well settled in the case of *Shilpi Bose and others v. State of Bihar & others* [reported in AIR 1991 SC 532], wherein the Hon'ble Apex Court held that "**where a competent authority issues transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered with by the Court merely because the transfer orders were passed on the**"

request of the employees concerned". In the said case of Shilpi Bose [supra] the Hon'ble Supreme Court proceeded to say that the 'Courts should not interfere with transfer orders which are made in public interest and for administrative reasons, unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide.' In the said case, the Hon'ble Apex Court recorded further that "A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of the executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

11. That apart, law is well settled that "transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules or in grounds of mala fides." [Ref. Union of India v. H.N. Kirtania; reported in [1989] 3 SCC 445].



12. In view of the above ^{noted} explanations supplied in the written statement of the Respondents, there are no question of any mala fides in the impugned transfer order dated 20.06.2008

13. In the case of Rajendra Roy v. Union of India and another [reported in AIR 1993 SC 1236] the Hon'ble Supreme Court of India held that "**It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post, an order of transfer is a normal consequence and personal difficulties are matters for consideration of the Department.**" In the case of Union of India v. N.P. Thomas [reported in AIR 1993 SC 1605] it was clearly held by the Apex Court that a Government servant holding a transferable post has no vested right to remain in one station and cannot claim as a matter of right to be posted in a particular place. In the case of Abani Kanta Ray v. State of Orissa and others [reported in 1995 Supp [4] SCC 169] it was held that "**It is a settled law that a transfer is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or violative by mala fides or infraction of any professed norm or principle governing the transfer.** The Transfer



of the Additional Registrar of the Cuttack Bench of the Orissa Administrative Tribunal being, on facts, in public interest, there was no permissible ground available to the Tribunal for quashing the same. The Division Bench of the Tribunal which quashed the said transfer on the ground of malice of the Chairman of the Tribunal did so against the material on record and the facts beyond controversy which borders on judicial impropriety." In the case of State of Madhya Pradesh and another v.S.S. Kourav and others [reported in AIR 1995 SC 1056] it was held that "**The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation.** When, as in this case, the transfer order is issued on administrative grounds the Court cannot go into the expediency of posting an officer at a particular place." In the case of Union of India and others v. Janardhan Debanath and Another [reported in [2004] 4 SCC 245], the Hon'ble Supreme Court held that "**Transfers unless they involve any such adverse impact, or visit the persons concerned with any penal consequences, are not required to be subjected to same type**

of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.” In the case of Kendriya Vdyalaya Sangathan v. Damodar Prasad Pandey and others [reported in [2007] 2 SCC [L&S] 596], it was held that “Transfer is an incidence of service. Who should be transferred and posted where, is a matter for the administrative authority to decide. Unless the order of transfer is shown to be clearly arbitrary or vitiated by mala fides or is made in violation of any operative guidelines or rules governing the transfer the courts should not ordinarily interfere with it.”

14. In the case of State of U.P. and others v. Gobardhan Lal [reported in 2005 SCC [L&S] 55], it was held that “the order of transfer made even in transgression of administrative guidelines cannot also be interfered with as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

In the said case of Gobardhan Lal [supra], the Apex Court examined the case of transfers of Government servants and proceeded to hold as under:-

“8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular

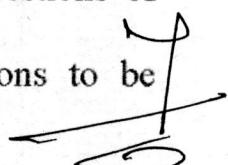
place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision [an Act or Rule] or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer polices at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable lights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

10. The very questions involved, as found noticed by the High Court in these cases, being disputed questions

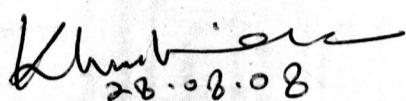
of facts, there was hardly any scope for the High Court to generalize the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write-ups in journals or newspaper reports, conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the in-built powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities affecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalized directions as have been given by the Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously Courts endeavour to safeguard the rights of parties."

15. In the case in hand, the allegation of mala fides, on the face of the explanations furnished by the Respondents, is not sustainable. Applicant having faced a transfer from one floor of the same building located at Guwahati to another, there are no questions of violation of any statutory rules or executive instructions to be

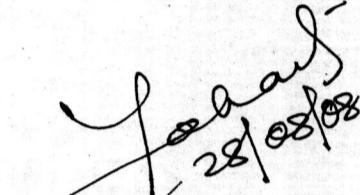


examined by this Tribunal. There are no scope also to examine the matter as we are not the Appellate Forum.

16. In the aforesaid premises, this case is dismissed without being admitted. Ad interim order passed on 28.07.2008, as a consequence, stands vacated. No costs.


28.08.08

[Khushiram]
Member [A]


28/08/08

[Manoranjan Mohanty]
Vice-Chairman

cm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 123 /2008

Shri Chandra Kumar Lal Das

-Vs-

Union of India and Others

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

12.06.1989- Applicant initially joined in the department of Central Water Commission (for short CWC) as Assistant Director and was posted in the Design and Research Wing of CWC, New Delhi.

01.01.2006- Shri B.P. Pandey, Respondent No. 5, is junior to the applicant as per seniority list of the Central Water Engineering (Gr. A) Service (as on 01.01.2006).
(Annexure- 9)

June, 2006- Applicant was promoted to the Director level in June 2006 and again posted in the River Management Wing, CWC, New Delhi.

12.01.2007- Applicant submitted his option for transfer at Guwahati or Shillong.
(Annexure- 1)

07.05.2007- Applicant was transferred and posted from the River Management Wing, CWC, New Delhi to the Hydrological Observation Circle (for short HOC), CWC, Guwahati as Superintending Engineer.
(Annexure- 2)

12.06.2007- Applicant joined as Superintending Engineer at HOC, CWC, Guwahati.
(Annexure- 3)

02.01.2008- Ministry of Water Resources, CWC issued guidelines regarding rotational transfers. In the said office memorandum it is stated that Officers in the rank of Directors/Superintending Engineer who have completed/will complete a tenure of two years in N.E Region by 31.07.2008 may exercise their option for specific places but not specific office.
(Annexure- 4)

19.06.2008- Shri B.P. Pandey (respondent No. 5) in his letter addressed to the Chairman, CWC, New Delhi expressed his willingness for transfer at HOC, CWC, Guwahati at his own interest. Said letter was written by the respondent No. 5 with attention to the Chief Engineer, B&BBO, CWC, Shillong Camp at New Delhi.
(Annexure- 5)

20.06.2008- Applicant in his letter addressed to the Chairman, CWC, New Delhi expressed his views regarding transfer and posting of Superintending Engineer/Director level officers. In the said letter applicant stated that any transfer of the officer in the intervening

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period (particularly during monsoon period) in a work unit like HOC, Guwahati) has extremely ~~detimental~~ implications in relation to the ongoing works and also the spirit of the concerned unit. Such a transfer could be considered in exceptional situations arising due to personal emergency or proven incompatibility of the concerned officer with the related works. (Annexure- 6)

20.06.2008- Under Secretary (E.I), Govt. of India, CWC, New Delhi issued impugned office order of transfer/posting, whereby applicant is sought to be transferred from the office of HOC, Guwahati to M&A, Guwahati vice one Sri B.P. Pandey at the request of Shri B.P. Pandey. Impugned order of transfer and posting will take effect from 31.07.08.

(Annexure- 7)

It would be evident from the impugned order dated 20.06.08, that one Sri Lalit Kumar has been ordered for transfer and posting from M&A, Guwahati to SE (C) YBO, New Delhi w.c.f. 31.07.08, as a result the post of Superintending Engineer in M&A Division, Guwahati is going to fall vacant w.c.f. 31.07.08 and this fact is well known to respondent No. 2 and 3. But in spite of having such knowledge of resulting vacancies in the cadre of SE, the respondent No. 2 vide impugned order dated 20.06.08 has sought to remove the present applicant from HOC Division, Guwahati only in order to entertain the request of respondent No. 5 who had expressed his desire for posting as S.E. HOC, Guwahati at the instigation of respondent No. 3. As such the impugned order dated 20.06.08 so far the applicant is concerned has been issued not in public interest but with a malafide intention to accommodate respondent No. 5 in the place of the applicant for some undisclosed reason. Moreover, the impugned transfer and posting order has also been issued in violation of O.M dated 02.01.08. Hence the impugned order dated 20.06.08 is liable to be set aside and quashed so far the applicant is concerned.

23.06.2008- Applicant submitted his representation addressed to the Chairman, CWC, New Delhi with the request to reconsider his transfer and posting. It is also stated by the applicant that his transfer may have been designed to serve/suit certain personal interest/convenience rather than the public interest through the replacement of him of the post of SE, HOC, Guwahati by the incumbent of the post of SE, Meghna Circle, as such he stated that consequence of such transfer is highly prejudicial to the dignity and self respect of him. (Annexure- 8)

Applicant in support of his contention in the O.A relies upon judgment and order dated 21.12.2006 passed in O.A. No. 253 of 2006 by the learned CAT, Jodhpur Bench (reported in Swamysnews page 77) and also the judgment and order dated 17.09.2007 passed in WP (C) No. 176 (SH) of 2007 by the Hon'ble Gauhati High Court (Shillong Bench). (Annexure- 10 and 11)

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PRAYERS

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Guwahati Bench

1. That the Hon'ble Tribunal be pleased set aside and quash the impugned Office order bearing No. 22012/1/2007-Estt.I dated 20.06.2008 (Annexure-7) so far the applicant is concerned.
- 8.2 Costs of the application.
- 8.3 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

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

- 9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned Office order bearing No. 22012/1/2007-Estt. I dated 20.06.2008 (Annexure-7) so far the applicant is concerned till disposal of the 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.

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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. 123 /2008

Shri Chandra Kumar Lal Das : Applicant.

-Versus-

Union of India & Ors. : Respondents.

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Filed By: -
The Petitioner
Through: -

(Shri M. Dutta
Advocate)

Date: 10.07.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

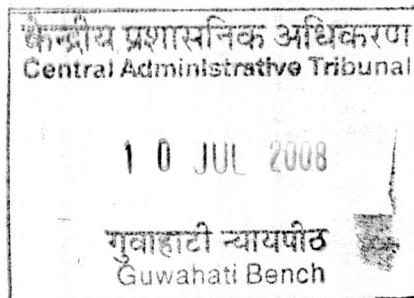
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 123 /2008

BETWEEN:

Shri Chandra Kumar Lal Das,
 Son of Shri Subhadra Lal Das,
 Superintending Engineer,
 Hydrological Observation Circle,
 Central Water Commission
 CWC Complex
 (Behind Adabari Bus Stand)
 Adabari, P.O- Guwahati University, Guwahati- 781014.

-----Applicant.

-AND-

1. The Union of India,
 Represented by the Secretary
 Ministry of Water Resource,
 Shram Shakti Bhawan,
 New Delhi- 110 001.
2. The Chairman,
 Central Water Commission,
 Govt. of India, Sewa Bhawan,
 R.K Puram, New Delhi- 110 066.
3. Chief Engineer,
 Central Water Commission,
 Brahmaputra and Barak Basin Organisation,
 Rebekka Ville, Temple Road,
 Near Barik Point, Lower Lachumiere,
 Shillong- 793001.
4. Shri S.K. Choudhuri,
 Chief Engineer,
 Central Water Commission,
 Brahmaputra and Barak Basin Organisation,
 Rebekka Ville, Temple Road,
 Near Barik Point, Lower Lachumiere,
 Shillong- 793001.
5. Shri B.P. Pandey,
 Superintending Engineer,
 Meghna Circle,
 Central Water Commission,
 Furkan Mansion, Panchyat Road, Silchar- 788004, Assam.

..... Respondents.

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गुवाहाटी न्यायपीठ
Guwahati Bench

DETAILS OF THE APPLICATION

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

This application is made against the impugned Office order bearing No. 22012/1/2007-Estt.I dated 20.06.2008 (Annexure- 7) whereby the applicant is sought to be transferred and posted from the Office of the Hydrological Observation Circle, Guwahati to the M&A, Guwahati just after completion of one year with a malafide intention to accommodate respondent No. 5 on his own request without any public interest in place of the applicant and also in violation of transfer guideline issued through Office Memorandum dated 02.01.2008.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

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

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant initially joined in the department of Central Water Commission (for short CWC) on 12.06.1989 as Assistant Director and was posted in the Concrete Masonry Dam Design Directorate, North and West, in the Design and Research Wing of CWC, New Delhi and after working for four years he was deputed to the Water Resources Development Training Centre, University of Roorkee for Master's Degree in Water Resources Development. After completion of Masters Degree in Water Resource Development applicant joined River Management Wing and worked as Deputy Director for about four years in Flood Control

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Application Directorate for three months, and in the Planning and Development Directorate for the remaining portion. In November 1999, applicant was selected for the on-the-job training at Danish Hydraulic Institute (DHI), Denmark for a period of eight weeks for the development of mathematical modeling for inflow forecasting in the Chambal Basin (Gandhi Sagar Reservoir). After successfully completing the modeling assignment at DHI applicant was deputed to Jaipur for setting up the model. Thereafter applicant was transferred to the Indus Wing of the Ministry of Water Resources in November 1999 as Deputy Commissioner mainly responsible for Indo-Pakistan negotiation in connection with the implementation of the Indus Water Treaty 1960 and worked in the Ministry of Water Resources up to June 2006 and was deeply involved in almost all the Commission-level and Secretary-level discussions including Neutral Expert proceeding to resolve the differences that had arisen between India and Pakistan on the design aspects of Baglihar Hydroelectric Project on the Chenab river in Jammu and Kashmir. During the process of Expert determination for the resolution of differences on the Baglihar Hydroelectric Project applicant visited a number of countries including Switzerland (Geneva), England (London), France (Paris) where the meetings were conducted under the auspices of World Bank. However, applicant was promoted to the Director level in June 2006 and he was again posted in the River Management Wing and worked there till his transfer as Superintending Engineer, Hydrological Circle, CWC, Guwahati on 07.05.2007.

4.3 That the applicant while working as Director in the Planning and Development Directorate, CWC, New Delhi he submitted his option for transfer at Guwahati or Shillong vide his letter dated 12.01.2007. Accordingly vide office order bearing No. A-22012/1/2007-Estt.I dated 07.05.2007 he was transferred and posted from the River Management Wing, CWC, New Delhi to the Hydrological Observation Circle (for short HOC), Central Water Commission, Guwahati as Superintending Engineer. Accordingly applicant joined as Superintending Engineer at HOC, Guwahati on 12.06.2007.

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Copy of the letter dated 12.01.07 office order dated 07.05.07
and letter dated 18.06.07 are enclosed herewith and marked
as Annexure- 1, 2 and 3 respectively.

4.4 That it is stated that the Ministry of Water Resources, Central Water Commission issued Office Memorandum bearing No. A-22012/1/2007-Estt.I dated 02.01.2008 issued guidelines regarding rotational transfers. In the said office memorandum it is stated that Officers in the rank of Directors/Superintending Engineer and Deputy Director/Executive Engineer and employees who have completed/will complete a tenure of two years in N.E Region by 31.07.2008 may exercise their option for specific places but not specific office. All others are allowed to indicate only their choice region (the jurisdiction of Chief Engineer in the field) to which they desire to be transferred. In case transfer is required to places within the same region, officers at the level of Assistant Director/AEE and below may send their choices to the concerned Chief Engineer and they need not send the same to CWC headquarters. It is stated that from the office memorandum dated 02.01.08 it is evident that Officers in the rank of Directors/Superintending Engineer and Deputy Director/Executive Engineer and employees who have completed/will complete a tenure of two years in N.E Region by 31.07.2008 may exercise their option for specific places but not specific office.

Copy of the office memorandum dated 02.01.08 is enclosed
herewith and marked as Annexure-4.

4.5 That the respondent No. 5 vide his letter bearing No. MC/PF-199/2008/869 dated 19.06.2008 addressed to the Chairman, Central Water Commission, New Delhi with attention to the Chief Engineer, B&BBO, CWC, Shillong Camp at New Delhi expressed his willingness for transfer at HOC, CWC, Guwahati at his own interest. In the said letter respondent No. 5 stated that the matter was discussed with the Chief Engineer, B&BBO, CWC, Shillong on 18 and 19.06.2008 and his letter dated 19.06.2008 is as follow up to the discussion with him. It is stated that from the letter dated 19.06.08 it is evident that the respondent No. 5 in collusion with respondent

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Guwahati Bench

No. 3 has placed his choice of transfer at HOC, CWC, Guwahati to the Chairman, CWC, New Delhi whereas in the O.M dated 02.01.2008 the Ministry of Water Resources has specifically stated that Officers in the rank of Directors/Superintending Engineer may exercise their option for specific places but not specific office. As such the request of respondent No. 5 to the Chairman for his transfer at a specific office i.e. HOC, CWC, Guwahati against a specific post is clear violation of O.M dated 02.01.08 that too at the instance of respondent No. 3. It is also stated that respondent No. 3 knowing fully well that the respondent No. 5 has been posted at Silchar only six months back and the applicant has just completed one year at HOC, CWC, Guwahati but most surprisingly has given his consent to respondent No. 5 for placing his request for transfer at HOC, Guwahati. Moreover, in his letter dated 19.06.08, the respondent No. 5 made attention of respondent No. 3 who was camp at New Delhi, as such it appears that respondent No. 3 at New Delhi was pursuing transfer of respondent No. 5 at HOC, Guwahati in place of the applicant for the reason best known to him.

Copy of the letter dated 19.06.08 is enclosed herewith and marked as Annexure- 5.

4.6 That the applicant vide his letter bearing F. No. HOC/CAU/PF-1013/2241-46 dated 20.06.2008 addressed to the Chairman, CWC, New Delhi expressed his views regarding transfer and posting of Superintending Engineer/ Director level officers. In the said letter dated 20.06.08, applicant stated that the Secretary, CWC had informally asked the views of the applicant regarding transfer of the Superintending Engineer, HOC, Guwahati to M&A Directorate, Guwahati to which applicant stated that he could handle the pressure of the HOC works despite extreme stresses. In his letter applicant also stated that subsequent to his joining as SE in HOC, Guwahati on 12.06.07 which is a specialized unit with the requirement of specific technical expertise a reasonable time is generally supposed to be utilized by the officer in the process of acquainting himself with the new set up and associated works, staff/officers/employees to develop site-specific skills/expertise and knowledge of relevant codal procedures, regulations,

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Guwahati Bench

manuals etc. After this initial building up phase, the efficiency and quality of works in the concerned unit further enhances. It is also stated by the applicant in his representation dated 20.06.08 that any transfer of the officer in the intervening period (particularly during monsoon period in a work unit like HOC, Guwahati) has extremely detrimental implications in relation to the ongoing works and also the spirit of the concerned unit. Such a transfer could be considered in exceptional situations arising due to personal emergency or proven incompatibility of the concerned officer with the related works. As such the applicant requested that any such transfer, if in the offing, may kindly be considered after suitable consultation with the concerned officer (s) and due substantiation of the associated facts so as to eliminate any possibility of adverse impact on the concerned unit and injustice to the concerned officer in terms of his professional health/dignity and psychological/emotional disturbances likely to be caused will be avoided. It is also stated by the applicant in his letter dated 20.06.08 that such kind of consultation is also essential to rule out the scope of any considerations other than reasonably well established facts and consequently having potential sensitive implications.

Copy of the representation dated 20.06.08 is enclosed herewith and marked as Annexure- 6.

4.7 That the applicant while completed just one year out of his fixed two years tenure at N.E. Region in terms of O.M dated 14.12.1983, 01.12.1988 and 22.07.98 as Superintending Engineer, HOC, Guwahati, the Under Secretary (E.I), Govt. of India, CWC, New Delhi vide impugned letter No. 22012/1/2007-Estt.I dated 20.06.2008 issued one office order of transfer/posting of officers. In the said impugned office order name of the applicant appeared at Sl. No. 7 and he has been sought to be transferred from the office of HOC, Guwahati to M&A, Guwahati vice one Sri B.P. Pandey, placed at Sl. No. 8. It is stated that in the said impugned office order it is shown that Shri B.P. Pandey has been transferred at own cost and his transfer at HOC, Guwahati is not in public interest but at his own request. It is relevant to mention here that Shri B.P. Pandey is junior to the applicant and he is now sought to be accommodated at HOC, CWC.

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Guwahati Bench

Guwahati replacing the applicant without any justifiable reason that too at the request of Shri B.P. Pandey. It is also stated that the applicant while functioning as Superintending Engineer at HOC, Guwahati for last one year only, as such replacement of the applicant by a junior officer that too at his own request smacks malfide since the said transfer of the applicant from HOC, Guwahati does not involve any public interest but at the request of Shri B.P. Pandey for undisclosed reasons. It is stated that the impugned transfer order dated 20.06.08 will be affected on 31.07.2008, as such the applicant is working as Superintending Engineer till filing of the Original Application.

It is also stated that Shri B.P. Pandey made his request for his transfer at HOC, CWC, Guwahati vide his letter dated 19.06.08 for certain undisclosed reasons at the instance of the Chief Engineer, B&BBO, CWC, Shillong, who was camp at New Delhi at that relevant point of time and most surprisingly in the very next day the impugned order dated 20.06.08 was issued transferring Shri B.P. Pandey at HOC, CWC, Guwahati in the place of the applicant. As such it can rightly be concluded that the impugned transfer order dated 20.06.08 has been issued at the instance of the respondent No. 3 with a malfide intention just in order to accommodate the respondent No. 5 at HOC, CWC, Guwahati in place of the present applicant on extraneous consideration without any reasons or without any public interest. As such the impugned order dated 20.06.08 is liable to be set aside and quashed so far the applicant is concerned.

Copy of the impugned office order dated 20.06.08 is enclosed herewith and marked as Annexure-7.

4.8 That it is stated that on a mere reading of the impugned order dated 20.06.2008, it would be evident that one Sri Lalit Kumar has been ordered for transfer and posting from M &A, Guwahati to SE (C) YBO, New Delhi w.e.f. 31.07.2008, as a result the post of Superintending Engineer in M&A Division, Guwahati is going to fall vacant w.e.f. 31.07.08 and this fact is well known to respondent No. 2 and 3. But in spite of having such knowledge of resulting vacancies in the cadre of SE, the respondent No. 2 has issued the impugned transfer and posting order dated 20.06.08,

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seeking removal of the present applicant from HOC Division, Guwahati only in order to entertain the ^{गुवाहाटी न्यायपीठ} request of respondent No. 5 who had expressed his desire for posting as S.E. HOC, Guwahati at the instigation of respondent No. 3.

On a mere reading of the impugned order dated 20.06.2008, it appears that since the respondent No. 5 has made a request to get a posting in HOC, Guwahati and accordingly in order to comply with his desire for certain undisclosed reasons. It is further stated that the impugned order dated 20.06.08 so far the applicant is concerned has been issued without any public interest, as such the same is liable to be set aside and quashed.

4.9 That it is stated that in the office memorandum dated 02.01.08 it has been specifically stated that Officers in the rank of Directors/Superintending Engineer and Deputy Director/Executive Engineer and employees who have completed/will complete a tenure of two years in N.E Region by 31.07.2008 may exercise their option for specific places but not specific office whereas from the impugned office order dated 20.06.08 it is evident that applicant is sought to be replaced from the office of HOC, Guwahati at the request of Sri B.P. Pandey, which is clear violation of office memorandum dated 02.01.08. Moreover, the transfer and posting of the applicant vide impugned office order dated 20.06.08 has been issued not in public interest rather it has been issued at the instance of respondent No. 3 with extraneous consideration in order to comply with the request of Sri B.P. Pandey. As such the impugned office order dated 02.01.08 is malafide, arbitrary, illegal and the same is liable to be set aside and quashed so far the applicant is concerned.

4.10 That the applicant after receipt of the impugned office order dated 20.06.2008 submitted his representation on 23.06.2008 addressed to the Chairman, CWC, New Delhi with the request to reconsider his transfer and posting. It is also stated by the applicant that his transfer may have been designed to serve/suit certain personal interest/convenience rather than the public interest through the replacement of the post of SE, HOC, Guwahati by the incumbent of the post of SE, Meghna Circle, as such he stated that consequence of such transfer is highly prejudicial to the dignity

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Guwahati Bench

and self respect. More so when the transfer and posting of respondent No. 5 is made for certain undisclosed reasons without having any public interest.

Copy of the representation dated 23.06.08 is enclosed herewith and marked as Annexure- 8.

4.11 That it is stated that the respondent No. 5 is junior to the applicant, which is evident from the Seniority list of Central Water Engineering (Gr. A) Service (as on 01.01.2006) and the way in which the applicant is sought to be replaced by the respondent No. 5, is highly derogatory to the applicant and the manner in which request of the respondent No. 5 has been entertained by the Chairman, CWC at the instance of respondent No. 3 is highly objectionable and the same is liable to be interfered by this Hon'ble Tribunal.

Copy of the extract of seniority list as on 01.01.06 is enclosed herewith and marked as Annexure- 9.

4.12 That the applicant begs to state that during the entire existence of HOC, CWC, Guwahati for more than 34 years since 28.03.1973 this is the first instance when the incumbent Superintendent Engineer has been transferred during his tenure without his knowledge that too before completion of his tenure. It is also stated that the applicant during his posting at HOC, Guwahati he has also held additional charge of the Meghan Circle, Silchar for a period of more than 4 months apart from the additional work of Monitoring and Appraisal Directorate, CWC, Guwahati time to time as per the order of the competent authority during the completed period of one year out of his stipulated tenure of two years in N.E. Region. It is also stated that the monsoon, 2008 is going on and there is a need to be extremely vigilant during this period to save lives and properties in flood effected areas by way of efficient flood forecasting wherever possible. The responsibility of Superintending Engineer, HOC, CWC, Guwahati is extremely critical and the change of Superintending Engineer at this point of time by the respondent No. 5 shall serve no public interest rather it will disrupt smooth functioning of the duties and

Chandra Kumar Lal Das

10 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

responsibilities of the HOC, CWC, Guwahati. It is relevant to mention here that the respondent No. 5 was posted at Silchar only about 6 months back.

4.13 That it is stated that the impugned order of transfer/posting dated 20.06.2008 is not passed in the administrative exigency or in urgency or in public interest, so far the applicant is concerned rather it has been issued just in order to accommodate respondent No. 5 in the place of applicant in a most arbitrary manner, as such the impugned order dated 20.06.08 is liable to be set aside and quashed so far the applicant is concerned. It is pertinent to mention here that there is no public interest involved in replacing the applicant from the post of Superintending Engineer, HOC, CWC, Guwahati by the respondent No. 5, therefore Hon'ble Court be pleased to set aside and quash the impugned order of transfer dated 20.06.2008 so far the applicant is concerned.

4.14 That it is stated that Shri S.K. Choudhuri, Chief Engineer, Central Water Commission, Brahmaputra and Bark Basin Organisation has been impleaded as private respondent No. 4 since the applicant is sought to transferred from the post of Superintending Engineer, HOC, Guwahati at the instance of Shri S.K. Choudhuri, Chief Engineer in collusion with respondent No. 5.

4.16 That the applicant in support of his contention in the instant Original Application relies upon the judgment and order dated 21.12.2006 passed in O.A. No. 253 of 2006 (M.A. Qureshi Vs. The Commissioner of KVS and another) by the learned CAT, Jodhpur Bench (reported in Swamysnews page 77) and the judgment and order dated 17.09.2007 passed in WP (C) No. 176 (SH) of 2007 (Andrew Banrilang Umdor - Vs- State of Meghalaya & Ors.) by the Hon'ble Gauhati High Court (Shillong Bench).

Copy of the judgment dated 21.12.06 and judgment dated 17.09.07 are enclosed herewith and marked as Annexure- 10 and 11 respectively.

Chandra Kumar Lal Das

1.0 JUL 2008

गुवाहाटी न्यायालय
Guwahati Bench

4.15 That the applicant states that he has no other alternative than to approach this Hon'ble Tribunal, as such the Hon'ble Tribunal be pleased to stay operation of the impugned order dated 20.06.08 till disposal of the Original Application as an interim measure and further be pleased to set aside the impugned order dated 20.06.2008 so far the applicant is concerned.

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

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

5.1 For that, the impugned transfer order dated 20.06.2008 has been issued not in public interest but in order to accommodate the respondent No. 5 at his own request in place of the applicant for undisclosed reasons with a malafide intention at the instance of the respondent No. 3.

5.2 For that, there is no urgency or administrative exigency or public interest in effecting the impugned transfer order dated 20.06.08 so far the applicant is concerned rather it has been issued just in order to accommodate the respondent No. 5 in place of the applicant, who is junior to the applicant in the cadre of S.E. in violation of professed norms.

5.3 For that, the way in which the applicant is sought to be replaced by the respondent No. 5 vide impugned transfer order dated 20.06.08 is highly arbitrary, unreasonable and ex-facie illegal.

5.4 For that, applicant has served only one year at the post of SE, HOC, Guwahati out of his fixed tenure of 2 years in NE Region and he has been sought to be transferred and posted vide impugned order dated 20.06.08 just in order to accommodate the respondent No. 3, which smacks malafide.

5.5 For that, the respondent No. 5 has served for only six month at Silchar and he has been sought to be accommodated at HOC, CWC, Guwahati at his own request in place of the applicant without any public interest but at the instance of respondent No. 3.

Chandra Kumar Lal Das

5.6 For that, the impugned transfer order dated 20.06.08 so far the applicant is concerned is liable to be set aside and quashed since there is no administrative exigency involved in issuing the impugned transfer order dated 20.06.08.

5.7 For that, in spite of a vacancy in the cadre of S.E. which is going to be occurred o 31.07.2008, due to transfer of Shri Lalit Kumar from Guwahati to New Delhi, but even than in order to entertain the request of the applicant, the impugned order of transfer and posting order dated 20.07.2008, has been liable to be set aside and quashed.

5.8 For that professed norms cannot be violated just at the whims and fancy of an officer, who is junior to the applicant in the matter of transfer and posting.

5.9 For that the impugned order of transfer and posting dated 20.06.2008 is highly arbitrary, illegal and the same is issued with a malafide intention for undisclosed reasons.

6. Details of remedies exhausted.

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

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

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

8. Relief (s) sought for:

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

Chandra Kumar Lal Das

10 JUL 2008

गुवाहाटी न्यायपीठ

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

- 8.1 That the Hon'ble Tribunal be pleased set aside and quash the impugned Office order bearing No. 22012/1/2007-Estt.I dated 20.06.2008 (Annexure- 7) so far the applicant is concerned.
- 8.2 Costs of the application.
- 8.3 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

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

- 9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned Office order bearing No. 22012/1/2007-Estt. I dated 20.06.2008 (Annexure- 7) so far the applicant is concerned till disposal of the 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. | : 396 344296 |
| ii) Date of issue | : 10.06.2008. |
| iii) Issued from | : G.P.O., Guwahati. |
| iv) Payable at | : G.P.O., Guwahati. |

12. List of enclosures:

As given in the index.

Chandra Kumar Lal Das

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

10 JUL 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION

I, Shri Chandra Kumar Lal Das, Son of Shri Subhadra Lal Das, aged about 44 years, Superintending Engineer, Hydrological Observation Circle, Central Water Commission, CWC Complex, Adabari, P.O- Guwahati University, Guwahati- 14, 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 7th day of July 2008.

Chandra Kumar Lal Das

-15-

1-6 JUL 2008

Annexure-1

मुख्यालयी न्यायपीठ
Government of India National Bench
Central Water Commission
Planning & Development Directorate

New Delhi
12th Jan. 2007

Subject : Request for transfer/ option for choice places in respect of
C K L Das, Director (P&D)

Ref : O.M. No. A.22012/1/2006-Estt. I Dated 5/1/2007

With reference to the above, please find enclosed herewith the
proforma (Annex 1) duly filled ~~on~~ regarding option for choice places in
respect of C K L Das, Director (P&D).

Encl : As above

Copy of *CKL* 12.1.07
12.1.07
(C K L Das)
Director (P&D)

Copy
Under Secretary, Estt-I, CWC
No. 748 Dated 12-1-07

Copy for kind information to Secretary, CWC

Attn:
Shri Advocate

PROFORMA FOR INDICATING CHOICE STATION/REGION FOR TRANSFER ON REQUEST

1. Name: C K L DAS
2. Designation: Director
3. Date of Birth: 1-1-1964
4. Date of Joining Service in CWC: 12-06-1989
5. Date of Superannuation: 31-12-2023
6. Declared Home Town: Madhubani
7. Place of present posting and since when posted: P & D Dte
since 15.11.06
8. Details of previous posting since appointment in CWC

| Post held, Office/Place & Region | Period of stay | Remarks |
|----------------------------------|----------------|------------|
| A.D. CM DD (Now) | 12.6.89 | July 94 |
| A.D./D.D. WR DTC, Rohtak | July 94 | Jan 96 |
| D.D. FCA Dte | Jan 96 | March 96 |
| D.D. P&D Dte | March 96 | Nov 99 |
| D.C. Indraprasth, Now P | Nov 99 | June, 2006 |
| Director P.M. Wing | July 2006 | till date |

9. Opted stations/regions
1. Guwahati
2. Shillong
3.

(Choice of station will be considered as far as possible subject to administrative requirements/ exigencies and provisions of transfer policy).

10. Any specific information which the official wishes to furnish: My son had brain surgery in Nov. 05 & he is under treatment in AIIMS for convulsions. My family will be to remain in Delhi. My posting in N.E., particularly Garhwal which is connected to D by direct train, may help. This was also intimated to chairman earlier.

Place: New Delhi
Date:

Signature
Name:


C K L DAS

Attested
JLB
Advocate

New Delhi, dated 7.5.2007

Office Order

The following transfer/postings of officers in the Junior Administrative Grade of CWE (Gr.A) Service are hereby ordered in public interest except Sl.No. 3.

| S.No. | Name & Designation S/Shrl | Present Posting | Where Posted | Remarks |
|-------|------------------------------|---|---|----------------|
| 1 | C.K.L. Das | RM WIng, New Delhi | SE, HOC, Guwahati | |
| 2 | M.P. Singh | SE, HOC Guwahati | RM WIng New Delhi | |
| 3 | B.G. Kaushik | Mon. Dte., Agra | WP&P WIng New Delhi | At own cost |
| 4 | T.K. Sivarajan | D&R WIng New Delhi | Mon. Dte., Colmbatore | |
| 5 | M.K. Srlnvias | NWA, Pune | SE, Godavari Circle, Hyderabad | |
| 6 | P.R. Rao | SE, Godavari Circle, Hyderabad | D&R WIng New Delhi | |

Officers transferred from CWC (Hqrs.), New Delhi shall move first.

Consequent upon the transfer/posting of Shri B.G. Kaushik, Director (Mon.) Agra to WP&P WIng, New Delhi, Shri Amarendra Kumar Singh, SE, Planning Circle, Faridabad in addition to his own duties will hold the additional charge of the post of Director (Mon.), Agra with immediate effect until further orders without any additional remuneration.

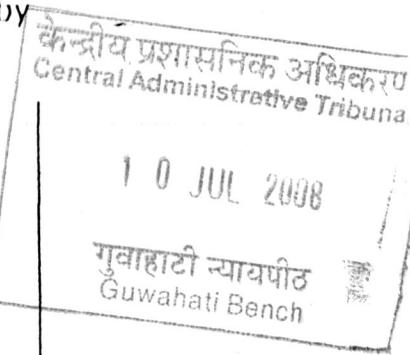
Gulshan Lal

(Gulshan Lal)
Under Secretary

Copy to :-

- 1.PPS to Chairman, CWC
- 2.PS to Member (D&R)/PPS to Member (WP&P)/PPS to

*Attestd
Sub.
Advocate*



केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

10 JUL 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Member (RM), CWC
3. All Chief Engineers, CWC
4. Ministry of Water Resources (Shri K. Rajappa,
US), Shram Shakti Bhavan, New Delhi
5. Director (Admn./Estt.)/Trg./PCP/TD/TC/D&R Coord./RM
Coord./WP&P Coord., CWC/Shri H.S. Chaudhary, Deputy
Secretary, CWC
6. All Estt./Accounts/CM&V/CR/Coordn/Hndl/Budget/R&I
Sections, CWC
7. PAO/AO/All Under Secretaries, CWC
8. Officers concerned ✓
9. Personal file/Service Book of officers concerned.

Shri CCL Das, ^{Dir.} Coastal Erosion Dir., CWC



No HOC/GAU/PE-1013/ 1246-47
Government of India
Central Water Commission
Hydrological Observation Circle

Tel-Fax 2674268

Phone 2674191

2674297

e-mail: hocguwahati@sify.com

CWC Complex
Behind Adabar Bus terminus
Guwahati 781014

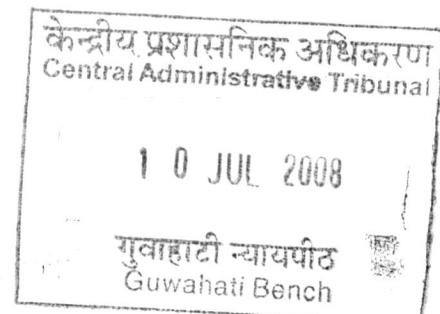
Dated 18, 6, 2007

To

The Under Secretary, (Estt I)
Central Water Commission
323(S), Sewa Bhawan, R.K Puram
New Delhi-110066

Sub:- Transfer of charges of S E HOC, CWC, Guwahati

Ref:- CWC Office Order No A-22012/1/2007 Estt I dated 12/6/2007



Sir

In pursuance of CWC office order, under reference the undersigned has taken over the charges of S E, HOC, CWC, Guwahati in the afternoon of 12th June 2007 (GFR-17/2007 (a duplicate), duly filled in, is enclosed herewith for your kind information and further necessary action please.

Yours faithfully

(C.K.L. Das)

SUPERINTENDING ENGINEER

Encl:- As above.

Copy along with a copy of above enclosure to

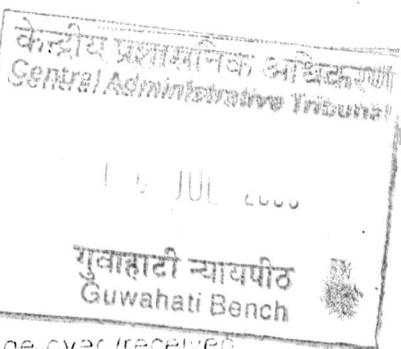
The Chief Engineer, Brahmaputra & Barak Basin organization (CWC) - Rebek, Maiti Temple Road, Near Barik Point, Lower Lachumiere, Shillong - 793 001

(C.K.L. Das)
SUPERINTENDING ENGINEER

*Adv.
Adv.
Advocate*

(See Rule 78)

CERTIFICATE OF TRANSFER OF CHARGES



Certified that we have in the Afternoon of 12-06-2007 respectively made over/received the Charge of the Superintending-Engineer Hydrological Observation Circle, Central Water Commission, Guwahati in pursuance of the CWC Office Order No. 22012/1/2007-Estt.I Dated 7.5.2007.

(For use in audit office only)

Noted in A/R at Page _____ Relieved Officer

Noted in Leave A/C at page _____

Signature

(M.P. Singh)

Superintending Engineer
HOC, CWC, Guwahati

Leave Salary Certificate/
Service statement issued
On xcbz.....

Relieving Officer

Signature

(C.K.L. Das)

Director
R.M. Wing, CWC, New Delhi

Audit Superintendent
A.A.G/A.A.O

Noted in A/R at page _____

Pay slip issued on _____

Station: Guwahati

Audit Supdt A.A.G/A.A.O

Name in the balance for which responsibility is accepted by the Officer receiving Charge:-

Cash

(i) Main Rs Nil
(II) Sub: Rs Nil

Temporary advance Rs Nil

Permanent Advance Rs Nil

Relieved Officer

(M.P. Singh)

Superintending Engineer
HOC, CWC, Guwahati

Relieving Officer

(C.K.L. Das)

Director

R.M. Wing, CWC, New Delhi

* Whether transfer of charge proceeds the issue of formal order by the competent authority, a suitable indication to that effect may be given.

Attest
File
Advocate

-21-

IMMEDIATEH.M
8/6/08

No. A-22012/1/2007-Estt.I/

Government of India
Ministry of Water Resources
Central Water Commission

New Delhi, Dated:

2.1.08
12/10/07ANNEXURE-4केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

10 JUL 2008

गुवाहाटी न्यायपीठ
Guwahati Bench**OFFICE MEMORANDUM**

In connection with the ensuing rotational transfers in 2008, all the officers below the level of Chief Engineer and staff members (excluding Group D) are given an opportunity to indicate their choice place for posting. All officers/staff members who desire consideration of their requests for transfer without waiting for their turn may indicate their choice (not more than 3 places/regions) in the proforma at Annexure -I. Those who wish to be considered for transfer on maturity of their turn may exercise their options in the proforma prescribed at Annexure-II. The choices exercised will be taken into consideration as far as possible. However, keeping in view the exigencies of work and administrative requirements, postings may be made to any office.

Officers in the rank of Directors/Superintending Engineer and Deputy Director/Executive Engineer and employees who have completed/will complete a tenure of two years in N.E. Region by 31.7.2008 may exercise their option for specific places but not specific office. All others are allowed to indicate only their choice region (the jurisdiction of Chief Engineer in the field) to which they desire to be transferred. In case transfer is required to places within the same region, officers at the level of Assistant Director/AEE and below may send their choices to the concerned Chief Engineer and they need not send the same to CWC Hqrs.

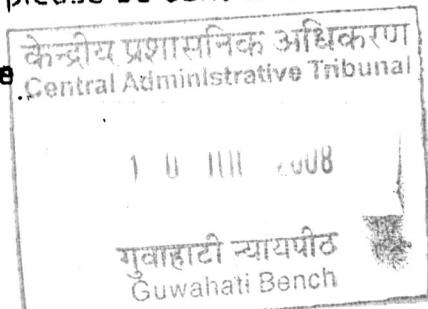
Accordingly, the request for transfer/option for choice places or regions may be forwarded in the relevant proforma at Annexure-I or Annexure-II, as the case may be through proper channel. The choices may be consolidated region wise and send with the recommendation of S.E. (Coordn.) of the regional organization/Chief Engineer/Director concerned at Head

Office
Smt
Advocate

Quarter, so as to reach the Under Secretary in charge of the Establishment Section concerned latest by **31.1.2008**.

The contents of this office Memorandum may kindly be brought to the notice of all officers of CWE (Gr.A & B) Services, other technical and ministerial officers and staff of CWC, working under your administrative control and confirmation to the effect may please be sent to the undersigned.

Encl: As above



V.K. Chawla
(V.K. CHAWLA)
Secretary, CWC

Copy to:-

1. Chairman, GFCC, Patna.
2. All Chief Engineer, CWC/Secretary, SSAC, Vadodra.
3. All Directors/Secretary, CWC/TCD, CEA.
4. MoWR (Shri N.K. Gupta, Under Secy. (Admin./SS Bhawan, New Delhi with 25 spare copies.
5. All Under Secretaries, CWC.
6. All Section Officers of Establishment Section, CWC.
7. All Dtes.,/Units, CWC (HQ) and All Ex. Engineers in field offices of CWC.

Copy for Information to:

1. PPS to Chairman, CWC.
2. PPS to Member (D&R)/PPS to Member(RM)/PPS to Member (WP&P), CWC.

*Atul
Jain
Advocate*

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ANNEXURE-5

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

10 JUL 2008

गुवाहाटी न्यायालय
Guwahati Bench

GRAM: MEGHNA



GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION
MEGHNA CIRCLE
SILCHAR



Tel. No.: 03842-266760/265313
Fax No.: 03842-266760

No.: MC/PP-199/2008/ 869

Date: 19.6.2008

To

The Chairman
Central Water Commission
Sewa Bhawan, R.K. Puram
New Delhi - 110066

(Through Proper Channel)

(Kind Attention: Chief Engineer, B&BBO, CWC, Shillong Camp at New Delhi)

Sir,

I may be considered for transfer to H.O. Circle, CWC, Guwahati in my own interest. The matter was discussed with Chief Engineer, B&BBO, CWC, Shillong on 18 & 19/06/2008 and the request is as follow up to the discussion with him.

Yours faithfully

B. P. Pandey
19/6/08

(B. P. Pandey)
Superintending Engineer

"Furkan Mansion" Panchayat Road, Silchar-788004 (Assam)

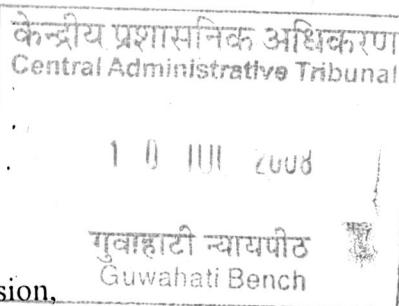
*Attest
Sub. Advocate*

Most Immediate/By Fax

F. No. HOC/GAU/PF-1013/2223-25

Government of India

Hydrological Observation Circle
Central Water Commission



CWC Complex,

Behind Adabari Bus Stand,

PO: Guwahati University,

Guwahati-781014.

Dated the 20th June, 2008

To

The Chairman,
Central Water Commission,
New Delhi.

(Through proper channel)

Sub: Transfer/posting of SE/Director level officer(s) in B&BBO, CWC.

Sir,

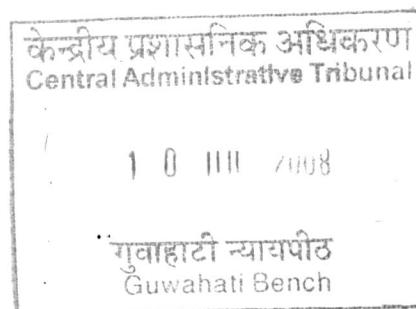
With reference to the aforesaid subject, it is to state that in the course of the meeting regarding review of a suspension case held on 12.05.08 in your chamber, the Secretary, CWC had informally asked the views of the undersigned regarding transfer of the present SE, HOC, Guwahati to M&A Directorate, Guwahati to which it was respectfully responded that the undersigned could handle the pressure of the HOC works despite extreme stresses due to family related reasons. In this regard, following points are most humbly and respectfully submitted for your kind perusal and necessary consideration please:-

- Subsequent to the joining of an officer in a particular unit (e.g. the joining of the undersigned as SE in HOC, Guwahati on 12.06.2007), particularly a specialized unit with the requirement of specific technical expertise (viz. HOC, Guwahati with the responsibility of flood forecasting in Brahmaputra & Barak Basins), a reasonable time is generally supposed to be utilized by the officer in the process of acquainting himself with the new set-up and associated works, staff/officers/employees to develop site-specific skills/expertise and knowledge of relevant codal procedures, regulations, manuals etc. After this initial building-up phase, the efficiency and quality of works in the concerned unit further enhances.

*A. H. Sethi
Advocate*

- Any transfer of the officer in the intervening period (particularly during monsoon period in a work unit like HOC, Guwahati) has extremely detrimental implications in relation to the ongoing works and also the spirit of the concerned unit. Such a transfer could be considered in exceptional situations arising due to personal emergency or proven incompatibility of the concerned officer with the related works.

In view of the facts stated under the aforesaid points, it is most respectfully submitted that any such transfer, if in the offing, may kindly be considered after suitable consultation with the concerned officer(s) and due substantiation of the associated facts so as to eliminate any possibility of adverse impact on the concerned unit(s) and injustice to the concerned officer in terms of his professional health/dignity and psychological/emotional disturbances likely to be caused due to damaging implications of such a transfer, which could well be avoided. This is also essential to rule out the scope of any considerations other than reasonably well established facts and consequently having potentially sensitive implications.



Yours faithfully,

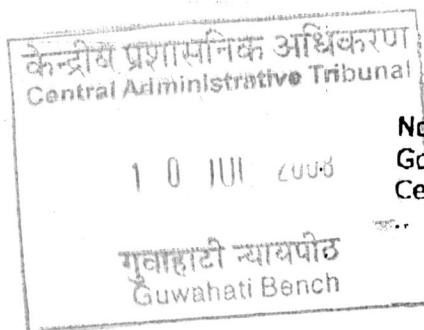
o/c

(C. K. L. Das)

S. E., HOC, Guwahati.

Copy in advance to the Chairman, CWC, New Delhi for kind information and necessary consideration please.

Copy to the Member(RM), CWC, New Delhi for kind information and necessary consideration please.



No.22012/1/2007-Estt.I
Government of India
Central Water Commission

Seva Bhawan, R.K.Puram,
New Delhi, dt. 20.6.2008

OFFICE ORDER

The following transfer/postings of officers in the Junior Administrative Grade of CWE (Gr.A) Service are hereby ordered in public interest (except S.No.1, 3, 8, 10, 12, 14 and 19) with immediate effect or the dates shown against each name:

| <u>S.No.</u> | <u>Name of officer</u> | <u>Present posting</u> | <u>Where posted</u> |
|--------------|------------------------|---------------------------|---|
| 1. | S/Shri Atul Jain | HOC, Dehradun | CWC (Hqr) HRM Wing (w.e.f. 14.7.2008) (At own cost) |
| 2. | D.Renga Reddy | TCD, CEA | HOC, Dehradun (w.e.f. 14.7.2008) |
| 3. | Bhopal Singh | M&A, Simla | CWC (Hqr) D&R Wing (w.e.f. 17.7.2008) (At own cost) |
| 4. | Ghanshyam Jha | M&A, Ranchi | TCD, CEA |
| 5. | M.S.Dhillon | W&P | M&A, Ranchi |
| 6. | Lalit Kumar | M&A, Guwahati | SF (C) YBO, N Delhi (w.e.f. 31.7.2008) |
| 7. | CKL Das | HOC, Guwahati | M&A, Guwahati (w.e.f. 31.7.2008) |
| 8. | B.P.Pandey | Meghna Circle, Silchar | HOC, Guwahati (w.e.f. 31.7.2008) (At own cost) |

Attest
Sub. Advocate

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केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

10 JUL 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Meghna Circle, Silchar
(w.e.f. 31.7.2008)

| | | |
|--------------------------|------------------------------------|---|
| 9. Bhagat Singh | RM Wing | |
| 10. Dr Sameer Chatterjee | M&A, Jammu | CWC (Hqr) RM Wing (w.e.f. 22.7.2008) (At own cost) |
| 11. R.K.Gupta | D&R Wing | M&A, Jammu (w.e.f. 22.7.2008) |
| 12. V.K.Talwar | M&A, IBO, Chandigarh | CWC (Hqr) WP&P Wing (At own cost) |
| 13. K Sharma | WP&P Wing | M&A, IBO, Chandigarh |
| 14. Gulshan Raj | HOC, Varanasi | CWC (Hqr) D&R Wing (At own cost) |
| 15. U Tikekar | Coord, Mon (C), Nagpur | CWC (Hqr) D&R Wing |
| 16. A.M.Patil | M&A, Vadodara | Coord, Mon (C) Nagpur |
| 17. Chhotey Lal | RM Wing | HOC, Maitton |
| 18. S.R.Kamde | WP&P Wing | SE(C), C&SR, Coimbatore |
| 19. J.J.Raju | D&R Wing | Appraisal, Mon (S), Bangalore (At own cost) |
| 20. K.S.Jacob | WP&P Wing | C&SR Circle, Bangalore |
| 21. Sanjeev Aggarwal | HOC, Noida | Mon, Agra. |
| 22. A.Parmesham | Sr. Jt Commissioner (CAD&WM), MoWR | K&CC, Hyderabad (w.e.f. 1.7.2008) |
| 23. A.B.Pandya | Mon, Gandhinagar | Coord, NTBO, Gandhi Nagar |
| 24. R.K.Pachauri | Punusa Design, Bhopal | CWC (Hqr) RM Wing |

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Officers whose names are mentioned at S.No. 5, 11 & 13 will move first.

It is further ordered that additional charge of the following posts will be held by the officers mentioned against each from the date the incumbent holding the post relinquishes the charge till further orders. They will not be entitled for any extra remuneration for holding the additional charge:

| <u>Name of the post</u> | <u>Name of the officer</u> |
|-------------------------|--|
| SE, HOC, Varanasi | S/Shri R.S.Kam, SE (c), IIGBO Lucknow. |
| M&A, Shimla | G.K.Agarwal, SE (C), IBO, Chandigarh. |
| M&A, Vadodara | Aditya Sharma, SE, HOC, Gandhinagar. |
| Mun, Gandhinagar | A.B.Pandya, SE(C), NTBO, Gandhinagar. |
| Punasa Design, Bhopal | T.S. Mehra, SE (C), NCC, Bhopal |

(Hindi version will follow).

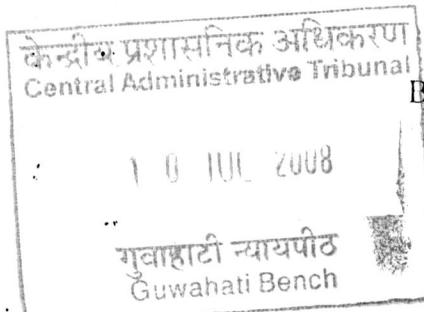
Gulshan Lal
(GULSHAN LAL)
UNDER SECRETARY (E.I)

Copy to:

1. PPS to Chairman, CWC.
2. PPS to Chairman, CEA.
3. PPS to Member (D&F)/ PPS to Member (W&P)/ PPS to Member (RM)
4. All Chief Engineers, CWC./CE (TCD), CEA.
5. Secretary, CEA
6. Commissioner (CAD&WM), MoWR, New Delhi.
7. SE (Coord) of concerned organizations, CWC.
8. All Directors/SEs, CWC.
9. Ministry of Water Resources (Shri N.K.Gupta, U.S(Adm)/
Shri K.Rajappa, U.S.(E.I)).
10. Secretary, CWC/ Director(Adm)/ Estt/ PCP/ TD/ TD/ D&R
Coord/Shri H.S.Choudhary, Dy. Secretary, CWC.
11. Officers concerned.
12. PAO, CWC/AO, CWC.
13. S.O., A/c-III/IV/CR/CM&V/R&T Section, CWC.
14. Service Book/Personal file of officers concerned.

Most Immediate/By Fax

F. No. HOC/GAU/PF-1013/ 2241-46
Government of India
Hydrological Observation Circle
Central Water Commission



CWC Complex,
Behind Adabari Bus Stand,
PO: Guwahati University,
Guwahati-781014.
Dated the 23th June, 2008

To

The Chairman,
Central Water Commission,
New Delhi.

(Through proper channel)

Sub: Transfer/posting of SE/Director level officer(s) in B&BBO, CWC.

Ref: (1) HOC, Guwahati's Letter No. HOC/GAU/PF-1013/2223-25 dated 20.06.08
(2) CWC Office Order No. 22012/1/2007-Estt.I dated 20.06.08

Sir,

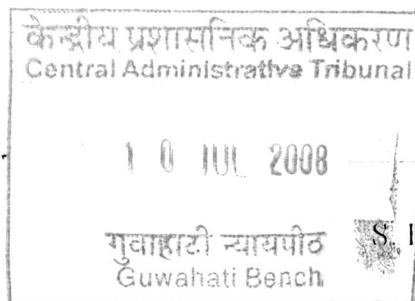
Kind reference is invited to aforesaid letters in connection with the above cited subject. In this regard, most humbly and respectfully, following submissions are made for your kind perusal and appropriate action:-

- In view of the facts/issues stated vide this office letter under reference (1), the transfer of officers at S. No. 7, 8 & 9 needs to be suitably reconsidered in absolutely non-controversial manner by thoroughly examining/investigating all the associated matters in due consultation with all the concerned officers and may be, even the previous Chairman(CWC) & Member(RM) who may be aware of the facts and implications thereof in greater details.
- The said reconsideration may be indispensable so as to appropriately take care of the apparent impression/potential interpretation that the transfer of the aforesaid officers may have been designed to serve/suit certain personal interest/convenience rather than the public interest through the replacement of the

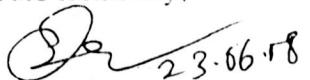
*Hfest
Advocate*

present incumbent of the post of SE, HOC, Guwahati by the present incumbent of the post of SE, Meghna Circle, the consequence of which may turn out to be highly prejudicial to the dignity & self respect of all the associated officers in some way or the other.

- The action as deemed fit is required to be expeditiously taken to eliminate the air uncertainty, suspicion, acrimony and to promote the conduct in consonance with the call of conscience, integrity, ethics, dignity, self-respect and mutual respect for the fellow officers in our Central Water Commission which deserves to regain the height of its reputation as in bygone era.



Yours faithfully,


(C. K. L. Das)

Copy in advance to the Chairman, CWC, New Delhi for kind information and necessary consideration please.

Copy to the Member(RM), CWC, New Delhi for kind information and necessary consideration please.

Copy for kind information and appropriate action to: (1) SE, Meghna Circle, (2) Director, FM-II Directorate (Shri Bhagat Singh) & (3) Director, M&A Directorate, Guwahati. A copy of the letter under reference (1) is also enclosed in this regard.

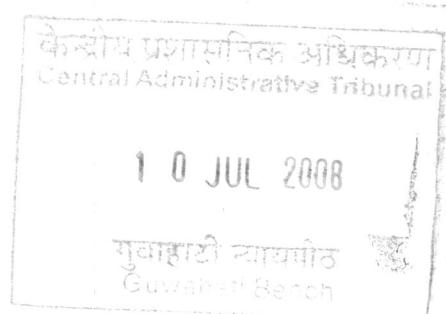
(Extract).

ANNEXURE-9

CIVIL LIST
CIVIL LIST OF CENTRAL WATER ENGINEERING (GROUP A) SERVICE (AS ON 1.1.2006)

| S.No. | Name | Qualifications | Date of | | DR | | Date of entry into | | | Present Posting |
|-------|------------------|--|----------|-------|----------|----------|--------------------|----------|-----------------|-----------------|
| | | | birth | Batch | JTS | STS | JAG | SAG | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| 1 | R.Jeyaseelan | B.E.(Civil) M.Tech (Civil) PG.Diploma(Hydropower) Norway | 17 11 46 | 1968 | 01.12.69 | 06.01.78 | 28.02.90 | 27.02.97 | Chairman, CWC | |
| 2 | S.K Das | B.E. (Mech.) | 07 07 47 | 1970 | 01.03.72 | 22.04.78 | 28.02.90 | 27.02.97 | Member, CWC | |
| 3 | B.S. Ahuja | B.E (Mech) M. Tech. D.Engg | 15 3 48 | 1969 | 31.03.71 | 22.04.78 | 28.02.90 | 06.02.98 | Member, CWC | |
| 4 | S.K. Aggarwal | B.Sc.B.E (Civil) PGD Irr. & Hyd. | 22 01 47 | 1969 | 29.03.71 | 29.05.78 | 28.02.90 | 06.02.98 | Member, CWC | |
| 5 | V.R Sastry | B.Tech.,M.Tech. | 01 07 47 | 1969 | 28.07.71 | 18.06.78 | 28.02.90 | 05.06.98 | Chairman, GFCC | |
| 6 | A.Sekhar | B.E.(Civil)M.Tech. | 30 06 47 | 1970 | 08.03.72 | 09.08.78 | 28.02.90 | 06.02.98 | Planning Comm. | |
| 7 | B.M.Upadhyay | B.E.(Civil) | 03 07 46 | 1970 | 02.03.72 | 09.08.78 | 04.07.91 | 06.02.98 | CWC, New Delhi | |
| 8 | S.B.Srivstava | B.E.(Civil)PGD(WRD)MIE | 16 01 46 | 1970 | 24.12.71 | 09.08.78 | 04.07.91 | 15.04.98 | CWC, Siliguri | |
| 9 | A.B.Pal | B.E.(Mech) | 15 08 47 | 1970 | 15.05.72 | 09.08.78 | 04.07.91 | 09.03.98 | CWC, Patna | |
| 10 | A.C.Gupta | M.Tech. | 18 11 46 | 1972 | 08.11.73 | 30.10.78 | 10.03.92 | 14.02.98 | NCA, Indore | |
| 11 | B.P.Singh | B.Sc. B.E.(Civil) | 18 02 47 | 1970 | 11.02.72 | 09.08.78 | 05.05.92 | 06.02.98 | CWC, New Delhi | |
| 12 | R.N.P. Singh | B.E. (C) M.Tech | 09 07 47 | 1970 | 12.02.72 | 09.08.78 | 10.03.92 | 6.2.98 | CWC, Patna | |
| 13 | Ravinder Singh | B.E (Civil) | 23 03 50 | 1971 | 25.11.72 | 09.08.78 | 10.03.92 | 06.02.98 | CWC, New Delhi | |
| 14 | M.L. Goyal | AMIE(Mech.) | 10 01 48 | 1971 | 08.12.72 | 09.08.78 | 10.03.92 | 06.02.98 | MOWR | |
| 15 | Dr.T.G.A. Balan | B.E.(Civil) Dip.(WRD) | 04 11 46 | 1971 | 04.11.72 | 09.08.78 | 25.1.94 | 30.07.99 | CWC, Coimbatore | |
| 16 | R.K. Sharma | M.Sc.(Civil) | 08 10 46 | 1971 | 11.10.72 | 09.08.78 | 25.01.94 | 30.07.99 | NWDA, New Delhi | |
| 17 | A.K. Bajaj | B.E.(Mech.) MIE | 15 08 51 | 1972 | 30.04.74 | 30.10.78 | 25.01.94 | 30.07.99 | CWC, New Delhi | |
| 18 | Dr. D.V. Thareja | B.Sc.(Civil).M.Sc. Ph.D | 15 06 50 | 1973 | 10.10.74 | 29.06.79 | 27.01.94 | 02.08.99 | CWC, New Delhi | |
| 19 | R.C. Jha | B.Sc.(Mech.) M.Tech. | 02 07 52 | 1973 | 19.07.75 | 18.04.80 | 27.01.94 | 02.08.99 | CWC, New Delhi | |
| 20 | A.K. Ganju | B.Sc.(Civil). M.Tech, PGD (Hyd) IHE DELFT. MIE | 25 07 52 | 1974 | 18.10.75 | 18.04.80 | 21.02.94 | 18.12.00 | CWC, New Delhi | |

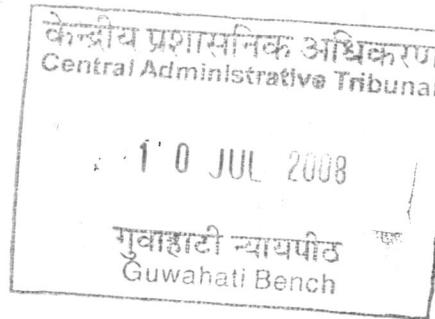
Contd...2/-



*Attest
Smt
Advocate*

| S.No. | Name | Qualifications | Date of DR | | Date of entry into | | | | Present Posting |
|-------|--------------------|------------------|------------|-------|--------------------|----------|-----|-----|-------------------|
| | | | birth | batch | JTS | STS | JAG | SAG | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 218 | D. Ranga Reddy | B. Tech (Civil) | 05 02 64 | 1987 | 08.12.89 | 08.06.95 | | | CEA, New Delhi |
| 219 | N.M.Krishnanunni | B. Tech (Civil) | 14 02 64 | 1987 | 29.05.89 | 03.02.95 | | | CWC, New Delhi |
| 220 | T.K. Sivarajan | M.Tech (Mech) | 25 05 64 | 1987 | 14.03.89 | 09.02.95 | | | CWC, New Delhi |
| 221 | Dr. Naresh Kumar | B.E. (Civil) | 05 01 62 | 1987 | 14.03.89 | 03.02.95 | | | CWC, New Delhi |
| 222 | Ravi Shankar | B.E. (Civil) | 24 01 60 | 1987 | 25.10.89 | 07.04.95 | | | MOWR, New Delhi |
| 223 | Amarendra K. Singi | M.Tech (Designs) | 01 02 62 | 1987 | 22.05.89 | 19.04.95 | | | CWC, Faridabad |
| 224 | Bhopal Singh | ME(Hyd) | 08 07 65 | 1987 | 02.03.89 | 07.04.95 | | | WAPCOS, New Delhi |
| 225 | B.R.K. Pillai | M.Tech (Str) | 28 02 64 | 1987 | 05.06.89 | 28.04.95 | | | CWC, New Delhi |
| 226 | S.K. Anil | B.Sc. (Civil) | 21 03 62 | 1987 | 05 01 90 | 28.04.95 | | | CWC, New Delhi |
| 227 | H.S. Choudhary | B.Sc. (Civil) | 04 01 49 | | 05.04.84 | 28.04.95 | | | CWC, Patna |
| 228 | C.K.L. Das | B.Tech (Civil) | 01 01 64 | 1987 | 12.06.89 | 07.04.95 | | | MOWR, New Delhi |
| 230 | Smt. B. Martin | B.Sc. (Civil) | 23 08 46 | | 05.04.84 | 07.04.95 | | | CWC, Bangalore |
| 231 | Harkesh Meena | B.E. (Civil) | 05 07 61 | 1987 | 24.10.89 | 07.02.95 | | | CWC, Jaipur |
| 232 | Saibal Ghosh | B.E. (Civil) | 25 12 60 | 1984 | 27.03.89 | 07.04.95 | | | CWC, New Delhi |
| 233 | K. Balakrishnan | B.Sc. (Civil) | 12 12 46 | | 05.04.84 | 07.04.95 | | | CWC, Coimbatore |
| 234 | Ambrish Nayak | B.Sc. (Civil) | 27 05 65 | 1988 | 10.07.91 | 03.02.95 | | | CWC, Bhubaneshwar |
| 235 | Munni Lal | B.Tech (Civil) | 15 02 62 | 1988 | 28.03.90 | 10.02.95 | | | WAPCOS, New Delhi |
| 236 | Joginder Singh | AMIE | 10 07 59 | 1988 | 14.03.90 | 03.02.95 | | | SSCAC, Vadodara |
| 237 | A.K. Pradhan | ME (WRD) | 03 07 65 | 1988 | 14.05.90 | 03.02.95 | | | CWC, Bhubaneshwar |
| 238 | Anupam Prasad | B.Tech (Civil) | 07 12 66 | 1989 | 24.07.91 | 08.02.95 | | | CWC, Itanagar |
| 239 | B.B. Halder | L.C.E. | 22 12 47 | | 25.10.89 | 03.02.95 | | | CWC, Behrampore |
| 240 | P.S. Kutiyal | B.E. (Civil) | 03 06 64 | 1987 | 09.08.89 | 17.04.96 | | | CWC, New Delhi |
| 241 | C.V. Rao | B.E. (Civil) | 15 03 47 | | 05.04.84 | 27.05.96 | | | CWC, New Delhi |
| 242 | L.K. Taneja | AMIE | 17 03 64 | 1988 | 17.05.90 | 27.03.96 | | | CWC, Agra |
| 243 | R.L.Dutta | B.E. (Civil) | 07 01 48 | | 05.04.84 | 29.03.96 | | | CWC, New Delhi |

Contd...11/-



| S.No. | Name | Qualifications | Date of | | DR | | Date of entry into | | | Present Posting |
|-------|-------------------|----------------------|----------|-------|----------|----------|--------------------|-----|----|------------------|
| | | | birth | batch | JTS | STS | JAG | SAG | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| 244 | Yogesh Paithankar | B.E.(Mech) | 29 06 66 | 1988 | 09.04.90 | 27.03.96 | | | | CWC, New Delhi |
| 245 | N.K. Roy | B.E. (Civil) | 19 09 49 | | 05.04.84 | 20.05.96 | | | | CWC, Hyderabad |
| 246 | B.V. Rao | B.E. (Civil) | 27 06 47 | | 23.05.84 | 27.03.96 | | | | CWC, Gandhinagar |
| 247 | Aditya Sharma | M.E.(Hyd & Irr) | 22 11 65 | 1988 | 31.12.60 | 27.03.96 | | | | CWC, Coimbatore |
| 248 | K.K. Rajan | B.Sc. (Civil) | 01 03 49 | | 05.04.84 | 27.03.96 | | | | CWC, Pune |
| 249 | Sushil Kumar | B.Tech. (Civil) | 05 04 63 | 1988 | 20 04.90 | 28.03.96 | | | | UYRB, New Delhi |
| 250 | Y.P. Mittal | B.Sc. (Civil) | 15 11 46 | | 05 04.84 | 14.06.96 | | | | MOWR, New Delhi |
| ✓251 | B.P. Pandey | M.Tech (Civil) | 01 04 66 | 1988 | 14.06.90 | 14.06.96 | | | | BID, Bhutan |
| 252 | D.K. Tewari | M.Tech (FE) | 13 2 63 | 1988 | 14.1.91 | 14.6.96 | | | | CWC, New Delhi |
| 253 | Ravinder Singh | B.E. (Civil) | 24 07 51 | | 11.06.86 | 25.07.96 | | | | CEA, New Delhi |
| 254 | Neeraj Kumar | M.Tech (Str) | 14 3 62 | 1988 | 12.04.90 | 14.06.96 | | | | CWC, New Delhi |
| 255 | G.K. Aggarwal | M.E. (Civil) | 17 04 64 | 1988 | 07.03.90 | 14.06.96 | | | | CWC, New Delhi |
| 256 | Vijay Saran | B.E. (Civil) | 01 01 65 | 1988 | 09.04.90 | 30.09.96 | | | | CWC, New Delhi |
| 257 | Balram Saha | LCE | 05 03 49 | | 11.06.86 | 08.05.96 | | | | CWC, New Delhi |
| 258 | B.K. Karjee | B.E. (Mech) | 01 11 65 | 1989 | 03.09.91 | 28.03.96 | | | | DVRR, Maithon |
| 259 | Sher Singh | ME.PGD (WRD-Civil) - | 08 06 67 | 1989 | 18.04.91 | 29.03.96 | | | | CWC, New Delhi |
| 260 | Dinesh Verma | M.E.(Civil) | 29 04 66 | 1988 | 16.02.90 | 26.08.97 | | | | MOWR, New Delhi |
| 261 | Reading Shimray | B.E.(Civil) | 27 01 67 | 1989 | 09.01.92 | 21.08.97 | | | | CWC, New Delhi |
| 262 | Ravindra Singh | B.E.(Civil) | 20 10 62 | 1988 | 21.05.90 | 04.03.02 | | | | CWC, Varanasi |
| 263 | Awadesh Sharma | B.Sc.(Civil) | 15 11 53 | | 11.06.36 | 04.03.02 | | | | GFCC, Patna |
| 264 | Ashok Ahiuwalia | B.E.(Civil) | 20 02 53 | | 11.06.86 | 04.03.02 | | | | CWC, New Delhi |
| 265 | Jani Ram Boro | B.E.(Mech) | 12 01 62 | 1990 | 16.07.93 | 04.03.02 | | | | CWC, Shillong |
| 266 | S. Biswas | B.E.(Mech) | 15 12 66 | 1991 | 04.04.94 | 04.03.02 | | | | CWC, New Delhi |
| 267 | D.M. Raipure | M.Tech(Civil) | 08 10 65 | 1991 | 29.03.94 | 04.03.02 | | | | CWC, Nagpur |

Contd... 12/-

केन्द्रीय प्रशासनिक अधिकारण
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instruction on par with this juniors when they were promoted as Technician Grade III with all consequential benefits of pay and allowances. The order has to be complied in 3 months' time from the date of receipt of this order.

[*Shri Narendra Kumar and another v. General Manager, Northern Railway and others, 12/2007, Swamysnews 75, (Principal Bench), date of judgment 7-1-2007.*]

O.A. No. 1373 of 2005

115

1. Transfer of Government employees should be ordered only in accordance with rules
2. Transfer to accommodate another without following rules is bad in law

Facts: The Applicant joined Kendriya Vidyalaya Sangathan (KVS) as Postgraduate Teacher (PGT) in the discipline of History on 17-9-1984 at K.V. No. 1 (Army) Jodhpur. He was transferred in 2000 in Public Interest to K.V. Mehsana. Thereafter also he had carried out number of Transfers including K.V. (AFS) Naliya (hard station). Lastly he was posted on 29-7-2005 at Agra on his request. He also wanted transfer to Jodhpur or Bikaner on his own request. That request was conceded and he was posted at Jodhpur by Order, dated 11/12-9-2006. Immediately after a month he joined Jodhpur he was transferred out to K.V.AFS, Jaisalmer to accommodate one Shri G.S. Charan who was posted at Jaisalmer then on ground of ill health of the wife of Sri Charan. Applicant was relieved from Jodhpur on 23-10-2006. It is stated that this transfer is as per rule Para. 16.2 of the transfer guidelines of K.V.S. At that time, the daughter of the Applicant was studying in 10th standard at K.V. Jodhpur. Challenging his transfer from Jodhpur to Jaisalmer, the Applicant has filed this OA on numerous grounds.

It is stated that the transfer has been made to post Shri Charan at Jodhpur to take medical assistance from MDM Hospital Jodhpur as the treatment is available only there. Sri Charan had given only choice for transfer to Jodhpur and the transfer is effected under Clause 15 of the transfer Rule of K.V.S. The Applicant is serving as History teacher for three years and Counselling before transfer in individual cases is not necessary. Procedural aspects are for internal use and the Applicant having availed the benefits of transfer procedure cannot question the same.

The Applicant submitted that the wife of Shri Charan is suffering from cancer for last three years and is taking medical assistance. It cannot be said that MDM Hospital only has the facility for curing the

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Guwahati Bench

Alka
Law
Advocate

disease. Further transferring him within a month of his joining at Jodhpur is against Para. 15.1 of the policy which stipulates that none should be transferred before completion of 3 years in a station.

The Respondents submitted that considering the case of Sri Charan he was posted at Jodhpur displacing the Applicant. The Applicant having undergone transfer under the same policy cannot question the same especially when he has not challenged the policy guidelines. In support of his contention, the Respondent cited the judgment in the case of *W.L. Singh v. Union of India* [C.W.P. No. 4868 of 2006, dated 31-10-2006] of the Rajasthan High Court. Individual Counselling is not necessary as per Para. 16.2 of the policy. Since the case of the Applicant is an individual transfer and not *en masse* transfer, there was no need to Counsel him.

The Tribunal after learning both sides held that the factual aspect is clear. The main transfer for the transfer of the Applicant is to accommodate Sri Charan for treatment of his wife at Jodhpur. An employee of K.V.S. can be transferred throughout the country. Treatment as required for cancer treatment is available in very many places. The Applicant is transferred frequently in public interest in the last six years. The present transfer is within a month of his joining at Jodhpur.

There is no doubt that Tribunal cannot sit on the judgment of authorities in Transfer cases. But under some circumstances it can interfere. In that context it was held:—

Held: "The Court or a judicial forum can intervene and set aside the transfer order if the same is found to be *mala fide* or in breach of constitutional provisions or binding administrative instructions and statutory rule or is capricious and based on extraneous considerations or is in colourable exercise of powers".

The important portion of transfer policy under Paras. 15.1 and 16.2 reads as below:—

"15.1 *** If no non-CDA category employee with more than 3 years' tenure is available at the station of first choice of a PCGR category employee, the exercise will be done for locating such a person at stations of his second, third and lower choices in that order. If no non-CDA employee with more than 3 years' tenure is available at any stations of choice, the non-CDA employee, with longest tenure out of all the preferred stations together, will be displaced. ***

"16.2 *** The teacher so identified for displacement shall be called for counselling by the RTC by 16th July".

The case of *W.L. Singh* has no application as none of the policy decision is under challenge. When plain meaning of the rule is clear, no

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Guwahati Bench

harmonious construction is necessary. The case cannot be decided on affidavit to meant to supplement an order as held in the case of *Mohinder Gill v. The Chief Election Commissioner, New Delhi* [AIR 1978 (SC) 851]. If under the circumstance as in this case the affidavit in relied upon the bad order by passage of time will get validated.

As regards the contention of Respondents that one need not necessarily give five places of choice for transfer, the same is believed by Rule 15.2 as extracted earlier. The rule has to be treated then as redundant. The computerized designed format provides five options in each case. Hence the support of the Respondents that Charan had not given five choices is in order cannot be accepted.

The policy of counselling even in one single transfer is the essence of Para. 16.2 of the policy *supra*. That view of the Tribunal is also supported by *Mohinder Gill's case (supra)*. Hence the plea of the Respondent that counselling in single transfer is not essential is to be treated as an after-thought just to justify their act on any pretext, might be repugnant or inconsistent to the very policy.

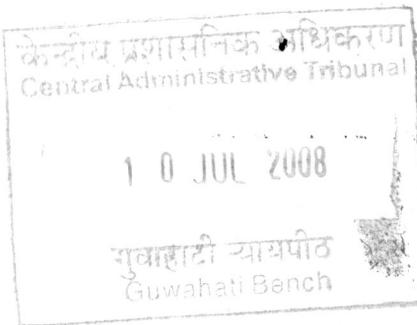
From the above discussion, the Tribunal came to the conclusion that the transfer of the Applicant was ordered on wrong facts. This transfer can uproot the family causing irreparable loss. In that connection the Tribunal referred to the case of *Seshrao Nagorao Umap v. State of Maharashtra* [1985 (II) LLJ 73] of the Bombay High Court wherein it is said that—

“A transfer is *mala fide* when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons”.

From the above observation of Bombay High Court, it becomes evident in the present case there is no nexus to the object to be achieved. In that view, the impugned transfer order cannot be sustained.

The submission of the Respondents that the policy is an internal one and hence no vested interest may be created in favour of any one was rejected as in the present case no administrative or public interest is involved. The malice in law in this case need not be gone into as it cannot be exercised for an unauthorized purpose.

The Tribunal as a parting advice to the Respondents observed that Transfers involve expenditure causing drain in public exchequer. Mid transfer is to be avoided to ensure schooling of the wards of the transferee is not affected. The authorities should apply their mind before ordering a transfer of a Government servant.



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In the result, the impugned transfer order of the Applicant transferring him to Jaisalmer, dated 18-10-2006 and 23-10-2002 were quashed and the OA was allowed.

[M.A. Qureshi v. The Commissioner of KVS and another, 12/2007, Swamysnews 77, (Jodhpur), date of judgment 21-12-2006.]

O.A. No. 253 of 2006

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1. Transfer of a Government employee, for his misconduct, cannot be taken as an easy option in place of invoking rules for violating CCS (Conduct) Rules
2. Transfer at the very fag end of service of a Government employee is not to be done as per the rule of Postal Department

Facts: The Applicant was transferred while working as BCR PA in the Head Post Office of Pondicherry in-charge of night Post Office to Kutteripattu as Sub-Postmaster by Memo No. B1/Tfr/Dlgs., dated 18-10-2006. This OA is filed in challenging the said transfer order to set aside the same.

The Applicant was posted to the P.O. at Pondicherry within $1\frac{1}{2}$ years of his transfer to that P.O. from the post of Sub-Postmaster, Reddiarpalayam. The Applicant also filed a contempt petition M.A. No. 44 of 2006 for violating the interim orders of the Tribunal, dated 30-10-2006 keeping the transfer order in abeyance while admitting the application. But it is seen that the Applicant had been relieved on 18-10-2006 a token of the same he has signed that relief order. As this was not brought to the notice of the Tribunal at the time of admission, the interim order as above passed which stands cancelled as the relief had taken place much earlier to the date of interim order.

The Applicant challenges the transfer order on the following grounds:—

1. He was transferred before the completion of his tenure at Pondicherry Head P.O. where he joined only in 2004.
2. There are many others including P. Somasundaram, who was posted at Kutteripattu earlier to the Applicant which posting order was cancelled and the Applicant posted vice him retained after they had completed the tenure of four years.
3. The Applicant is Member of FNPO Union whereas the Head Postmaster under whom he is working is Secretary of NFPE Union, Pondicherry. The Union rivalry because of the above affiliation to different union is the motive behind this transfer.
4. As he was not signing the order book to perform overtime in the Pondicherry Post Office, he was issued with the transfer

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

10 JUL 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

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ANNEXURE-11

2007 (4) GLT 712
(BEFORE A. P. SUBBA, J.)
SHILLONG BENCH
ANDREW BANRILANG UMDOR
...PETITIONER
VS.
STATE OF MEGHALAYA & ORS.
...RESPONDENTS
W.P. (C) No. 176 (SH) of 2007
Decided on 17.09.2007

(A) Service Law—Transfer—Undisclosed reasons—Transfer order passed within two years of previous order and before completion of tenure—Professed policy of the Government for fixed term posting of three years at a place—Records revealing no reason, even no proposal, behind transfer of petitioner—Petitioner suddenly picked up for transfer—Rejecting the plea that impugned order being administrative, no supportive reason was required—Held: an order of transfer, even though administrative in nature, must be supported by reasons—Duty to act fairly even in such matters, emphasised—Impugned order set aside—Petition allowed.

(1989) 2 SLR 328 followed.

... Para 17, 19, 20, 22, 24, 25, 26

(B) Service Law—Transfer—Malafide—Burden is on him who alleges—Mere allegation in the petition or non-filing of counter would not suffice.

AIR 1979 SC 220, AIR 1993 SC 1236 referred. ... Para 10, 12, 13, 29, 32

Cases referred : Chronological Paras
L. AIR 1964 962 : C.S. Rowjee Vs. State of A.P. ...31

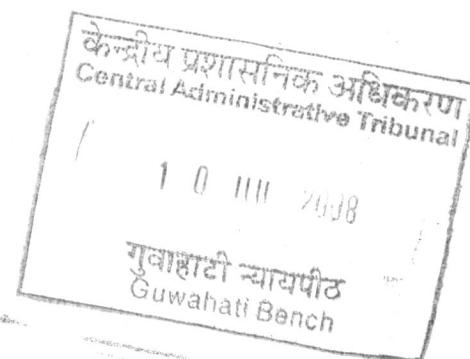
2. AIR 1970 SC 150 : A. K. Kraipak Vs. Union of India21
3. AIR 1974 SC 555 : E. P. Royappa Vs. State of Tamil Nadu25
4. (1978) 1 SCC 405 : Mohinder Singh Gill & Anr. Vs. CEC New Delhi20
5. AIR 1979 SC 220 : Kedar Nath Baht Vs. State of Punjab10
6. AIR 1981 SC 818 : Swadeshi Cotton Mills Co. Ltd. Vs. Union of India23
7. AIR 1987 SC 762 : Hemlal Vs. State of Sikkim32
8. (1989) 2 SLR 328 : Sherao Nagurao Vs. State of Maharashtra & Ors.25
9. (1990) 2 SCC 48 : M.S. Nelly Bhosal Engineering Co. Ltd. Vs. State of Bihar24
10. AIR 1991 SC 1260 : State of Bihar Vs. P.P. Sharma30
11. (1991) 1 SCC 189 : Yadavindra Public School Association Vs. State of Punjab & Ors.29
12. AIR 1993 SC 1236 : Rajendra Ray Vs. Union of India10
13. (1994) 4 SCC 269 : Indian Nut Products & Ors. Vs. Union of India13
14. AIR 2002 SC 834 : State Financial Corporation Vs. Jagadamba Oil Mills24
15. (2003) 11 SCC 740 : Sarvesh Kumar Awasthi Vs. U. P. Jal Nigam & Ors.26
16. 2004 (Suppl.) GLT 764 : Jyoti Kumar Das Vs. Rubul Sarmah26
17. 2005 (4) GLT 371 : Dilip Kumar Saikia Vs. State of Assam26
18. 2006 (Suppl.) GLT 379 : Viyishe Sema & Anr. Vs. State of Nagaland26

Advocates appeared for the Petitioner:
 Mr. M. Chanda, Mr. S. Dutta & Mr. S. Choudhury
 Advocates appeared for the Respondents :
 Mr. E. C. Suja & Mr. T. T. Diengdoh.

JUDGMENT & ORDER

A. P. SUBBA, J.—

In this writ petition filed under Article 226 of the Constitution of India the petitioner has sought for issuance of a writ in the nature of Mandamus and/or certiorari for quashing



*Attested
Smt. Advocate*

Notification No. PW/Admn-32/2000/47 (B) issued under Memo No. PW/Admn-32/2000/47 (AA) dated 12.07.2007, whereby he has been transferred from his present place of posting to another station before completion of his tenure in violation of the professed policy of transfer and posting.

2. Having regard to the urgency involved in the matter and as agreed to by the learned counsel for the parties, this writ petition is being disposed of at the admission stage. Accordingly, Mr. M. Chanda, the learned counsel for the petitioner, Mr. E.C. Suja, the learned counsel for the State respondents and Mr. T.T. Diengdoh, the learned counsel for the respondent No. 4 were heard at length.

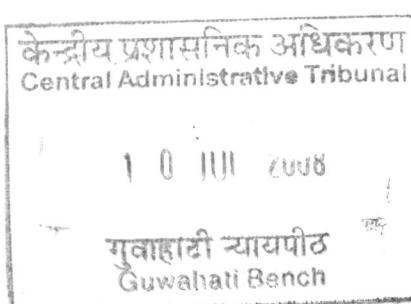
3. The case of the petitioner, in a nutshell, is that he was promoted and posted as Executive Engineer, PWD (Roads) NH Shillong Bye Pass Division, Shillong, in May 2005 from the post of Sub-Divisional Officer PWD (Roads) which he was then holding. Having joined the post of Executive Engineer to which he was promoted he had barely completed 2 (two) years tenure when he was transferred and posted as Assistant Chief Engineer, Office of the Assistant Chief Engineer, PWD (Roads) Western Zone, Tura purportedly in public interest. However shortly thereafter the petitioner was again transferred to Central Roads Branch, PWD (Roads) Shillong in suppression of the earlier order. Being aggrieved by this second order of transfer the petitioner has come up with the present writ petition seeking quashing of the order in question.

4. The main grounds which the petitioner has taken in the writ petition are that even

though there are no statutory rules governing the transfer and posting of employees, under the term of various notifications and instructions issued by the Govt. from time to time, a fixed term of three years has been prescribed before completion of which no Govt. employee would be transferred in normal course. This practice has over the years been a professed policy of the Govt. in the matter of transfer of a Govt. employee. In view of such professed policy the petitioner would be entitled to continue in his present place of posting i.e. as Executive Engineer PWD (Roads), NH Shillong Bye Pass Division, Shillong at least till May, 2008.

5. Since the posting order in question has been issued in total disregard and in violation of the above professed policy of transfer being followed by the Govt. the further case of the petitioner is that the impugned order is not based on any consideration of public interest or any administrative exigency. The order, according to the petitioner, is based on extraneous considerations the main purpose being to accommodate the respondent No. 4 who is the blue eyed boy of the respondents in place of the petitioner. Therefore, the order being mala fide and arbitrary was liable to be quashed.

6. While the respondent No. 2 did not contest the petition a joint affidavit-in-opposition on behalf of respondent Nos. 1, 2 and 3 was filed denying the contention of the petitioners. Even though it was not disputed that under the different administrative instructions issued by the Govt. the policy evolved was that an employee should not be transferred



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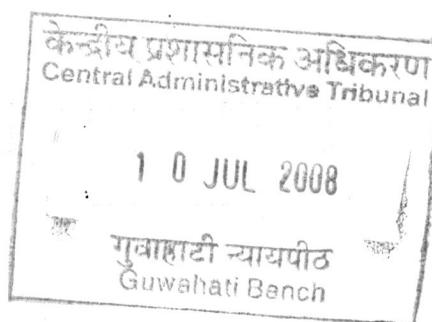
before completing a period of three years in one place of posting, it was contended that such policy was not inflexible. It was within the power of the Govt. to deviate from such policy in cases of exigency of service. It was further contended that the notifications issued in this regard were mere administrative instructions which had no statutory force and as such deviation, even if any, does not give any cause of action to file a writ. In other words, the contention was that the guidelines/instructions in question lack any statutory force and cannot be enforced by filing a writ under Article 226 of the Constitution. It was contended that since petitioner who was transferred and posted as Assistant Chief Engineer, PWD (Roads) Western Zone, Tura, vide order dated 3.7.2007, was reluctant to comply with the order and to hand over charge and as the posting of an officer against the vacant post in Tura, was very urgent, the department had to modify the order of transfer dated 3.7.2007 vide Notification dated 12.7.2007 posting one Shri Khylluid Nongrum at Tura and posting the petitioner in the Office of Chief Engineer, PWD (Roads) Central Roads Branch, Shillong, Meghalaya. Such action according to the respondents, was necessary in the interest of public service without any mala fide interest.

7. It is the further case of the respondents that consequent upon the transfer order, the petitioner vide letter dated 16.7.07 was directed to hand over charge of his office to the next officer transferred and posted in his place but the petitioner vide his reply dated 18.7.07 declined to comply with the order taking a plea that he had not been able to complete

the accounts till that date. Such reluctance on the part of the petitioner cast a doubt on his integrity and efficiency in so far as under the Meghalaya Financial Rules, an Engineer in charge of a Division was required to finalize and submit the monthly accounts within 10th day of the succeeding month. Such conduct on the part of an officer who was holding charge of large Divisional Office dealing with huge financial transaction showed lack of sincerity and integrity on the part of the petitioner for which the Department had to take serious note of it. Such conduct and lapses on the part of the petitioner according to the respondents showed his keenness to stay on and stick to his place of posting for reason best known to him.

8. The respondent No. 4 by filing a separate affidavit-in-opposition supported the case of the other State respondents contending, inter alia, his transfer and posting in place of the petitioner was in public interest and not mala fide.

9. Mr. Chanda, in his submissions assailed the impugned order mainly on the ground of mala fide. It was his contention that the impugned order of transfer was mala fide as it was not supported by any valid reasons which would show that the order was made in public interest or for exigencies of public service. It was also his contention that Shri P. K. Bhaiya, the Secretary to the Govt. of Meghalaya, Public Works (R & B) Department, Shillong, who was impleaded as respondent No. 2 in his personal capacity, chose to remain absent despite service and since no affidavit-in-opposition was filed by him the averments relating to mala fide were uncon-



troverted and in view of this the allegation of mala fide stands established. Per contra, the contention of Mr. E. C. Suja, was that the Department had to issue the impugned order keeping in view public interest and exigency of service and as such the order cannot be termed as colourable exercise of power. Sailing in the same boat and supporting the contention raised by the learned counsel for the State respondents, Mr. T. T. Diengdoh, submitted that no mala fide can be taken to have been established on the basis of the two grounds taken by the learned counsel for the petition. It was also his submission that the impugned order which was issued in public interest was not violative of any statutory provisions. The deviation, if any, being only in respect of Administrative instructions the writ petition filed by the petitioner was mala fide and liable to be rejected at the threshold.

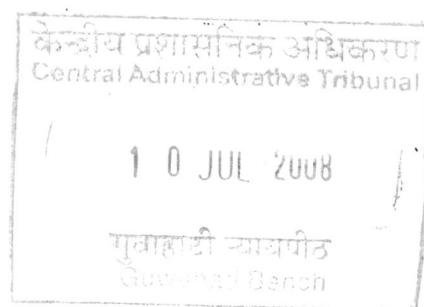
10. It is well established that the burden of establishing mala fide is on the person making the allegations and such burden is very heavy. Mere allegation without *prima facie* establishing how the order is biased or actuated by something other than public interest would not be enough. Laying down as to what type of evidence would be required to establish mala fide the Apex Court in *Kedar Nath Baht Vs. State of Punjab AIR 1979 SC 220* has held that direct and circumstantial evidence and respondents' admission and the attendant circumstance of the case are admissible to establish the lack of bona fide or bad faith alleged. In a later decision rendered in *Rajendra Ray Vs. Union of India, AIR 1993 SC 1236*, the Apex Court has held that establishing malice in fact in a straight cut man-

ner may not always be possible. Hence it has further been held that in an appropriate case, reasonable inference can be drawn about mala fide action from the pleadings and antecedents, facts and circumstances.

11. As already narrated above, the material facts pleaded by the petitioner in support of the plea of mala fide are that the petitioner has been transferred out of the place of his posting before completion of fixed tenure of three years against the professed policy of transfer. He was first transferred vide Notification No. PW/Admn-32/2000/40(L) dated 3rd July 2007 as Assistant Chief Engineer to Tura. Within a short period thereafter he has been again transferred to the office of the Chief Engineer PWD (Roads) Meghalaya, Shillong and in his place the respondent No. 4 has been transferred allegedly for undisclosed reasons without any administrative exigency or public interest.

12. The question is whether the facts as pleaded above are sufficient for drawing an inference of mala fide. As already noted above the contention of the petitioner is that the manner in which one order was replaced by the other in quick succession was indicative of absence of bona fide the object being to accommodate respondent No. 4 in his place for undisclosed reasons.

13. As per law laid down by the Apex Court in *Indian Nut Products & Ors. Vs. Union of India (1994) 4 SCC 269*, the existence of the conditions for the exercise of the power must be made out on the basis of relevant material on record. As further held by the Court, if the existence of the conditions for the exercise of such power is chal-



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lenged as in the present case, the courts are entitled to examine whether the conditions existed when the order was made. The relevant observation which occurs in para 10 of the judgment is as follows :

"10. It is well-settled that if a statute requires an authority to exercise power, when such authority is satisfied that conditions exist for exercise of that power, the satisfaction has to be based on the existence of grounds mentioned in the statute. The grounds must be made out on the basis of the relevant material. If the existence of the conditions required for the exercise of the power is challenged, the courts are entitled to examine whether those conditions existed when the order was made. A person aggrieved by such action can question the satisfaction by showing that it was wholly based on irrelevant grounds and hence amounted to no satisfaction at all. In other words, the existence of the circumstances in question is open to judicial review."

14. The learned State counsel in support of his submission that the requisite conditions existed when the impugned order was issued in public interest and exigency of service produced the Departmental file bearing No. PW/Admn-32/2002 on the subject of promotion of Asstt. Engineer (Civil) PWD to the rank of Executive Engineer, PWD, Meghalaya, for perusal of this Court.

15. A perusal of the file goes to show that a proposal for promotion of four Asstt. Engineers to the post of Executive Engineer was initiated and approval was obtained vide notings at NSP 110-112. The notings go to show that since three of the officers proposed to be promoted and posted had not completed three years of service in their present places of posting, the proposal was submitted to the Chief Minister for his approval as required

under the different instructions issued by the Govt. in this regard. The further notings after the approval was accorded go to show that necessary notification under Memo No. PW/Admn-32/2000/40 (AA) dated 3rd July 2007 was duly issued. The relevant part concerning the petitioner reads as follows :

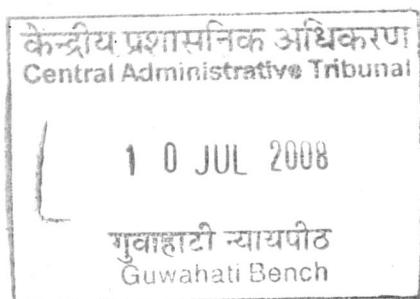
"No. PW/Admn-32/2000/40(L) : On reliefs, Shri Andrew Banrilang Umdor, BE (Civil) Executive Engineer, PWD (Roads), N. H. Shillong Bye Pass Division, Shillong is in the interest of public service, transferred and posted until further orders as Assistant Chief Engineer, Office of the Additional Chief Engineer, PWD (Roads), Western Zone, Tura with effect from the date of taking over charge of the post vice Smt. Odelia K. Marak, transferred."

16. The relevant part of the other Notification issued under Memo No. PW/Admn-32/2000/47 (AA) dated the 12th July 2007 reads as follows :

"No. PW/Admn-32/2000/47 (A) : On relief Shri Hubert Kharlukhi, BE (Civil), Under Secretary to the Government of Meghalaya, Public Works Department (R&B), Special Works Branch is, in the interest of public service, transferred and posted until further orders as Executive Engineer, PWD (Roads), NH Shillong Bye Pass Division, Shillong with effect from the date of taking over charge of the post vice Shri Andrew Banrilang Umdor, transferred.

No. PW/Admn-32/2000/47 (B) : On relief Shri Andrew Banrilang Umdor, BE (Civil), Executive Engineer, PWD (Roads) NH Shillong Bye Pass Division, Shillong is, in the interest of public service, transferred and posted until further orders as Assistant Chief Engineer, Central Roads Branch, Office of the Chief Engineer, PWD (Roads), Meghalaya, Shillong, with effect from the date of taking over charge of the post of Shri Winston Churchill Paswei, transferred.

No. PW/Admn-32/2000/47 (F) The order of transfer of Shri Andrew Banrilang Umdor, B.E.



(Civil) from the post of Executive Engineer, PWD (Roads), NH Shillong Bye Pass Division, Shillong posting him as Assistant Chief Engineer, Office of the Additional Chief Engineer, PWD (Roads), Western Zone, Tura issued vide this Department's Notification No. PW/Admn-32/2000/40 (L) dated 3.7.2007 is hereby cancelled."

17. The above matter was apparently processed and approval was obtained vide notings appearing at NSP 114 and 115 of the concerned file. Curiously enough, these notings go to show that what was put up for approval was a draft Notification for transfer and posting of officers as per order at NSP 43 '46'. Since earlier notification was approved by the CM further approval of the CM was obtained and the impugned notification was issued. A perusal of the orders on page 43 '46' referred to in the above note go to show that the proposal is in respect of officers other than the petitioner. While the noting at NSP 43 relates to the proposal for posting of one Shri K. K. Mawa, the notings at NSP 46 relates to the posting of Shri K. Nongrum, SDO South, Shillong Sub-Division and Shri Bedi Thongni, NN Sub-Division No. III and posting of Shri M Tariang (ACF Bldgs) and Shri I. Kharmawlong Principal SATC. The name of the petitioner finds no mention in these proposals. It is only in the impugned notification issued after approval of the Chief Minister at NSP 114 that the name of the petitioner figures showing his new place of posting as Asstt. Chief Engineer, Central Roads Branch, Office of the Chief Engineer, PWD (Roads) Meghalaya, Shillong, in supercession of the earlier notification.

18. It must however be noted that the

subsequent note recorded by P. K. Bhaiya, Secretary PWD (R & B) at NSP 116 does place on record the circumstances which preceded the issue of the impugned notification. The relevant part of the note reads as follows:

"Chief Secretary

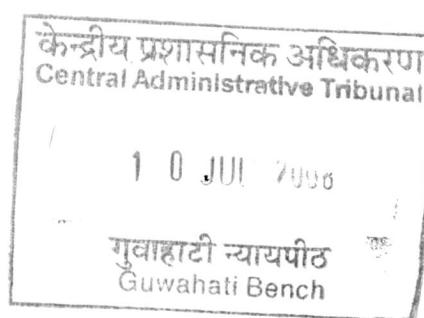
The department issued a notification transferring Shri Andrew Banrilang Umdor, EE, PWD (Roads), NH, Shillong Bye-pass Division to the Addl. CE, PWD (Roads) office at Tura vide No. PW/Admn-32/2000/40 (L) dt. 3.7.07 (Sl. 41 c). Approval of Minister, PWD (Roads) and Chief Minister at Page 112 N.

The CM issued a note to Minister, PW (R) vide Sl. 43C to stay the transfer order in respect of Shri Umdor in view of representation by 5 (five) MLAs. In a meeting held in the office chamber of C.M., where Minister PWD (R) and Minister, Tourism were present on 12.7.07 it was decided that Shri A.B. Umdor, EE should be transferred but posted in Shillong itself and accordingly a modified order was issued with approval of the Minister PW (R) and the Chief Minister vide 81.47C.

It appears that some MLAs had met the Hon'ble Chief Minister on 19.7.07 and submitted a joint representation demanding that Shri A. B. Umdor, EE, NH Shillong Bye-pass should be transferred and Shri K. K. Mawa, Asstt. CE (Building) may be posted there. A copy of representation with the endorsement of CM is at Flag 'X'. The Minister, PWD (Roads) endorsement on Page 115 N may please be seen. As desired by them a modified order may be issued as per draft placed below, with approval of the Minister, PWD (Bldg.), Minister, PWD (Roads) and the Chief Minister.

Sd/- Illegible
Secretary PWD (R&B)"

19. Even though the above notings highlight the backdrop in which the impugned order came to be issued the notings do not show whether the complaint or the representations received were processed in normal course



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following set Office procedure for obtaining approval for modification/supercession of the earlier order for supervening reasons, if any. The relevant notings highlighted above thus do not throw any light on the conditions that existed if any and that makes it difficult to ascertain as to what weighed with authorities in taking the decision to modify or replace the earlier one before the impugned Notification was issued.

20. Conceding to the above position in all fairness the contention urged by Mr. E.C. Suja and Mr. T.T. Diengdoh is that the impugned order being in the nature of an administrative order, no supporting reasons were required. It is true that as far as administrative officers are concerned, the duty is not so much to act judicially as to act fairly, as held by the Apex Court in *Mohinder Singh Gill & Anr. Vs. CEC New Delhi* (1978) 1 SCC 405. The relevant observation occurring in para 44 and 45 which is illuminating is as follows :

“44. The dichotomy between administrative and quasi-judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescent after Kraipak in India and Schmidt in England.

45. Kraipak marks the watershed, if we may say so, in the application of natural justice to administrative proceeding. Hegde, J., speaking for a Bench of five Judges observed, quoting for support Lord Parker in *In re H. K.* (an infant)

It is not necessary to examine these decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding.”

21. As pointed out by the Apex Court in *A. K. Kraipak Vs. Union of India*, AIR 1970 SC 150 the distinction between a quasi judicial and administrative function has now become thin and what was considered as an

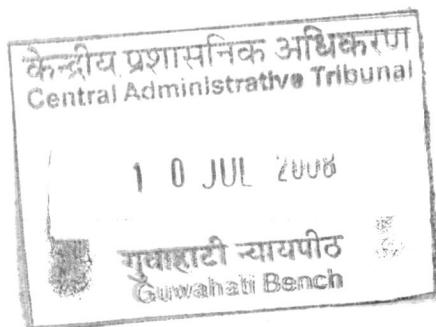
administrative power some years back is now being considered as a quasi judicial power. The following is the relevant observation occurring at para 13 of the judgment :

“13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.”

22. As further held by the Court, a duty to act fairly denotes obligation to follow procedural safeguards. Thus, even in administrative matters, it is the duty of the administrative authority to act fairly.

23. The Supreme Court in *Swadeshi Cotton Mills Co. Ltd. Vs. Union of India*, AIR 1981 SC 818 has held as follows :

“57.It cannot be laid down as a general



proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, but, as was pointed out by this Court in Barium Chemicals (*ibid*), the existence of the circumstances from which the inference constituting the opinion, as the *sine qua non* for action, are to be drawn, must be demonstrable, and the existence of such 'circumstances' if questioned, must be proved at least *prima facie*."

24. Similarly, the Apex Court in *M.S. Nelly Bhosal Engineering Co. Ltd. Vs. State of Bihar* (1990) 2 SCC 48 has held that fairness is a fundamental principles of good administration. It is a rule to ensure that the vast power in modern State is not abused but properly exercised. The Court has further clarified that the principle of fairness of procedure or fair play in action should be observed even where the principles of natural justice are not required to be followed. A similar observation made by the Apex Court in *State Financial Corporation Vs. Jagadamba Oil Mills*, AIR 2002 SC 834 makes it clear that the obligation to act fairly on the part of the administrative authorities has been evolved to ensure rule of law and to prevent failure of justice.

25. In *Sherao Nagurao Vs. State of Maharashtra & Ors.* (1989) 2 SLR 328 a decision relied on by the learned counsel for the petitioner in support of his case, it has been held by the Bombay High Court that a transfer is malafide when it is made not for professed purpose, such as in normal course or

in public or administrative interest or in exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. This view finds approval from the judgment of the Apex Court rendered in *E. P. Royappa Vs. State of Tamil Nadu*, 1974 SC 555 wherein it has been held that a transfer made to accommodate someone for undisclosed reasons has to be termed as malafide.

26. In addition to the above we may also notice the following few of the other decisions referred to and relied on by the learned counsel for the petitioner on the point.

In *Dilip Kumar Saikia Vs. State of Assam & Ors.* 2005 (4) GLT 371 a learned Bench of this Court observed as follows :

".....If the exercise of power is based on extraneous consideration for achieving an alien purpose or an oblique motive, it would amount to malafide and colourable exercise of power. Frequent transfer, without sufficient reason to justify such transfer cannot be held as *bonafide*. A transfer is malafide when it is made not for professed purpose such as normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order of transfer is to satisfy the test of Article 14 and 16 of the Constitution, otherwise the same will be treated as arbitrary."

"7. A transfer order issued as in the instant case only to accommodate another person and that too without affording any opportunity to the person whose interest is affected, cannot be said to an order issued in administrative exigencies."

Another learned Bench of this Court *Viyishe Sema & Anr. Vs. State of Nagaland*



2006 (Suppl.) GLT 379 observed as follows:

"7. On close inspection of the records, it appears that the entire action of making impugned cross transfer has been taken up at the behest of the respective Minister and MLA reflecting arbitrariness and nepotism therein. It also goes to show that there was no public interest involved as such in renewing the initial cross transfer order dated 13.5.2004 on 25.1.2005 after almost a gap of one year."

In *Jyoti Kumar Das Vs. Rubul Sarmah* also a decision of this Court reported in 2004 (Suppl.) GLT 764 another learned Bench observed as follows:

"4. Records further reveal that transfer was ordered primarily on consideration of certain complaints lodged by some political person and members of the public against the writ petitioner. If the writ petitioner has been indulging in any conduct not befitting the office of the CDPO contrary to the public interest, the respondent authority should have gone for any enquiry for imposing such penalty as may be permissible under the rules. Premature transfer at the behest of the members of the public without any enquiry is against public interest. It tends to destroy the morale of the government servant. Such a transfer cannot get the seal of approval from the Court. Hence, the application for vacating order of stay is rejected."

In *Sarvesh Kumar Awasthi Vs. U. P. Jal Nigam & Ors.* (2003) 11 SCC 740, the Apex Court observed as follows:

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

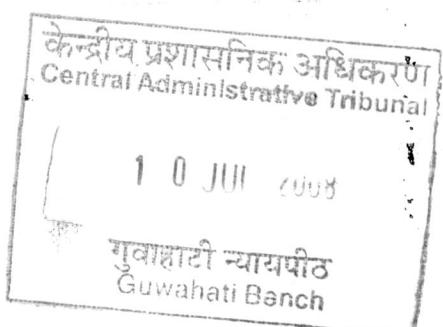
ness of administration."

The above decisions make it amply clear that an order of transfer of an employee cannot be made without valid reasons. In such view of the matter, I have no hesitation to answer the question raised by the learned counsel for the respondents in the affirmative and to say that an order of transfer even though in the nature of administrative order must be supported by valid reasons.

27. The only question that now remains to be answered is whether the impugned order of transfer can be said to be duly supported by reasons in the present case. As already noted above, the concerned file produced by the Department neither reflects existence of the conditions for the exercise of the power under challenge nor does it indicate any reason so as to show that the power was exercised for professed purpose.

28. In the above circumstances, the contention of the learned counsel for the petitioner that the impugned order was passed to accommodate the respondent No. 4 for undisclosed reasons cannot be easily brushed aside.

29. Now coming to the other ground relating to absence of denial affidavit by the respondent No. 2 and its consequence it may be noted that, Mr. Chanda relying on *Yadavindra Public School Association Vs. State of Punjab & Ors.* (1991) 1 SCC 189, contended that since the respondents No. 2 against whom the allegation of mala fide was directed did not independently file any affidavit in opposition denying the allegations, the averment of mala fide stand admitted. The observation relied on by the learned counsel



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is as follows :

“2. Considering that serious allegations of mala fides have been raised in the writ petition, it was not appropriate, in our opinion, for the High Court to have dismissed the writ petition by a detailed order in limine and without notice. When such allegations of mala fides are raised and the person against whom the allegations are made has been impleaded as a respondent, it would be appropriate to give an opportunity to the person concerned to file an affidavit and then to decide the case on merits. Without expressing any opinion on the merits of this case, we set aside the judgment of the High Court and restore CWP No. 16047 of 1997 to the file of the High Court for decision in accordance with law. Pending disposal of the writ petition, the appellant should not be dispossessed.

30. The position of law has been more clearly laid down by the Apex Court in *State of Bihar Vs. P.P. Sharma*, AIR 1991 SC 1260 as follows :

“It is well-settled law that the person against whom mala fide or bias was imputed should be impleaded to nominee as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity.”

31. As further held by the Apex Court in *C.S. Rowjee Vs. State of A.P.* AIR 1964 962 when :

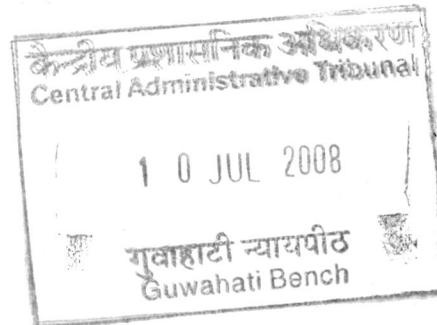
“....In the absence of a denial affidavit by the person against whom such allegations are made, the court would be constrained to accept allegations so remaining unrebutted and unanswered on the test of probability.”

32. However, the above does not appear to be law in each and every case. As per the law laid down by the Apex Court in a later decision rendered in *Hemlal Vs. State of*

Sikkim, AIR 1987 SC 762, a decision relied on by Mr. Diengdoh, it is not necessary in each and every case where allegation of malafide have been made that a counter affidavit refuting these allegations is necessary. In this regard, it is relevant to note that even though the respondent No. 2 did not contest the petition in his personal capacity he was at the same time impleaded as respondent No. 1 in his official capacity and in the joint counter affidavit filed on behalf of respondent Nos. 1, 2 and 3, the allegations of malafide have been denied. Thus, having regard to this fact and bearing in mind the above principle, I find myself unable to agree with the submission of the learned counsel for the petitioner that the allegation of malafide in the present case should be taken as admitted merely for non filing of counter by the respondent No. 2 in his personal capacity. Even though this ground fails it follows from the foregoing discussion on the first ground that the impugned order is unsupported by any reason to show that it was necessitated by exigency of service or public interest. Consequently the conclusion is irresistible that the impugned order cannot but be termed as malafide.

33. As a result, the writ petition succeeds and the impugned orders of transfer bearing No. PW/Admn-32/2000/47 (B) and PW/Admn-32/2000/47(F) issued under Memo No. PW/Admn-32/2000/47(AA) dated 12th July 2007 stands quashed.

34. The department file may be returned to the concerned Department forthwith.



Before The Hon'ble Central Administrative Tribunal, Aby, Bench

File in Court on 28/7/08
Court Officer.

O. A - NO - 123/08

Sri. C.K.L. Das
-vs-
Union of India

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

29 JUL 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

The Counsel for & on behalf of The Respondent
most respectfully beg to state as follows:-

(i) That the Hon'ble Tribunal directed the Respondent
vide order dtd 11-7-08, to file reply/objection on/a before
25/7/08.

(ii) That, after receiving the aforesaid direction, the
Respondent has Collected all relevant documents,
and Perused/x-rayed the facts & circumstances,
relating to the transfer of the applicant, and
Prepared the Para-wise Comments, in order to
assist the Hon'ble Tribunal - within short period
of Time.

(iii) That, it is not possible on the part of The
Respondent, to file a Vetted/verified reply within this
short Period of Time since same has to be verified
by the Secretary and/or Minister level at Delhi.

Under the above circumstances, your Lordship will
be pleased to Consider the Para-wise Comments
attached herewith, while considering the interim
order for the ends of justice & equity.

- AND -

For this Act of Kindness, your Petition/Respondent shall
ever pray.

**PARAWISE COMMENTS IN RESPECT OF
O.A.No.123/2008 - SHRI C.K.L.DAS VERSUS UNION OF
INDIA & OTHERS FILED BEFORE THE ~~CENTRAL~~
ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.**

PRELIMINARY OBJECTIONS:

1. That the application filed by the applicant is not maintainable as the applicant has failed to disclose as to how he is adversely affected by the transfer.
2. That the application of the applicant is not maintainable as the transfer of the applicant has been ordered by keeping in view the administrative requirement, exigencies of government work, administrative convenience, public interest and for better management of the organisation.
3. That the applicant has raised the plea of his transfer due to malafide intentions on the part of the respondents without substantively submitting any evidence in support. Therefore, the plea taken by the applicant being devoid of evidence is liable to be quashed and the application summarily rejected.
4. That there is no change in the place of transfer of the applicant except that he has to now work on a floor other than the floor he is already working in the same building. The applicant has also not disclosed as to what is the interest he has in continuing on the same post when there is no change in the place and the building. The application of the applicant is more of an emotional outburst then based on facts and merits. Therefore, the application filed by the applicant is nothing but an abuse of process of law and therefore, should be summarily rejected.
5. That the application filed by the applicant is based on wrong facts and pleas. As a responsible Group A engineering officer belonging to illustrious Central Water Engineer (Gr.A) Service and having been

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Guwahati Bench (CAT)

assigned the responsibility of managing Human Resources available at his command in HO Circle, Guwahati, he should have sufficient knowledge that in the matter of transfers, the seniority of the officer in the grade in which he is working is not considered. Therefore, by taking the plea of his seniority with that of respondent No.5, the applicant is trying to mislead this Hon'ble Tribunal and therefore, the application filed by him deserves summary dismissal.

6. That the applicant is quite a senior officer holding the post of SE of CWE (Gr.A) Service and by virtue of his status and the position he holds in the hierarchy, it is his first and foremost duty to honour the orders and instructions issued to him with a view to set an example for the staff and officers working his control and supervision.

7. The application filed by the applicant is not maintainable. As per Memorandum dated 02.01.2008 keeping in view the exigencies of work and administrative requirement transfer and posting may be made to any office. However, in this case the applicant has been ordered transfer from Hydrological Observation Circle, Central Water Commission, Guwahati to M&A, CWC, Guwahati both offices are located in the same building in CWC complex at Adabari, Guwahati. As such there is no change of place due to the transfer order.

BRIEF FACTS OF THE CASE:

That Central Water Commission, an attached office of Ministry of Water Resources, Government of India, is an Apex organisation in the field of water resources sector. For implementing various schemes, it has a number of field organizations all over the country and one such office is called Hydrological Observation Circle situated at Guwahati, which is considered to be the biggest field office in the entire Central Water Commission. It is dealing with hydrological observations, flood forecasting, etc. Also the office of Director (Mon), CWC is situated at



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Guwahati Bench (CAT)

Guwahati. Both these offices are located at Guwahati in the same building but on different floors. As a policy measure, the transfers/postings in various grades are considered and ordered during the months of April-June every year for which the requests/options from the officers and staff are invited in the months of December-January every year. The rotational transfers are ordered during April-June keeping in view the academic session. During such rotational transfers in the year 2007, the applicant was transferred to Guwahati as SE, HOC, as per his option, he being one of the longest stayees at Delhi. He joined the said post at Guwahati on 12.6.2007. During his incumbency as Superintending Engineer, HOC, Guwahati, it was realized that keeping in view the quantum of work involved in the above Circle, the functioning of the Circle office can be better managed by posting another officer while the services of the applicant could be better utilized at the same place in another unit situated in the same building as Director (Mon), CWC, Guwahati. The matter was considered and discussed at the headquarter office at New Delhi at length with the concerned Member and during the visit of the applicant to the headquarter in the month of May, 2008, he was sounded about his transfer from HOC to Monitoring unit, CWC, Guwahati. After a decision had been taken in the months of March, 2008 to transfer the applicant from his present posting, it was also decided to find out a substitute who can be posted in his place. While searching a substitute, the respondents were informed that the respondent No.5, who is already posted in the NE region i.e. Silchar is willing to be transferred to Guwahati as SE, HOC, CWC. Accordingly, while considering the rotational transfers, the name of the applicant was considered for transfer from HOC, Guwahati and the request of respondent No.5 was accepted for posting at Guwahati as SE, HOC. Therefore, the above sequence of events shows that a decision to transfer the applicant had already been taken much prior to the request of the respondent NO.5. The respondent No.5 was posted due to the reason that he is already posted in the NE region and is well aware about the working conditions in the NE region.

28/7/08
 Motin Ud-Din Ahmed
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 Addl. Central Govt. Standing Counsel
 Guwahati Bench (CAT)

It is submitted that vide order dated 20.6.2008 issued by the respondent No.2, the applicant has been transferred to M&A Dte., CWC, Guwahati, Shri Lalit Kumar, Director (M&A), Guwahati, transferred to CWC (Hqr), New Delhi consequent upon the completion of his tenure, respondent No.5 has been transferred as SE, HOC, Guwahati and Shri Bhagat Singh, Director has been transferred from CWC (Hqr), New Delhi to Meghna Circle, CWC, Silchar in place of respondent No.5. However, due to the pressing personal problems of Shri Bhagat Singh, his transfer orders to Silchar have been modified and he has now been transferred to HOC, CWC, Dehradun vide orders dated 23.7.2008. The name of the officer to whom the charge of the post of SE, Meghna Circle, Silchar is to be assigned is being decided.

It is respectfully submitted that it is the prerogative of the organisation to utilize the manpower available at its command in the best possible manner to serve the public interest and the overall interest of the organisation.

It is also respectfully submitted that the transfer of those officers who have completed their prescribed tenure (2/3 years in the case of North East region and 3 years in the case of other regions) are made in public interest. In all other cases, the transfers ordered at the request of the transferee officer are treated as 'own cost'. For the sake of clarification it is submitted that the officers who are transferred in public interest are paid admissible TTA and allowed joining time, as per the rules. In the case of transfers 'at own cost', the government servant is neither entitled for TTA nor the joining time. Therefore, the term 'own request' or 'own cost' has no other meaning then the one explained above.

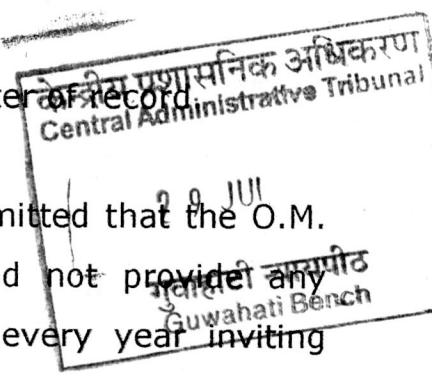
ON MERITS:

1 to 3. Paras 1 to 3 of the application need no comments



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Guwahati Bench (CAT)

4.1-4.3 Paras 4.1 & 4.3 of the application are matter of record.



4.4 In reply to para 4.4 of the application it is submitted that the O.M. dated 2.1.2008 issued by the respondent No.2 did not provide any guidelines for transfer. Such circulars are issued every year inviting requests/options from officers and staff for rotational transfers. The contents of the above circular have been wrongly interpreted by the applicant. The instructions contained in the above circular only relate to the submissions of the options/requests for transfer. It is also submitted that the request made by respondent No.5 was after the expiry of the date stipulated in the said circular and was not made with reference to the said circular.

4.5 In reply to para 4.5 of the application it is submitted that the allegation of collusion leveled by the applicant are unfounded, uncalled for and motivated. As already submitted in the preceding para, a decision to transfer the applicant from his present post had already been taken in the month of March, 2008 and the discussion of respondent No.4 with respondent No.5 was a follow up action to find out a suitable substitute for the applicant. As per the own showing of the applicant, respondent No.4 discussed the issue with respondent No.5 in the month of June, 2008 i.e. only after the decision to transfer the applicant had been taken. It is again submitted that the request of respondent No.5 was not in response to the O.M. dated 2/1/2008 and even otherwise also, the last date for submission of such requests had expired much earlier. The respondent No.5 being the Head of the B&BB Organisation, Shillong under which HOC, Guwahati is functioning was well within his right and power to give his consent for the transfer of respondent No.5 in place of the applicant keeping in view the administrative requirement, exigencies of government work and public interest involved.

4.6 The averments made by the applicant in this para of the application confirms the facts narrated by the respondents in the preceding paras

1/11/2011

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Guwahati Bench (CAT)

that a decision to transfer the applicant from his present posting was taken much prior to the date of submission of the request by the respondent No.5. The applicant in this para has stated that Secretary, CWC discussed with him the issue of his transfer in the month of May 2008. It is submitted that Secretary, CWC would not have discussed the said issue with the applicant without a decision having been taken by Chairman, CWC & Ex-officio Secretary to the Government of India. By his own showing the applicant has pleaded that the respondent No.4 had discussed the issue with the respondent No.5 in June, 2008 about his transfer to HOC, Guwahati. This proves that the above action on the part of respondent No. 4 was subsequent to the meeting of the applicant with Secretary, CWC. Therefore, it is amply clear that a decision to transfer the applicant had been taken much prior to the decision to post the respondent No.5 in his place. The representation submitted by the applicant was duly considered. Further, it is submitted that the applicant himself joined in the midst of the monsoon season i.e. June, 2007. Therefore, his plea that the transfer is in the monsoon season is contrary to his own stand.

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4.7 In reply to para 4.7 of the application it is submitted that the transfer of the applicant does not violate any provisions of O.M. dated 14.12.1982 or 1.12.1988 or 22/7/1998, as quoted by him. He remains in the NE region after transfer and will be transferred to his choice station after completion of tenure of two years. The issuing of the order dated 20.6.2008 transferring the applicant and respondent No.5, among others, is a matter of record. It is submitted that in the matter of transfers, the question of seniority is not considered nor is there any provision in the rules to consider such questions as all the posts for the purpose of posting are treated equally (except located in foreign countries). It is denied that the transfer of the applicant and respondent No.5 is without any justifiable reason. It is again submitted that the questions of transfer of the applicant and posting of the respondent No.5 are two separate issues which were decided at separate times. While the decision to transfer the



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applicant from his present place was taken in March, 2008, the decision to post the respondent No.5 in his place was taken on 20.6.2008. Therefore, the content of the application that he was transferred to accommodate the respondent No.5 is baseless. The allegations of malafide interest are denied being baseless, unfounded, after thought and made out of emotional outburst without considering the status and the position which the applicant holds. It is again submitted that the transfer of the applicant is in public interest. It is denied that the respondent No.5 made the request for transfer at the instance of respondent No.4. It is submitted that his request was due to his personal reasons. It is submitted that while the respondent No.4 was at Delhi on 19.6.2008, respondent No.3 was at Silchar only on the said date. The transfer order dated 20.6.2008 being legal and issued in public interest is not liable to be quashed.

4.8 In reply to para 4.8 of the application, the circumstances leading to the transfer of the applicant from his present posting and posting of respondent No.³ in his place have been amply clarified in the preceding paras of this reply.

4.9 In reply to para 4.9 of the application it is submitted that the transfer of the applicant from his present posting has not been ordered with a view to accommodate the request of respondent No.⁴. The decision to transfer the applicant had been taken much prior to the request of the respondent No.5 for posting at Guwahati. Therefore, there is no violation of the O.M. dated 2.1.2008. It is submitted that the transfer of the applicant has been ordered in public interest, exigencies of work and administrative requirement. It is submitted that the applicant has termed the O.M. dated 2.1.2008 as arbitrary and illegal which contradicts his own submission made in the preceding paras of the applicant.



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Guwahati Bench (CAT)

4.10. Para 4.10 of the application so far it relates to the representation dated 23.6.2008 of the applicant is a matter of record. The submissions made by the applicant in his above representation were duly considered by the competent authority.

4.11 In reply to para 4.9 of the application it is submitted that in the matter of transfers, the question of seniority is not considered nor is there any provision in the rules to consider such questions as all the posts for the purpose of posting are treated equally (except those located in foreign countries). As a responsible Group A engineering officer belonging to illustrious Central Water Engineer (Gr.A) Service and having been assigned the responsibility of maintaining Human Resources available at his command in HO Circle, Guwahati, he should have sufficient knowledge that in the matter of transfers, the seniority of the officer in the grade in which he is working is not considered while considering his transfer. Therefore, by taking the plea of his seniority with that of respondent No.5, the applicant is trying to mislead this Hon'ble Tribunal and therefore, the application filed by him deserves summary dismissal.

4.12 In reply to para 4.12 of the application it is submitted that the applicant was sounded about his impending transfer from his present posting during his meeting with Secretary, CWC in May, 2008, as admitted by him in previous paras. Therefore, it is incorrect to state that the transfer was made without the knowledge of the applicant. Notwithstanding the above, it is not obligatory on the part of the competent authority to discuss the transfers with individual concerned. The question of completion of tenure does not arise as the applicant remains at Guwahati i.e. NE region. As regards the timing of the transfer mentioned by the applicant in this para of the application with reference to the works of the HOC, it is submitted that the applicant himself joined in June, 2007 which is the midst of the monsoon season.

Motin Ud-Din Ahmed

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Guwahati Bench (CAT)

4.13 The circumstances under which the applicant has been transferred and the respondent No. 5 has been posted in his place have been explained in the preceding paras and the same are not reproduced for the sake of brevity.

4.14 The averments made by the applicant in this para about Shri S.K.Choudhuri, CE, B&BBO, CWC, Shillong are baseless, after thought and does not behove of the position held by the applicant. Shri S.K.Choudhuri, CE acted in the best interest of the organisation.

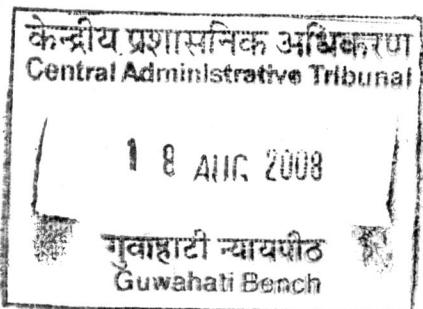
4.15 There is no para bearing para No. 4.15.

4.16 In reply to para 4.16 of the application, it is submitted that none of the judgments quoted by the applicant in this para of the application is applicable to his case. It is submitted that the applicant has not been transferred out of the station already posted, his transfer remains at the same station, the transfer is in public interest, exigencies of work and public interest. Therefore, the transfer of the applicant cannot be equated with any of the cases narrated in the judgments enclosed by the applicant with the above application.

Motin Ud-Din Ahmed

28/7/88
Motin Ud-Din Ahmed
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 Addl. Central Govt. Standing Counsel
 Guwahati Bench (CAT)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI



OA NO. 123/2008

Shri Chandra Kumar Lal Das

.....APPLICANT

-VERSUS-

Union of India & Ors.

.....RESPONDENTS

Filed by
The Respondent No. 1, 2 & 3
through
M. B. Ahmed, C.A.
Addl. Counsel
Guwahati Bench
14/8/08

IN THE MATTER OF

Written statement submitted by the respondents No. 1, 2 & 3.

WRITTEN STATEMENT

I, Shri Shiv Dutta Sharma Son of Shri Rameswar Dayal Sharma presently working as Executive Engineer, Central Water Commission, Middle Brahmaputra Division, CWC Complex, Guwahati-14 do hereby solemnly affirm and state as under:-

1. That I am the Executive Engineer, Central Water Commission, Middle Brahmaputra Division, CWC Complex, Guwahati-14, representing the said OA on behalf of the respondents. The copies of the aforesaid application have been served upon the respondents. I have received copy of the OA, have gone through the same in my official capacity and I am conversant with the facts and circumstances of the case thereof. I have been authorized to file this Written Statement on behalf of respondents No. 1, 2 and 3. Save and except, the statements, which are specifically admitted herein below, rests may be treated as total denial.

Received
Shri Dutta
14/8/08

filed by

Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14.

through -

Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

14/8/08

2. That, the statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.

16 AUG 2008

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Guwahati Bench

3. That the answering respondents do not admit any facts, statements, allegations and averments made in O.A. and except those which have been specifically admitted herein under in the written statement. Further the facts and statements which are not borne on records are categorically denied.

1. PRELIMINARY OBJECTIONS:

1.1. That the application filed by the applicant is not maintainable as the applicant has failed to disclose as to how he is adversely affected by the transfer.

1.2. That the application of the applicant is not maintainable as the transfer of the applicant has been ordered by keeping in view the administrative requirement, exigencies of government work, administrative convenience, public interest and for better management of the organisation.

1.3. That the applicant has raised the plea of his transfer due to malafide intentions on the part of the respondents without substantively submitting any evidence in support or justification. Therefore, the plea taken by the applicant being devoid of evidence or justification is liable to be quashed and the application summarily rejected.

1.4. That there is no change in the place of transfer of the applicant except that he has to now work on a floor other than the floor he is

Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14.

This is with my

18 AUG 2008

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Guwahati Bench

already working in the same building. The applicant has also not disclosed as to what is the interest he has in continuing on the same post when there is no change in the place and the building. The application of the applicant is more of an emotional outburst than based on facts and merits. Therefore, the application filed by the applicant is nothing but an abuse of process of law and therefore, should be summarily rejected.

1.5. That the application filed by the applicant is based on wrong premises and pleas. As a responsible Group A engineering officer belonging to illustrious Central Water Engineering (CWE) Group-A Service and having been assigned the responsibility of managing Human Resources available at his command in HO Circle, Guwahati, he should have sufficient knowledge that in the matter of transfers, the seniority of the officer in the grade in which he is working is not considered. Therefore, by taking the plea of his seniority with that of respondent No.5, the applicant is trying to mislead this Hon'ble Tribunal and therefore, the application filed by him deserves summary dismissal.

1.6. That the applicant is quite a senior officer holding the post of SE of CWE Group-A Service and by virtue of his status and the position he holds in the hierarchy, it is his first and foremost duty to honour the orders and instructions issued to him with a view to set an example for the staff and officers working under his control and supervision.

1.7. The application filed by the applicant is not maintainable. As per Memorandum dated 02.01.2008 keeping in view the exigencies of work and administrative requirement transfer and posting may be

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Executive Engineer
M. B. Division, CWC
Adabari, Guwahati-14.

made to any office. However, in this case the applicant has been ordered transfer from Hydrological Observation Circle, Central Water Commission, Guwahati to M&A, CWC, Guwahati both offices are located in the same building in CWC complex at Adabari, Guwahati. As such there is no change of place due to the transfer order.

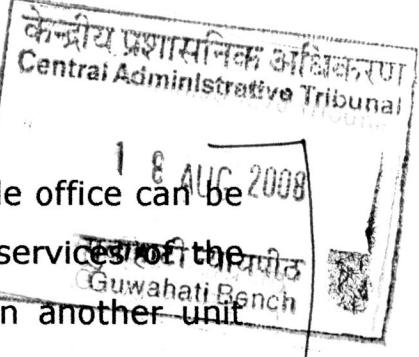
18 AUG 2008

2. BRIEF FACTS OF THE CASE:

That Central Water Commission, an attached office of Ministry of Water Resources, Government of India, is an Apex organisation in the field of water resources sector. For implementing various schemes and taking up the responsibilities entrusted, it has a number of field organizations all over the country and one such office is called Hydrological Observation Circle situated at Guwahati, which is considered to be one of the bigger field offices in the entire Central Water Commission. It is dealing with hydrological observations, flood forecasting, etc. Also the office of Director (M&A), CWC is situated at Guwahati and is responsible for works of project monitoring and appraisal in all the States in the North East. Both these offices are located at Guwahati in the same building but on different floors. As a policy measure, the transfers/postings in various grades are considered and ordered during the months of April-June every year for which the requests/options from the officers and staff are invited in the months of December-January every year. The rotational transfers are ordered during April-June keeping in view the academic session. During such rotational transfers in the year 2007, the applicant was transferred to Guwahati as SE, HOC, as per his option, he being one of the longest stayees at Delhi. He joined the said post at Guwahati on 12.6.2007. During his incumbency as Superintending Engineer, HOC, Guwahati, it was realized that keeping in view the quantum of work

Mr. Arun M

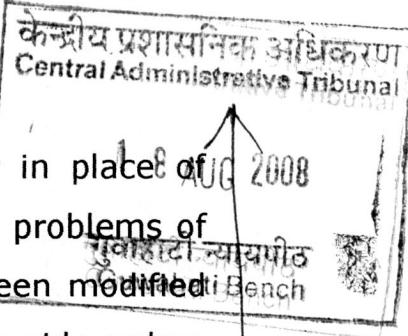
 Executive Engineer
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involved in the above Circle, the functioning of the Circle office can be better managed by posting another officer while the services of the applicant could be better utilized at the same place in another unit situated in the same building as Director (Mon), CWC, Guwahati. The matter was considered and discussed at the headquarter office at New Delhi at length with the concerned Member and during the visit of the applicant to the headquarter in the month of May, 2008, he was sounded about his transfer from HOC to Monitoring unit, CWC, Guwahati. After a decision had been taken in the month of March, 2008 to transfer the applicant from his present posting, it was also decided to find out a substitute who can be posted in his place. While searching a substitute, the respondents were informed that the respondent No.5, who is already posted in the NE region i.e. Silchar is willing to be transferred to Guwahati as SE, HOC, CWC at his own cost. Accordingly, while considering the rotational transfers, the name of the applicant was considered for transfer from HOC, Guwahati and the request of respondent No.5 was accepted for posting at Guwahati as SE, HOC. Therefore, the above sequence of events shows that a decision to transfer the applicant had already been taken much prior to the request of the respondent No.5. The respondent No.5 was posted, interalia, due to the reason that he is already posted in the NE region and is well aware about the working conditions in the NE region.

It is submitted that vide order dated 20.06.2008 issued by the respondent No.2, the applicant has been transferred to M&A Dte., CWC, Guwahati. Shri Lalit Kumar, Director (M&A), Guwahati has been transferred to CWC (Hqr), New Delhi consequent upon the completion of his tenure. Respondent No.5 has been transferred as SE, HOC, Guwahati and Shri Bhagat Singh, Director has been transferred from

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CWC (Hqr), New Delhi to Meghna Circle, CWC, Silchar in place of respondent No.5. However, due to the pressing personal problems of Shri Bhagat Singh, his transfer orders to Silchar have been modified and he has now been transferred to HOC, CWC, Dehradun vide orders dated 23.7.2008. The name of the officer to whom the charge of the post of SE, Meghna Circle, Silchar is to be assigned is being decided.

It is respectfully submitted that it is the prerogative of the organisation to utilize the manpower available at its command in the best possible manner to serve the public interest and the overall interest of the works and the organisation.

It is also respectfully submitted that the transfer of those officers who have completed their prescribed tenure (2 years in the case of North East region and 3 years in the case of other regions) are made in public interest. In all other cases, the transfers ordered at the request of the transferee officers are treated as 'own cost'. For the sake of clarification it is submitted that the officers who are transferred in public interest are paid admissible TTA and allowed joining time, as per the rules. In the case of transfers 'at own cost', the government servant is neither entitled for TTA nor the joining time. Therefore, the term 'own request' or 'own cost' has no other meaning than the one explained above.

3. PARAWISE REPLY TO THE O.A.

3.1 That with regard to statement made in para 1 of O.A., the answering respondents respectfully state that the application filed by the applicant is not maintainable as the applicant has

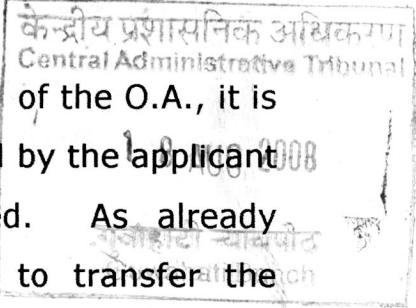
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failed to disclose as to how he is adversely affected by the transfer and the applicant has distorted entire facts and has depicted such a picture to made out a case so as to appear before the Hon'ble Tribunal. As a matter of fact the transfer has been made for the administrative exigency.

- 3.2 That with regard to statements made in para 2 and 3 of O.A. need no comments.
- 3.3 That with regard to statements made in para 4.1 to 4.3 of the O.A. are matters of record.
- 3.4 That with regard to statement made in para 4.4 of the O.A., it is submitted that the O.M. dated 02.01.2008 issued by the respondent No.2 did not provide any guidelines for transfer. Such circulars are issued every year inviting requests/options from officers and staff for rotational transfers. The contents of the above circular have been wrongly interpreted by the applicant. The instructions contained in the above circular only relate to the submissions of the options/requests for rotational transfer on completion of tenure. It is also submitted that the request made by respondent No.5 was after the expiry of the date stipulated in the said circular and was not made with reference to the said circular. The transfer orders under consideration in respect of the applicant and the respondent 5 are therefore not covered or related to the O.M. dated 02.01.2008.

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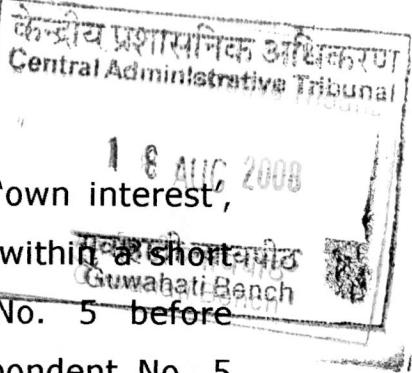


3.5 That with regard to statement made in para 4.5 of the O.A., it is submitted that the allegation of collusion leveled by the applicant are unfounded, uncalled for and motivated. As already submitted in the preceding para, a decision to transfer the applicant from his present post had already been taken in the month of March, 2008 and the discussion of respondent No.3 with respondent No.5 was a follow up action to find out a suitable substitute for the applicant. As per the own showing of the applicant, respondent No.3 discussed the issue with respondent No.5 in the month of June, 2008 i.e. only after the decision to transfer the applicant had been taken. It is again submitted that the request of respondent No.5 was not in response to the O.M. dated 02.01.2008 and even otherwise also, the last date for submission of such requests had expired much earlier. The respondent No.3 being the Head of the B&BB Organisation, Shillong under which HOC, Guwahati is functioning, was well within his right and power to give his consent for the transfer of respondent No.5 in place of the applicant keeping in view the administrative requirement, exigencies of government work and public interest involved.

In this regard, it is further submitted to the Hon'ble Tribunal that the decision to transfer the applicant from S.E. (HOC) to Director (M&A) Dte. was taken by the CWC administration way back in March 2008 and the applicant was apprised of the same during May 2008, it is only natural for the Department to look for a substitute. As the respondent No. 5 was willing to work as S.E. (HOC), he was specifically asked to make his request in writing and that the his request was

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required to be as "own request", "own cost" or 'own interest', thereby fulfilling the general criteria for transfer within a short time after the last transfer of Respondent No. 5 before completion of his tenure in NE Region. The respondent No. 5 who was willing to be considered for the transfer to Guwahati was earlier transferred to Meghna Circle, Silchar only in the recent past and transfer grant as due was paid to him. In the interest of the department to look for a substitute of S.E. (HOC), he was asked about his willingness, which is a usual, normal and routine practice by the department and forwarding such a request by the concerned higher officer (respondent No. 3 in this instance) is procedural requirement. Unless a favourable recommendation is made, no transfer of any official is considered, even if the transfer desired by transferee is in his own interest. It is also respectfully submitted to the Hon'ble court that all the transfers are made in interest of the department and the only difference in the terms under transfer as "public interest", and "own interest" is that the transfer grant and joining time are not applicable in case of "own interest" and therefore "own interest" does not mean "not in public interest".

3.6 That with regard to statement made in para 4.6 of the O.A., the averments made by the applicant in this para of the application confirms the facts narrated by the respondents in the preceding paras that a decision to transfer the applicant from his present posting was taken much prior to the date of submission of the request by the respondent No.5. The applicant in this para has stated that Secretary, CWC discussed with him the issue of his transfer in the month of May, 2008. It is submitted that

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Secretary, CWC would not have discussed the said issue with the applicant without a consideration towards this. By his own showing the applicant has pleaded that the Secretary, CWC had discussed the issue with the applicant in May, 2008 about his transfer from HOC, Guwahati. Therefore, it is amply clear that a decision to transfer the applicant had been taken much prior to the decision to post the respondent No.5 in his place. The representation submitted by the applicant was duly considered.

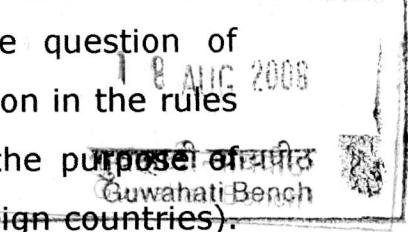
As regards transfer during the monsoon period, routine yearly rotational transfers are normally made during April to June and the officers join duties during flood season also and on doing so there is no impact on works. It is submitted that the applicant himself joined in the midst of the monsoon season i.e. June, 2007. Therefore, his plea that the transfer in the monsoon season being detrimental is contrary to factual position.

As regards the nature of duties related to floods, flood forecasting activities are handled by the Executive Engineers and not by the Superintendent Engineers.

3.7 That with regard to statement made in para 4.7 of the O.A., it is submitted that the transfer of the applicant does not violate any provisions of O.M. dated 14.12.1983 or 01.12.1988 or 22.07.1998, as quoted by him. He remains in the NE region after the transfer and is entitled to be transferred to his choice station after completion of tenure of two years. The issuing of the order dated 20.06.2008 transferring the applicant and respondent No.5, among others, is a matter of record. It is

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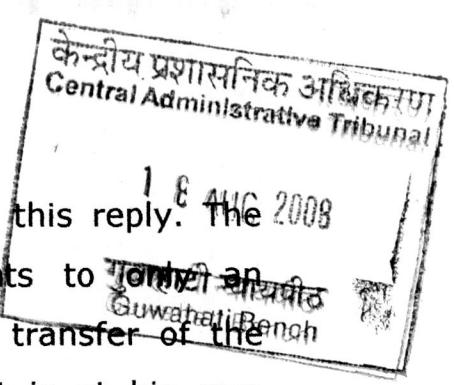


submitted that in the matter of transfers, the question of seniority is not considered nor is there any provision in the rules to consider such questions as all the posts for the purpose of posting are treated equally (except located in foreign countries). It is denied that the transfer of the applicant and respondent No.5 is without any justifiable reason. It is again submitted that the questions of transfer of the applicant and posting of the respondent No.5 are two separate issues which were decided at separate times. While the decision to transfer the applicant from his present place was taken in March, 2008, the decision to post the respondent No.5 in his place was taken in June, 2008. Therefore, the content of the application that he was transferred to accommodate the respondent No.5 is baseless. The allegations of malafide interest are denied being baseless, unfounded, after thought and made out of emotional outburst without any grounds being mentioned without considering the status and the position which the applicant holds. It is again submitted that the transfer of the applicant is in public interest. It is denied that the respondent No.5 made the request for transfer at the instance of respondent No.4 as clarified in para 4.5 and 4.6 above. It is submitted that his request was due to his personal reasons. It is submitted that while the respondent No.3 was at Delhi on 19.6.2008, respondent No.5 was at Silchar only on the said date. The transfer order dated 20.6.2008 being legal and issued in public interest is not liable to be quashed.

3.8 That with regard to statement made in para 4.8 of the O.A., the circumstances leading to the transfer of the applicant from his present posting and posting of respondent No.5 in his place have

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been amply clarified in the preceding paras of this reply. The request made by Respondent No. 5 amounts to ~~योग्यता दिलाना~~ undertaking that any expenditure towards the transfer of the officer would not be borne by the Govt. as it is at his own request. The entire chain of transfer involving the four officers is on the basis of exigencies of work and administrative requirement. The transfer order dated 20.06.2008 being legal and issued in public interest is not liable to be quashed.

3.9 That with regard to statement made in para 4.9 of the O.A., it is submitted that the transfer of the applicant from his present posting has not been ordered with a view to accommodate the request of respondent No.5. The decision to transfer the applicant had been taken much prior to the request of the respondent No.5 for posting at Guwahati. Therefore, there is no violation of the O.M. dated 02.01.2008 and there is nothing mentioned in the application as to how there is any violation. It is submitted that the transfer of the applicant has been ordered in public interest, exigencies of work and administrative requirement. The transfer order is totally in public interest as explained in foregoing paragraphs. The transfer order dated 20.06.2008 being legal and issued in public interest is not liable to be quashed.

3.10 That with regard to statement made in para 4.10 of the O.A., so far it relates to the representation dated 23.06.2008 of the applicant is a matter of record. The submissions made by the applicant in his above representation were duly considered by the competent authority.

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3.11 That with regard to statement made in para 4.11 of the O.A., it is submitted that in the matter of transfers, the question of seniority is not considered nor is there any provision in the rules to consider such questions as all the posts for the purpose of posting are treated equally (except those located in foreign countries). As a responsible Group A engineering officer belonging to illustrious Central Water Engineer Group-A Service and having been assigned the responsibility of maintaining Human Resources available at his command in HO Circle, Guwahati, he should have sufficient knowledge that in the matter of transfers, the seniority of the officer in the grade in which he is working is not considered while considering his transfer. Therefore, by taking the plea of his seniority with that of respondent No.5, the applicant is trying to mislead this Hon'ble Tribunal and therefore, the application filed by him deserves summary dismissal. The request of the Respondent No. 5 is in token of acceptance by him of any probable transfer without any financial benefit for the transfer.

3.12 That with regard to statement made in para 4.12 of the O.A., it is submitted that the applicant was sounded about his impending transfer from his present posting during his meeting with Secretary, CWC in May, 2008, as admitted by him in previous para. Therefore, it is incorrect to state that the transfer was made without the knowledge of the applicant. Notwithstanding the above, it is not obligatory on the part of the competent authority to discuss the transfers with individual concerned. The question of completion of tenure does not arise as the applicant

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remains at Guwahati i.e. NE region. As regards the timing of the transfer mentioned by the applicant in this para of the application with reference to the works of the HOC, it is submitted that the applicant himself joined in June, 2007 which is the midst of the monsoon season.

3.13 That with regard to statement made in para 4.13 of the O.A., the circumstances under which the applicant has been transferred and the respondent No.5 has been posted in his place have been explained in the preceding paras and the same are not reproduced for the sake of brevity. The public interest involved in transferring the applicant from the post of Superintending Engineer, HOC and posting him in M&A Dte., Guwahati has been duly considered by the transferring authority.

3.14 That with regard to statement made in para 4.14 of the O.A., the averments made by the applicant about Shri S.K.Choudhuri, CE, B&BBO, CWC, Shillong are baseless, after thought and does not behove of the position held by the applicant. Shri S.K.Choudhuri, CE acted in the best interest of the organisation.

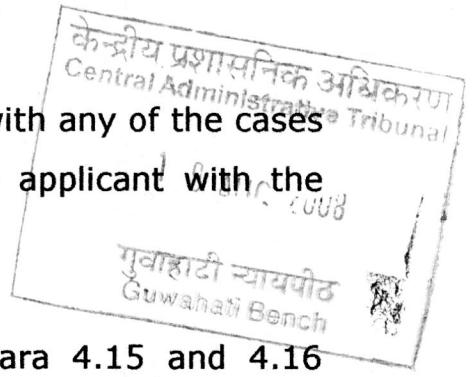
3.15 There is no para bearing para No. 4.15 in the continuity.

3.16 That with regard to statement made in para 4.16 of the O.A., it is submitted that none of the judgments quoted by the applicant is applicable to his case. It is submitted that the applicant has not been transferred out of the station already posted, his transfer remains at the same station, the transfer is in public interest, exigencies of work and public interest. Therefore, the

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transfer of the applicant cannot be equated with any of the cases narrated in the judgments enclosed by the applicant with the above application.



3.17 That with regard to statement made in para 4.15 and 4.16 (repeat of para number) in of the O.A., kind attention of the tribunal is drawn to the fact that there is no justifiable ground mentioned by the applicant as to how he is adversely affected by this transfer. In his application also he has only sought to curse others for his transfer without making out any ground about his distress, which in any case is non-existent because there is no change in place (or even the work place) in case of his transfer. The Ad interim stay of the transfer order granted by the Hon'ble tribunal in the absence of this written reply, which required reasonable time for the Government, may therefore please be vacated on the basis of facts submitted to the tribunal through this written reply. The transfer order may be allowed to be implemented in the interest of public services and interest.

3.18 That with regard to statement made in para 5.1 to 5.9, the grounds for relief are not maintainable and are not tenable.

3.19 That with regard to statement made in para 6 of the O.A., the answering respondents most respectfully beg to submit that if any relief is granted as sought for would cause irreparable loss and injury to the department which cannot be compensated by any means and the same will frustrate the smooth running of the administration.

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3.20 That with regard to statement made in para 7 of the O.A., the answering respondents do not admit anything which is beyond records.

3.21 That with regard to statement made in para 8 and 8.1 to 8.3 of the O.A., the answering respondents beg to state that considering above facts and circumstances as stated herein above is devoid of any merits and liable to be dismissed with cost.

3.22 That with regard to statement made in para 9 and 9.1 to 9.2 of the O.A., related to interim order is baseless and without any rational foundation since there is no violation of any guidelines which regulates the transfers and the balance of convenience is lean to in favour of the respondents only.

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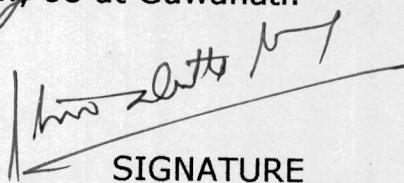
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Guwahati Bench

VERIFICATION

I, SHIV DUTTA MARMAL S/o Shri. Rameshwar Ray
 presently working as Executive Engineer, C.W.C. Complex, Middle
 Brahmaputra Division, CWC, Guwahati -14, aged about ..years, do
 hereby solemnly verify and state that the statement made in
 paragraphs ..1,2,3.....are true to best of my knowledge and those
 made in paragraphsare being matters of records of the case
 derived therefrom which I believe to be true and the rest are my
 humble submissions before this Hon'ble Tribunal.

I have not suppressed any material facts.

And I sign this verification of this 14th Aug 08 at Guwahati.


 SIGNATURE

Executive Engineer
 M. B. Division, CWC
 Adabari, Guwahati-14.