

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A./TA/ NO. 110/ 2015
R.A./CP/NO. 2015
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25/7/2015
SECTION OFFICER (JUDL.)

24.7.2015

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No: 110 / 2009

2. Miscellaneous Petition No

3. Contempt Petition No

4. Review Application No

Applicant(s) Shri Bolindra Nath Sarmah

Respondant(s) Union of India's works

Advocate for the Applicant(s): Mr. M. Chanda
Mr. S. Nath
Ms. U. Dutta

Advocate for the Respondant(s): 6
CGSC.

Notes of the Registrar	Date	Order of the Tribunal
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This application is in form
is filed/C.F. No. 50/-
deposited Rs. 50/-
No. 396 / 2009
Dated 28.5.09

11.06.2009

Heard Mr M. Chanda, learned
Counsel appearing for the Applicant and
Mrs M. Das, learned Addl. Standing
Counsel for the Union of India.

For the reasons recorded separately,
this O.A. stands disposed of.

Dy. Registrar
KS 11/6/09

M.R. Mohanty
(M.R. Mohanty)
Vice-Chairman

11.6.09

Extra copies of
application with envelope
received for issue not to
to the Respondents No 1 to
8. Copy served.

KS
11/6/09

12.6.09
Copies of the order along with
copy of the application sent to
the Dy. Sec. for issue to
the Respondents No 1 to 8
and copy sent free copy
to the Dy. Sec. for the parties.
D/No. 3123 to 3131
12/6/09 dtd 12/6/09

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

Original Application No. 110 of 2009

Date of Order: This the 11th day of June 2009

The Hon'ble Shri M.R. Mohanty, Vice-Chairman

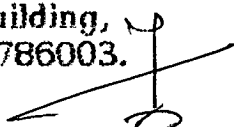
**Shri Bolindra Nath Sarmah,
Son of Late Suresh Nath Sarmah,
Superintendent,
Anti Evasion Unit, Central Excise,
Tinsukia Division,
Tinsukia, Assam-786125.**

..... Applicant

**By Advocates Mr M. Chanda, Mr S. Nath
and Mrs U. Dutta.**

- versus -

- 1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.**
- 2. Central Board of Excise and Customs
Government of India,
Through it's Chairman,
North Block, New Delhi-110001.**
- 3. The Chief Commissioner
Central Excise and Customs,
Shillong Zone,
3rd Floor, Crescens Building,
M.G. Road, Shillong-793001.**
- 4. The Commissioner
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O. C.R. Building,
Dibrugarh-786003.**
- 5. Additional Commissioner
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O. C.R. Building,
Dibrugarh-786003.**



6. Assistant Commissioner
Central Excise & Service Tax, Tinsukia,
P.O. Tinsukia, Assam-786125.
7. Shri Sudhir Kumar
Additional Commissioner,
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O. C.R. Building,
Dibrugarh-786003.
8. Shri Nipendra Nath Deka
Superintendent, Divisional (S.I.R.),
Office of the Assistant Commissioner,
Central Excise & Service Tax, Tinsukia,
P.O. Tinsukia, Assam-786125.

..... Respondents

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

.....

O.A.No.110/2009

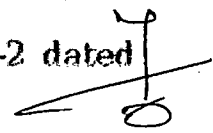
ORDER (ORAL)

11.06.2009

M.R. MOHANTY, VICE-CHAIRMAN

On being mentioned by Mr M. Chanda, learned Counsel for the Applicant (made in presence of Mrs M. Das, learned Addl. Standing Counsel for the Government of India) this case is taken up.

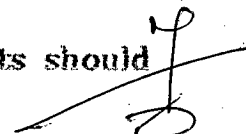
2. Having faced a transfer under Annexure-2 dated 09.06.009, the Applicant (who is going to face superannuation/retirement from service within the next four months) has approached this Tribunal with the present O.A. filed under Section 19 of the Administrative Tribunals Act, 1985. He has raised a point that the guidelines fixed by the Respondents (pertaining to transfer and posting) has not been properly followed before issuing the impugned transfer order dated 09.06.2009. It appears, vide Annexure-2 dated



09.06.2009, the officers were asked for posting/table rotation within the same Office/Campus/Station/Tinsukia.

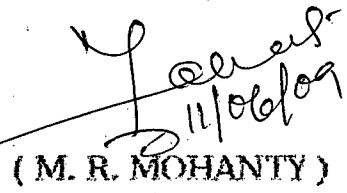
3. Heard Mr M. Chanda, learned Counsel appearing for the Applicant, and Mrs M. Das, learned Addl. Standing Counsel for the Government of India (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record. It has been alleged on behalf of the Applicant that in order to accommodate Respondent No.8 in the post now held by the Applicant, he has been asked to face the impugned transfer. Mrs M. Das has raised a preliminary point that, without exhausting the alternate remedies (by way of submitting representation) the Applicant has straightaway rushed to this Tribunal with this case and, therefore, this case should not be entertained. Mr M. Chanda, in reply to the said objection of Mrs M. Das, has stated that due to paucity of time the Applicant has approached this Tribunal without filing any representation. Mrs Das, then, vehemently argued to say that the guidelines having been followed properly, no interference is called for. At the time of hearing, Mr M. Chanda, learned Counsel appearing for the Applicant, has submitted that the Respondents should consider the grievances of the Applicant (as raised in the present O.A.) within a time frame to be fixed by the Tribunal.

4. Having heard the learned Counsel for the parties, this case is, hereby, disposed of with a direction to the Respondents (a) to treat the copy of this Original Application as a representation (of the Applicant) to the Respondents; (b) consider the same and (c) pass a reasoned order thereon within a period of thirty days from the date of receipt of a copy of this order. Until then the Respondents should



allow the Applicant to continue in the Anti Evasion Unit. While considering the grievances of the Applicant, the Respondents should keep in mind that the Applicant is going to retire within the next four months.

5. Send copies of this order to the Applicant and to all the Respondents (alongwith the copies of this O.A.) and free copies of this order be also supplied to the Advocates appearing for both parties.


(M. R. MOHANTY)
VICE-CHAIRMAN

nkm

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

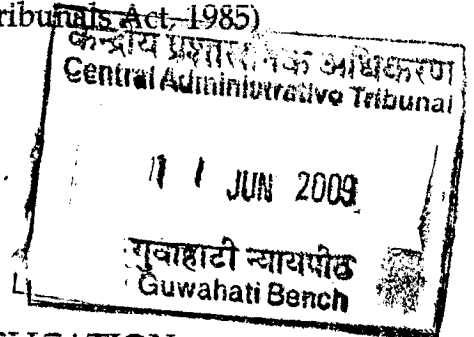
(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 110 /2009

Shri Bolindra Nath Sarmah

-Vs-

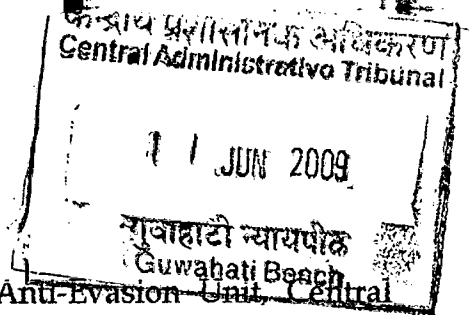
Union of India and Others.



LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant is working as Superintendent, Anti-Evasion Unit in the office of the Assistant Commissioner, Central Excise, Tinsukia. He is due to retire on superannuation on 01.10.2009.

- 1974- Applicant was initially appointed as L.D.C. in the year 1974 in the then Shillong Collectorate of Central Excise and Customs. Thereafter he was promoted as U.D.C
- 1984- Applicant was further promoted to the cadre of Inspector in the year 1984.
- January, 2005- Applicant was promoted to the cadre of Superintendent, Gr. 'B' in the month of January, 2005 and joined at Headquarter Office of Central Excise, Dibrugarh.
- 20/21.11.06- Transfer policy 2006 issued by the respondent No. 3. In terms of the clause 7 of the said transfer policy applicant is entitled to be posted at Anti-Evasion Unit, Central Excise, Tinsukia till completion of his fixed tenure of 2 years. (Annexure- 1)
- September, 2007- Respondent No. 8 was posted in the service tax intelligence and research wing (for short S.I.R).
- February, 2008- Applicant was transferred and posted in his present place of posting i.e. Anti-Evasion Unit, Tinsukia.
- 22.05.2009- Hon'ble Tribunal disposed of O.A No. 91 of 2009 (Sri Tapan Borah - Vs- U.O.I & Ors.) with a direction to the respondents to consider the grievance of the applicant of that O.A. who was at the verge of retirement. (Annexure- 3)
- 03.06.2009- Respondent No. 5 approved transfer and posting of the applicant after completion of 1 year 3 months in the present place of posting.
- 09.06.2009- Respondent No. 6 issued the impugned transfer and posting order dated 09.06.09. Applicant was placed at Sl. No. 4 of the impugned transfer and posting order. He is sought to be transferred from the



office of the Assistant Commissioner, Anti-Evasion Unit, Central Excise & Service Tax, Tinsukia, to the office of the Assistant Commissioner, Divisional (service tax intelligence and research wing), Tinsukia that is from a sensitive posting to a non-sensitive posting just after completion of 1 year 3 months whereas as per transfer policy the applicant is entitled to continue in the present place of sensitive posting till completion of 2 years of fixed tenure.

(Annexure- 2)

It is stated that the applicant is due to retire on superannuation from service on 01.10.2009, as such he is left with less than 4 months of service in his credit. Therefore, the impugned transfer order dated 09.06.2009 has been issued at the verge of retirement of the applicant without any administrative exigency and in violation of transfer policy.

Hence this Original Application.

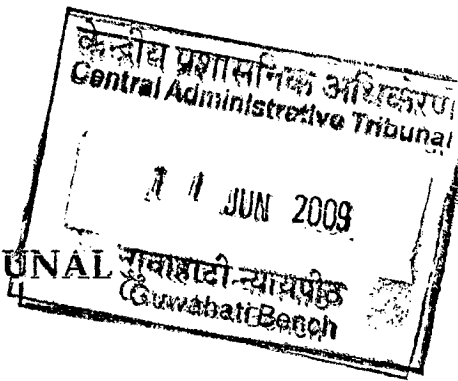
PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order bearing letter No. II (3) 1/TRANS/ACT/08/1863-75 dated 09.06.2009 (Annexure- 2) so far the applicant is concerned.
2. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in his present place of posting till completion of 2 years fixed tenure or alternatively till 01.10.2009 i.e. the date of retirement of the applicant on superannuation whichever is earlier.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

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

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned order bearing letter No. II (3) 1/TRANS/ACT/08/1863-75 dated 09.06.2009 (Annexure- 2) till disposal of the original application.
2. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this Original Application shall not be a bar to the respondents to provide the relief as prayed for.



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. 110 /2009

Shri Bolindra Nath Sarmah.

: Applicant.

-Versus-

Union of India & Ors.

: Respondents.

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3.	1	Copy of the transfer policy of 2006.	12 - 17
4.	2	Copy of impugned transfer and posting order dated 09.06.2009.	- 18 -
5.	3	Copy of the order dated 22.05.2009 in OA No. 91/2009.	19 - 22 .

Date: - 11.06.09

Filed by:

Putta
Advocate

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

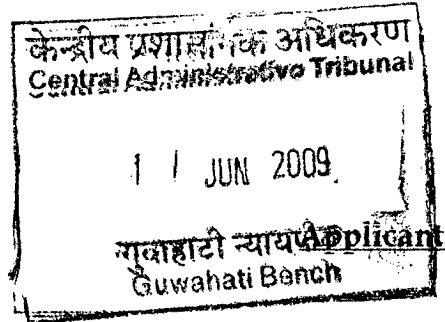
(An application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. _____/2009

BETWEEN:

Shri Bolindra Nath Sarmah.

Son of Late Suresh Nath Sarmah
Superintendent,
Anti-Evasion Unit, Central Excise,
Tinsukia Division,
Tinsukia, Assam- 786125. ✓



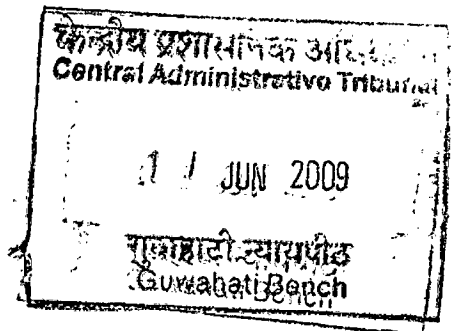
-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001. ✓
2. Central Board of Excise and Customs,
Govt. of India,
Through it's Chairman, North Block,
New Delhi-110001. ✓
3. The Chief Commissioner
Central Excise and Customs,
Shillong Zone,
3rd Floor, Crescens Building,
M.G. Road, Shillong- 793001. ✓
4. The Commissioner,
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O- C.R. Building, Dibrugarh- 786003. ✓
5. Additional Commissioner,
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O- C.R. Building, Dibrugarh- 786003. ✓
6. Assistant Commissioner,
Central Excise & Service Tax, Tinsukia,
P.O- Tinsukia, Assam- 786125. ✓
7. Shri Sudhir Kumar,

Filed by the applicant
Through U. Dutta, advocate
on 11.06.09

Bolindra Nath Sarmah.

Additional Commissioner,
Central Excise, Dibrugarh,
Milan Nagar, Lane 'F',
P.O- C.R. Building, Dibrugarh- 786003. ✓



8. Shri Nipendra Nath Deka,
Superintendent, Divisional (S.I.R),
Office of the Assistant Commissioner,
Central Excise & Service Tax, Tinsukia,
P.O- Tinsukia, Assam- 786125. ✓

..... Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the impugned order bearing letter No. II (3) 1/TRANS/ACT/08/1863-75 dated 09.06.2009 (Annexure- 2), whereby the applicant is sought to be transferred from the office of the Assistant Commissioner, Anti-Evasion Unit, Central Excise & Service Tax, Tinsukia, to the office of the Assistant Commissioner, Divisional (S.I.R), Tinsukia in total violation of professed norms laid down in transfer policy before completion of the fixed tenure and also when the applicant is at the verge of retirement on superannuation.

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:

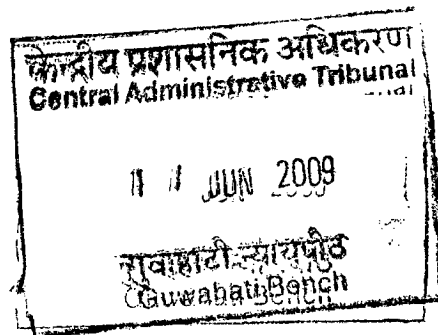
- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

B. N. Deka

4.2 That the applicant is a Group -B Officer, in the department of Customs and Central Excise and now working in the office of the Anti-Evasion Unit in the office of the Assistant Commissioner, Central Excise, Tinsukia. The applicant was initially appointed as L.D.C. in the year 1974 in the then Shillong Collectorate of Central Excise and Customs. Thereafter he was promoted as U.D.C. and further promoted to the cadre of Inspector in the year 1984. The applicant also found eligible and recommended for promotion to the cadre of Superintendent, Gr. 'B' in the month of January, 2005 and accordingly he was promoted to the cadre of Superintendent Gr. 'B' and joined at Headquarter Office of Central Excise, Dibrugarh.

4.3 That it is stated that the applicant during his service career has been transferred and posted in following places:

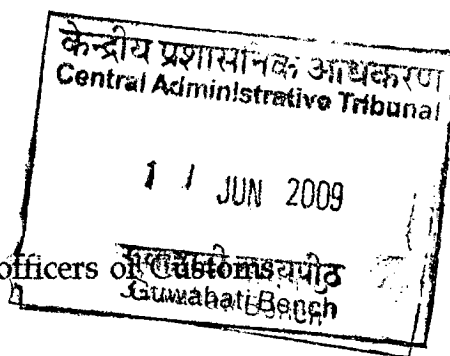
- (i) Shillong.
- (ii) Kolkata (on deputation)
- (iii) Jorhat.
- (iv) Dibrugarh.
- (v) Imphal.
- (vi) Tinsukia.



The applicant being a disciplined officer has carried out all the transfer and posting orders issued by the department from time to time.

4.4 That it is stated that office of the Chief Commissioner, Central Excise and Customs, Shillong Zone, NER circulated the New Transfer Policy in respect of Gr. 'B', 'C' and 'D' officer of the Office of the Dibrugarh Commissionerate vide letter No. C. No. II (3) 16/CCU/SH/2006/588 dated 20/21.11.06. In terms of the New Transfer Policy 2006 a Gr. 'B' Officer is liable to be transferred on completion of 2 years of tenure while posted in a sensitive station. It is stated that posting at Anti-Evasion Unit, Tinsukia is treated as a sensitive posting in terms of the transfer policy. In view of the New Transfer Policy 2006, the applicant has acquired a valuable legal right for continuation in the said Anti-Evasion Unit, Tinsukia till completion of his 2 years tenure. The relevant provision laid down in Clause 7 of the

Behind mark Sakshi,



guideline for transfer and posting in respect of Gr. 'B' officers of Customs and Central Excise, NER 2006 is quoted below:

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

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

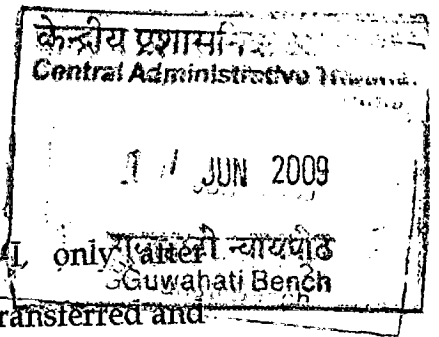
"2. The guidelines aims to:

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

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

Copy of the New transfer policy 2006 is enclosed herewith as for perusal of Hon'ble Tribunal Annexure- 1.

Behinika Nath Sakuma.



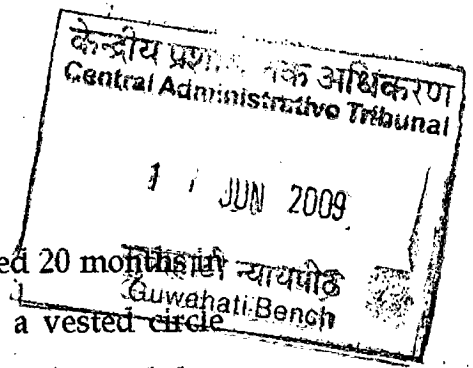
4.5 That your applicant while working at Tinsukia Range, only after completion of more than 2 years in the Range Office he was transferred and posted in his present place of posting i.e. Anti-Evasion Unit, Tinsukia in the month of February, 2008. Accordingly he is serving in the present place of sensitive posting. Be it stated that applicant has hardly completed 1 year 2 months in the present place of sensitive posting and as per transfer policy he has acquired a valuable legal right to continue in the sensitive post for a fixed period of 2 years.

4.6 Most surprisingly the respondent No. 6 has issued the impugned transfer and posting order bearing letter No. II (3) 1/TRANS/ACT/08/1863-75 dated 09.06.2009 with the approval of the Additional Commissioner, Central Excise Dirbugarh issued vide letter C.No. II (3)1/ET-I/CCE/DIB/2008/3076 dated 03.06.2009. By the said impugned transfer and posting order name of the applicant has been placed at Sl. No. 4 whereby he is sought to be transferred from the office of the Assistant Commissioner, Anti-Evasion Unit, Central Excise & Service Tax, Tinsukia, to the office of the Assistant Commissioner, Divisional (service tax intelligence and research wing), Tinsukia that is from a sensitive posting to a non-sensitive posting just after completion of 1 year 3 months whereas as per transfer policy the applicant is entitled to continue in the present place of sensitive posting till completion of 2 years of fixed tenure. The said impugned transfer order so far it is concerned to the present applicant has been issued in total violation of professed norms laid down in the transfer policy and on that score alone the impugned transfer and posting order dated 09.06.2009 is liable to be set aside and quashed so far the applicant is concerned.

Copies of the impugned transfer order dated 09.06.2009 is enclosed herewith for perusal of the Hon'ble Court and marked as Annexure- 2.

4.7 That it is stated that the respondent No. 8, Shri N.N. Deka was posted in the service tax intelligence and research wing (for short S.I.R) only in the

Bohinda with Sahas.

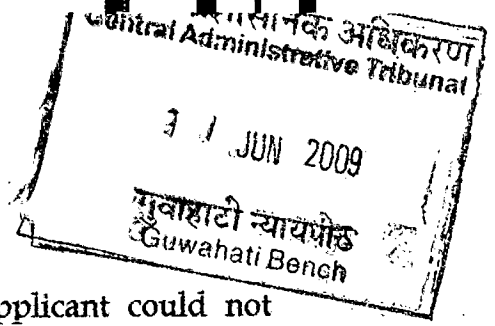


month of September, 2007, therefore he has hardly completed 20 months in S.I.R wing but the respondent No. 4 being influenced by a vested circle working in the office of the Commissioner, Central Excise, Dibrugarh has approved the transfer and posting of the respondent No. 8 in place of the applicant with a malafide intention in total violation of transfer policy. Be it stated that the impugned transfer and posting order dated 09.06.2009 of the applicant has been issued at the instance of the respondent No. 8 in collusion with Shri Sudhir Kumar, additional Commissioner, as such Shri Sudhir Kumar has been impleaded by name as party respondent No. 7. It is relevant to mention here that applicant is retiring on superannuation on 01.10.2009 and as such he has left with only less than 4 months service in his credit. Therefore there is no cogent reason to transfer the applicant at the verge of his retirement that too in violation of the transfer policy with the sole intention to accommodate respondent No. 8 and on that score alone the impugned transfer and posting order dated 09.06.2009 is liable to be set aside and quashed so far the applicant is concerned.

4.8 That it is stated that there is no administrative exigency to transfer the applicant in violation of the professed norms laid down in the transfer policy. But the respondent No. 7 on extraneous consideration issued the transfer and posting order dated 09.06.2009 without any justifiable reason. It is further stated that the respondents are duty bound to comply with the guidelines contained in the aforesaid transfer policy and deviation in the said guideline is not permissible when there is no administrative exigency.

4.9 That it is stated that the applicant has acquired a valuable and legal right in terms of the transfer policy, 2006 to continue in the present place of posting till completion of fixed tenure of 2 years. As such it is a fit case for the Hon'ble Tribunal to interfere with the impugned transfer and posting order dated 09.06.2009 and to pass appropriate order/interim order staying the operation of the impugned transfer and posting order dated 09.06.2009 so far the applicant is concerned otherwise it will cause irreparable loss and injury to the applicant.

Be kind to all



4.10 That your applicant further begs to say that the applicant could not submit any representation against the impugned transfer and posting order dated 09.06.2009 but approached the Hon'ble Tribunal apprehending his release at any moment. It is specifically stated that no release order has been issued till filing of this Original Application and the applicant is continuing in his present place of posting. Therefore the Hon'ble Tribunal be pleased to pass appropriate interim order staying operation of the impugned order dated 09.06.2009 so far it is concerned to the applicant and further be pleased to set aside and quash the impugned transfer and posting order dated 09.06.2009 so far it is concerned to the applicant.

4.11 That it is stated that in a similar facts and circumstances this Hon'ble Tribunal in O.A No. 91 of 2009 (Sri Tapan Borah -Vs- U.O.I & Ors.) disposed of the Original Application with a direction to the respondents to consider the grievance of the applicant of that O.A. who was at the verge of retirement. The present applicant is also at the verge of retirement and less than 4 months of service is left in his credit, as such the impugned order dated 09.06.2009 is liable to be set aside and quashed so far it is concerned to the applicant.

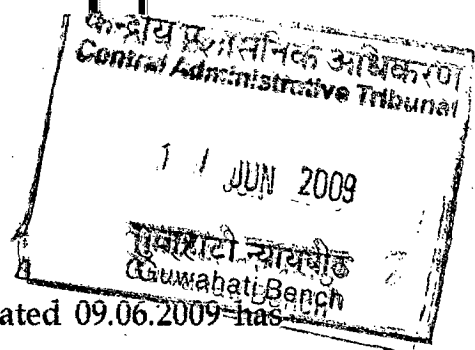
Copy of the order dated 22.05.2009 is enclosed
herewith and marked as Annexure- 3.

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

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

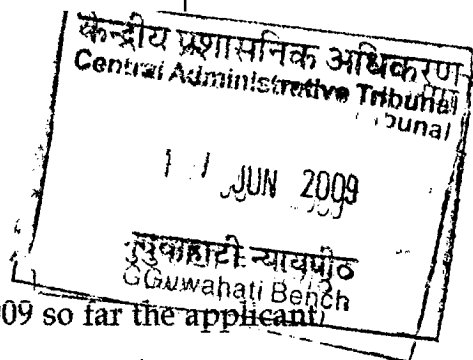
5.1 For that the impugned order of transfer and posting dated 09.06.2009 has been passed by the Respondent No. 6 at the instance of Respondent No. 5 in colourable exercise of power without any public interest or administrative exigency, as such the same is liable to be set aside and quashed so far it is concerned with the applicant.

Bahadur Nath Sarmah.



- 5.2 For that the impugned transfer and posting order dated 09.06.2009 has been issued in total violation of professed norms laid down in transfer policy, 2006 and on that score alone the impugned transfer and posting order dated 09.06.2009 is liable to be set aside and quashed so far the applicant is concerned.
- 5.3 For that impugned order of transfer and posting dated 09.06.2009 has been issued just after completion of 1 year 2 months in the present place of posting whereas as per transfer policy applicant is entitled to complete 2 years fixed tenure at present place. As such the impugned order dated 09.06.2009 is highly arbitrary, illegal, unfair and the same has been passed with a malafide intention in order to accommodate the respondent No. 8 in place of the present applicant before completion of the fixed tenure without having any administrative exigency or public interest, as such the impugned transfer and posting order dated 09.06.2009 is liable to be set aside and quashed so far the applicant is concerned.
- 5.4 For that the applicant has left with less than 4 months of service in his credit, as such passing of the impugned order of transfer and posting dated 09.06.2009 at the verge of retirement of the applicant is liable to be set aside and quashed so far the applicant is concerned.
- 5.5 For that the impugned order dated 09.06.2009 in respect with the applicant has been issued in violation of clause 7 of the transfer policy, 2006, as such the said order is liable to be set aside and quashed so far the applicant is concerned.
- 5.6 For that the respondent No. 8 has not completed his fixed tenure in the present place of posting at S.I.R wing, as such passing of the impugned order dated 09.06.2009 to accommodate the respondent No. 8 in place of the present applicant is highly arbitrary, illegal and contrary to the transfer policy and on that score alone the impugned order dated 09.06.2009 is liable to be set aside and quashed so far the applicant is concerned.

Arundha Nath Satmah.



5.7 For that the impugned transfer order dated 09.06.2009 so far the applicant is concerned has been issued at the instance with the respondent No. 7 in collusion with the respondent No. 8 without having any administrative exigency, as such the said impugned order is liable to be set aside and quashed so far the applicant is concerned.

5.8 For that apprehending immediate release pursuant to the impugned transfer and posting order dated 09.06.2009 the applicant has approached this Hon'ble Tribunal against the impugned order of transfer and posting dated 09.06.2009.

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.**

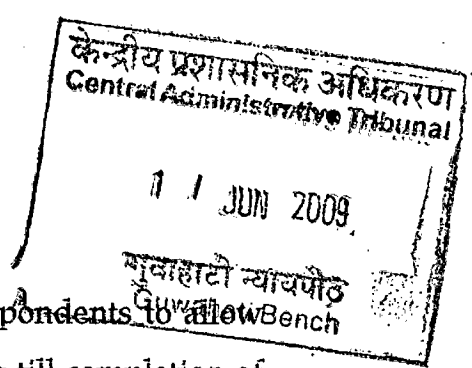
The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

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

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order bearing letter No. II (3) 1/TRANS/ACT/08/1863-75 dated 09.06.2009 (Annexure- 2) so far the applicant is concerned.

Behind Nath Larmah.



8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in his present place of posting till completion of 2 years fixed tenure or alternatively till 01.10.2009 i.e. the date of retirement of the applicant on superannuation whichever is earlier.

8.3 Costs of the application.

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

9. Interim order prayed for:

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

9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned order bearing letter No. II (3) 1/TRANS/ACT/08/1863-75 dated 09.06.2009 (Annexure- 2) till disposal of the original application.

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

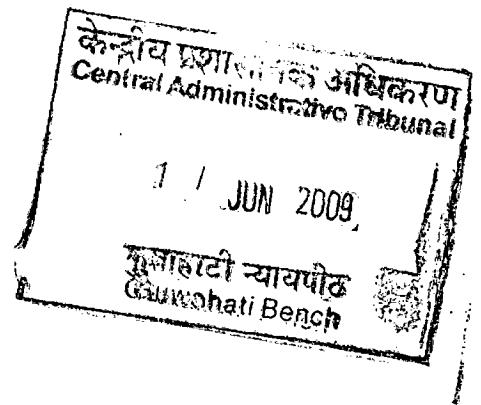
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11. Particulars of the I.P.O

- | | | |
|------|---------------|--------------------|
| i) | I.P.O No. | : 396 409123 . |
| ii) | Date of issue | : 28. 5. 2009 . |
| iii) | Issued from | : G.P.O, Guwahati. |
| iv) | Payable at | : G.P.O, Guwahati. |

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

Balinda Nath Sarmah.



VERIFICATION

I, Shri Bolindra Nath Sarmah, Son of Late Suresh Nath Sarmah, aged about 59 years, working as Superintendent, Anti-Evasion Unit, Central Excise, Tinsukia Division, Tinsukia, Assam- 786125, 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 10th day of June, 2009.

Bolindra Nath Sarmah



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

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

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

C.No. II (3) 16 CCU/SH/2006 / 588

Dated: - 20th November 2006

21 NOV 2006

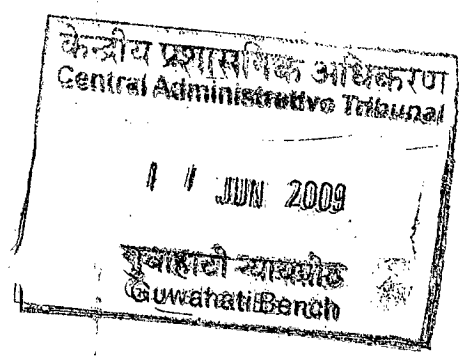
To,

The Commissioner,
Central Excise,
Shillong/ Dibrugarh.

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

The Commissioner (Appeals)
Central Excise
Guwahati.

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



Sir/Madam,

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

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

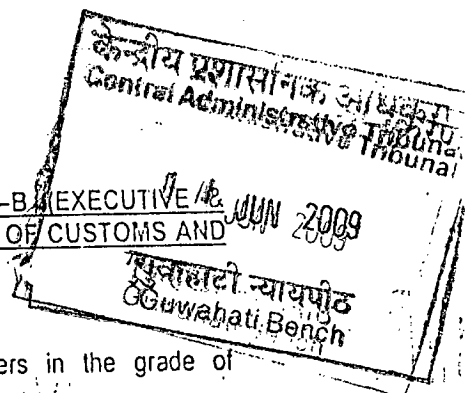
Yours faithfully,

Encls :- as above.

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

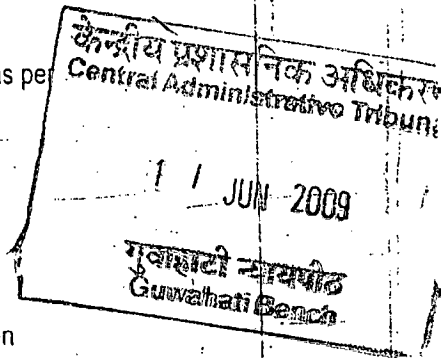
Started
Mulla
Adv

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



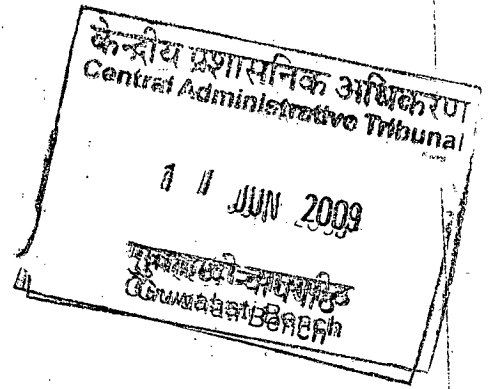
1. This may be called general guidelines for posting of Executive Officers in the grade of Superintendents and Inspectors working in the North Eastern Region.
2. The Guidelines aims to:-
 - a. Ensure minimum dislocation of officers in lines with the recent Department of Expenditure instruction for reducing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

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



GROUP 'B' AND 'C' MINISTERIAL OFFICERS ASSOCIATION

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



GROUP 'D' OFFICERS

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

GR. 'C' DRIVERS ASSOCIATION

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

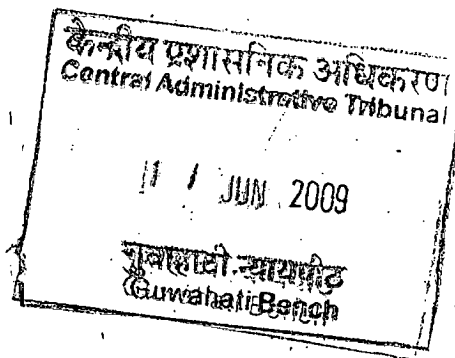
- 16 -

LIST OF SENSITIVE, NON-SENSITIVE AND HARD POSTING

Central Excise Commissionerate:-

1. Sensitive Posts :-

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



2. Hard Posts :-

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

3. Non-Sensitive Posts :-

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

B. Shillong Customs (Preventive) Commissionerate:-

1. Sensitive Stations:-

i. Agartala:-

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

ii. Aizawl:-

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

iii. Dhubri:-

- a) Chasrapara LCS
- b) Mahendraganj LCS

iv. Dimapur:-

- a) Dimapur CPF

- 17 -
v. Guwahati Division :-

- a) ICD Aningaon
- b) LGBI Airport

vi. Imphal :-

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

vii. Karimganj :-

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

viii. Shillong :-

- ✓ a) Dawki LCS
- b) Borsora LCS
- c) Pynursla CPF

2. Sensitive Post :-

i. Hqrs. Office, Shillong :-

Hqrs. Preventive Unit.

ii. Divisions :-

All Divisional Preventive Force.

2. Hardship Post :-

i. Agartala :-

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

ii. Aizawl :-

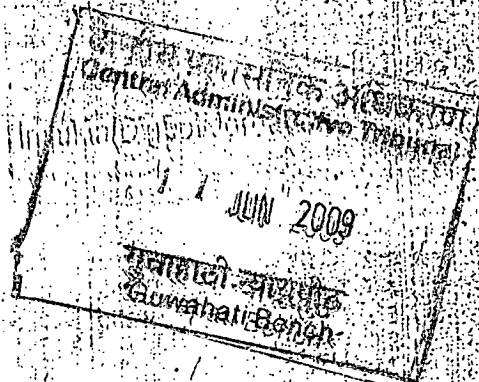
Demagiri LCS

iii. Dibrui :-

- a) Ullapani LCS
- b) Hatisar LCS

iv. Dimapur :-

Nampong LCS

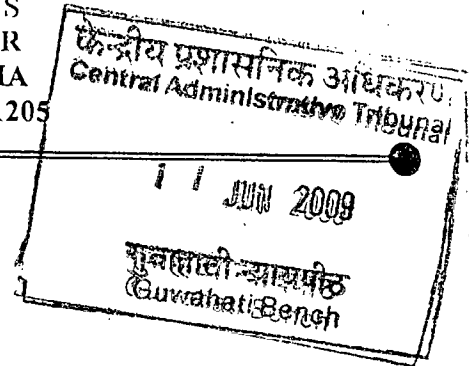




- 18 -

GOVT. OF INDIA,
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE & SERVICE TAX: TINSUKIA
PIN. 786125, PHONE :- 2332491, FAX:- (0374)2331205

ANNEXURE-2



O R D E R

Dated, Tinsukia the 9th June, 2009.

Consequent upon the Commissionerate Transfer Order No.1/2009 dated 20-03-2009 issued by the Commissioner's office, Central Excise & Service Tax, Dibrugarh following posting / table rotation in the grade of Group 'B' Superintendent of Central Excise, Tinsukia Division, are hereby ordered with immediate effect and until further orders.

Sl.No.	NAME OF THE SUPERINTENDENT	FROM	TO
1	Shri Ganesh Ch. Deka.	Technical-I	Tinsukia-IV Range.
2	Shri. Sujit Misra,	Technical-II	Technical-II
3.	Shri. D. Bhoktiari,	Tinsukia-IV Range.	Divisional(Audit)
✓ 4.	Shri. B.N. Sarmah, ✓ P.P.	Anti-Evasion Unit. ✓	Divisional (S.I.R.) ✓
5.	Shri. D.Chandi,	Tinsukia-II Range.	Tinsukia-II Range.
6.	Shri. Jogesh Sonowal,	Tinsukia-III Range	Technical-I
7.	Shri. T.K. Rajkhowa,	Divisional(System/PRO)	Divisional(System/PRO)
8.	Shri. Gopal Ch. Das.	Makum Range.	Makum Range.
9.	Shri. D.B. Paul,	Service Tax Cell	Service Tax Cell
10	Shri. N.N. Deka, R.B.	Divisional (S.I.R.)	Anti-Evasion Unit.
11	Shri. Niranjana Dhar,	Tinsukia-I Range	Tinsukia-I Range
12	Shri. Salil Bhattacharjee,	Tinsukia-V Range	Tinsukia-III Range and Additional charge of Tinsukia-V Range

This issues with the approval of the Additional Commissioner, Central Excise, Dibrugarh, vide C.No. II(3)1/ET-I/CCE/DIB/2008/3076 dated 03-06-2009.

(U.K. DAS.)
ASSISTANT COMMISSIONER
CENTRAL EXCISE: TINSUKIA

C.No.II(3)1/TRANS/ACT/08/ 1863 - 75

Date: 9-06-09

Copy for necessary information and compliance :-

1. The Additional Commissioner, Central Excise & Service Tax, Dibrugarh.
2. The Pay & Accounts Officer, Central Excise, Dibrugarh.
3. The Assistant Chief Accounts Officer, Dibrugarh.
4. Shri B.N. Sarmah, Superintendent, Central Excise, Tinsukia.

(U.K. DAS.)
ASSISTANT COMMISSIONER
CENTRAL EXCISE: TINSUKIA

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

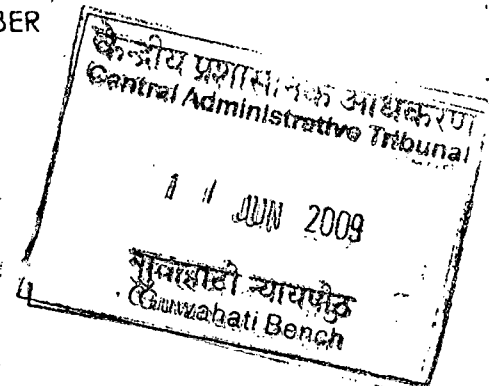
Original Application No. 91 of 2009

Date of Order: This, the 22nd Day of May, 2009

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI N.D.DAYAL, ADMINISTRATIVE MEMBER

Sri Tapan Borah
S/o Sri Tilakanta Borah
Resident of Chandan Nagar
Jorhat,
P.O. & Dist- Jorhat- 785 001.



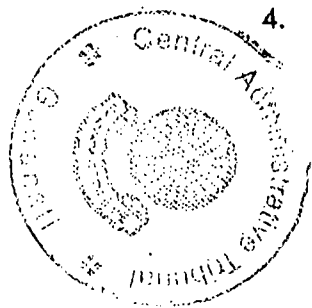
(Presently serving as Inspector of Central Excise and Service Tax in the Office of the Assistant Commissioner, Central Excise Tax Division, Jorhat, Station Godown Road, Jorhat - 785 001.)

..... Applicant.

By Advocates: Mr. A.S. Choudhury, Mr. I. Hussain, Mr. M.H. Ahmed, Mrs. S. Kanangoe

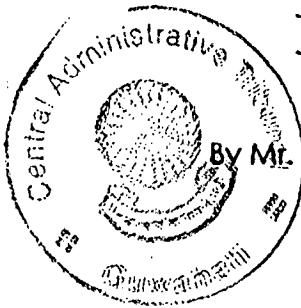
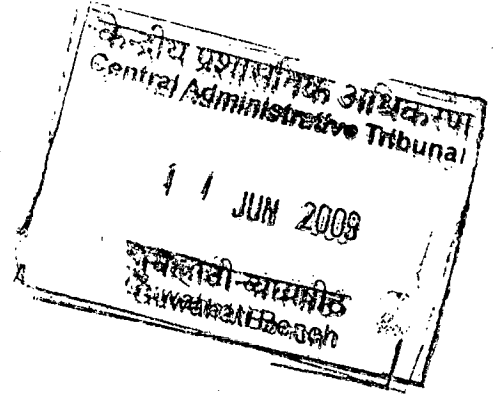
-Versus -

1. The Union of India
through its Secretary
Ministry of Finance
(Department of Revenue)
Govt. of India
New Delhi - 110 001.
2. The Commissioner
Central Excise & Service Tax
Dibrugarh, Milan Nagar
Lane 'F', P.O.- C.R. Building
Dibrugarh - 786 003, Assam.
3. The Additional Commissioner
Central Excise & Service Tax
Dibrugarh, Milan Nagar
Lane 'F', P.O.- C.R. Building
Dibrugarh - 786 003, Assam.
4. The Assistant Commissioner
Central Excise & Service Tax Division
Jorhat, Station Godown Road
Jorhat - 785 001, Assam.



Attested
By
Adv

5. Sri Swarup Sarma
Inspector, in the Office of the
Assistant Commissioner
Central Excise & Service Tax Division
Jorhat, Station Godown Road
Jorhat - 785 001, Assam.
6. Sri R.K. Singh
Inspector, in the Office of the
Assistant Commissioner
Central Excise & Service Tax Division
Jorhat, Station Godown Road
Jorhat - 785 001, Assam.
7. Sri D. Bhattacharjee
Inspector of Central Excise
and Service Tax, in the Office of the
Assistant Commissioner
Central Excise & Service Tax Division
Jorhat, Station Godown Road
Jorhat - 785 001, Assam.
8. Sri Hitesh Sarma
Inspector of Central Excise
and Service Tax, in the Office of the
Assistant Commissioner
Central Excise & Service Tax Division
Jorhat, Station Godown Road
Jorhat - 785 001, Assam.
9. Md. Mazid Alam
Inspector of Central Excise
and Service Tax, in the Office of the
Assistant Commissioner
Central Excise & Service Tax Division
Jorhat, Station Godown Road
Jorhat - 785 001, Assam.



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

..... Respondents.

ORDER (ORAL)
22.05.2009

MANORANJAN MOHANTY, (V.C.)

Heard Mr.I.Hussain, learned counsel appearing for the
Applicant and Mr. M.U.Ahmed, learned Addl. Standing counsel

[Signature]

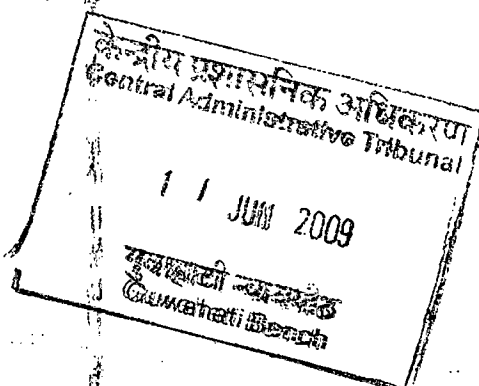
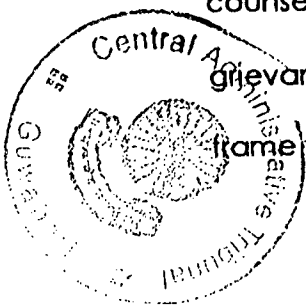
appearing for the Government of India (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record.

2. Having faced a transfer, the Applicant (who is going to face superannuation retirement from service within ⁴⁻next 18 months) has approached this Tribunal with the present O.A. filed under Section 19 of the Administrative Tribunals Act, 1985. He has raised a point that the guidelines fixed by the Respondents have not been properly followed before passing the impugned order of transfer dated ^{09.06.2009}08.05.2009. It appears from Annexure-²10 dated ^{09.06.2009}08.05.2009 that officers were relieved ^{asked for posting /} ~~table rotation~~ ~~w.e.f. 08.05.2009~~ to join the new assignment; which are within ~~that~~ ^{the same station}.

3. Mr.M.U.Ahmed, learned Addl. Standing counsel representing the Government of India has raised a point that without even exhausting alternative remedy, by way of submitting representation, the Applicant has straightway rushed to this Tribunal with the present O.A. and, therefore, this O.A. should not be entertained.

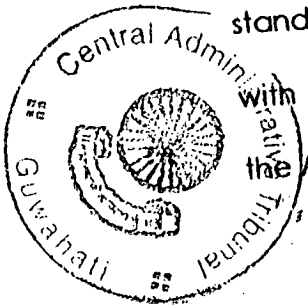
4. Mr.I.Hussain, learned counsel appearing for the Applicant, in reply to the above objection of Mr.M.U.Ahmed, has stated that due to paucity of time, the Applicant has approached this Tribunal without filing a representation.

5. At the time of preliminary hearing, Mr.I.Hussain, learned counsel for the Applicant submitted that Respondents should consider the grievances of the Applicant as raised in the present O.A. within a time frame to be fixed by this Tribunal.



6. Having heard the learned counsel appearing for both the parties, this case is, hereby, disposed of with a direction to the Respondents to treat the copy of this present O.A. as a representation (of the Applicant) to the Respondents; consider the same and pass reasoned order thereon within a period of 60 days from the date of receipt of a copy of this order. While considering the grievances of the Applicant, the Respondents should keep in mind that the Applicant is going to retire from service within the next 18 months.

7. With the aforesaid observations and directions, this O.A. stands disposed of. Send copies of this order to the Respondents along



with copies of this O.A. and free copies of this order be also supplied to the Applicant and to the learned counsel appearing for both the parties.

Sd/-

M.R. Mohanty
Vice-Chairman

Sd/-

N.D. Dey
Member(A)

Date of Application : 10.6.2009
Date on which copy is sent : 10.6.2009
Date on which copy is received : 10.6.2009
Certified to be true copy

Affected
Writ
Adv

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

