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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI - 5

(DESTRUCTION OF RECORD RULES, 1990)

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

1. Original Application No. 21/09
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) Abid Hossain Biswas VS- Union Of India & Ors

Advocate for the Applicant(S) Abid Ahmed, N. Ahmed

Advocate for the Respondent(S) CGSC

Notes of the Registry	Date	Orders of the Tribunal
1. The application is in form of F.1.C. F. for Rs. 50/- filed <u>vide IPC/BB No. 396/863694</u> Dated <u>7.10.09</u>	24.02.2009	For the reasons recorded separately, this case stands disposed of.
<i>By Registrar</i> <i>24.2.09</i> <i>Abid Hossain Biswas</i>	/bb/	 (M.R. Mohanty) Vice-Chairman
<i>Steps taken without envelope. Copy served.</i> <i>Abid Hossain Biswas</i> <i>13.03.09</i>		
<i>13.3.09</i> <i>Copy of the order</i> <i>of 24.2.09 alongwith</i> <i>the copy of the application</i> <i>served to the office for</i> <i>issue the same to the</i> <i>Respondent to copy of the</i> <i>order to the applicant by</i> <i>post</i>		

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.21 of 2009

DATE OF DECISION: 24.02.2009

Shri Abid Hossain Biswas Applicant/s.
Mr. Adil Ahmed Advocate for the
..... Applicant/s.

- Versus -

U.O.I. & Ors Respondent/s
Mr. M.U. Ahmed, Addl. C.G.S.C. Advocate for the
..... Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN

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

Judgment delivered by

Vice-Chairman

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.21 of 2009

Date of Order: This, the 24th Day of February, 2009

HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

Shri Abid Hossain Biswas
S/o Late Abuar Rahman Biswas, Asstt. Eng. (Civil).
Central Public Works Department
Khatkhati Central Division
Group Centre C.R.P.F.
P.O: Khatkhati
District: Karbi Anglong
Assam
Pin: 782 480.

Applicant.

By Advocate: Mr. Adil Ahmed & Mr. Nuruddin Ahmed.

- VERSUS -

1. The Union of India represented by
the Secretary to the Government of India
Ministry of Urban Affairs, Nirman Bhawan
New Delhi-110 011.
2. The Director General Works
Central Public Works Department
118-A, Nirman Bhawan
New Delhi-110 011.
3. The Superintendent Engineer
Coordination Circle (ER)
2nd MSO Building, Nizam Palace
17th Floor, 234/4 A.J.C. Bose Road
Kolkata - 700 020.
4. The Executive Engineer
Central Public Works Department
Khatkhati Central Division
Group Centre, C.R.P.F.
Post Office: Khatkhati
District: Karbi Anglong, Assam
PIN: 782 480.

...Respondents.

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

* * * * *



ORDER (ORAL)
24.02.2009

MANORANJAN MOHANTY, (V.C.) :

Applicant (Assistant Engineer A.H. Biswas of CPWD Organization) came to be posted at Kohima (Central Sub-Division I & II of CPWD) in the State of Nagaland during 2006. He represented on 26.05.2008 seeking transfer to Northern Zone; which was forwarded by the Executive Engineer on 02.06.2008. Ultimately, Order (dated 5th/9th September, 2008) was issued (transferring him to Northern Region) by the Director General of Works of CPWD and it was directed that he should be relieved on or after 15.09.2008. Despite the said order (transferring the Applicant from Nagaland to Northern Region, the Applicant has not yet been relieved from Nagaland; for which he represented. The said representation was forwarded (by Executive Engineer/Karbi Anglong/Assam) to the Superintending Engineer (EC) Kolkata on 05.12.2008. Applicant submitted another representation on 15.01.2009.

2. Having not been relieved from Eastern Region/Circle of CPWD (to join in Northern Region/Circle of CPWD) pursuant to CPWD Headquarters Order dated 5th/9th Sept. 2008; the Applicant has approached this Tribunal (with the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985) for redressal of his grievances.

3. A copy of this Original Application has already been served on Mr. M.U. Ahmed, learned Addl. Standing Counsel for the Government of India. He states that, apparently, for the reason of

non-availability of substitute, the Applicant has not yet been relieved/spared from Eastern Region to join (on transfer) in Northern Region of CPWD Organisation.

4. Applicant has placed on record a copy of the Circular Letter of SE(coord)ER/Kolkata dated 24.06.2008; relevant portion of which reads as under:

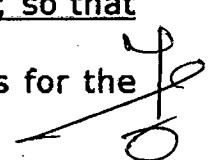
"Sub: Relieve of Assistant Engineers, Junior Engineer's (Civil & Elect) & Other Gr. 'C' & 'D' staff members.

It has been observed that in-spite of transfer posting order, the concerned Officers/Staff members are not being relieved by their controlling Officers. Also persons are not relieved even after joining of substitutes. This practice is creating a lot of administrative problem in this office.

All the controlling Officers are, therefore, requested to relieve the persons under order of transfer immediately under intimation to this office."

5. The Applicant has also placed on record a copy of the order dated 27.03.2002 of this Tribunal rendered in O.A. Nos. 412 & 431/2001; in which it was held as under:-

"On the pretext of want of replacement the authority can not procrastinate a lawful order."

6. It is the positive case of Mr. Adil Ahmed, learned counsel appearing for the Applicant, that the order of transfer dated 5th/9th September, 2008 is still in force and has not been superseded by the Headquarters of CPWD. That being the position, the Respondents ought to relieve the Applicant, promptly, from Eastern Region; so that he can join the new Station/Region/Zone at the earliest. It is for the 

Respondents to find out substitute and give respect to their own circular dated 16th November, 2004; relevant portion of which reads as under:-

" The proposal regarding reduction of tenure of posting in respect of officers and staff of C.P.W.D., in the states of Manipur & Nagaland has been examined in this Directorate. After due consideration it has been decided that the tenure of posting may continue to be 2 years in these two states but it may be ensured that substitutes against officers and staff who will be completing their tenure in these states are posted after one and half years, so that stay at these two states do not exceed 2 years in any case".

7. In the above premises, copies of this order, together with the copies of this Original Application, be sent to the Respondents; so that they shall give full consideration in the matter to relieve the Applicant (from Eastern Region of CPWD Organization) by end of March, 2009 to enable him (Applicant) to join the new Station/Zone/Region pursuant to the transfer order dated 5th/9th September, 2008.

8. With the above observation and direction, this case stands disposed of.

9. Copies of this order be also sent to the Applicant and to the Advocates of both parties.

Manoranj
24.02.2009
(MANORANJAN MOHANTY)
VICE-CHAIRMAN

/bb/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 21 OF 2009.

Abid Hossain Biswas

... Applicant

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

-Versus-

The Union of India & Others

... Respondents

13 FEB 2009

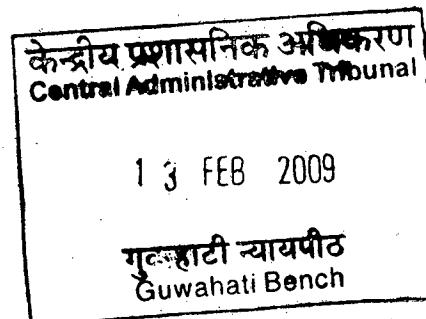
गुवाहाटी न्यायालय
Guwahati Bench

SYNOPSIS:

The Applicant is working as Assistant Engineer (Civil) at Kohima, Nagaland in the Central Public Works Department (CPWD in short) since 14.09.2006. The Respondent No.2 vide their O.M. dated 16.11.2004 reduced the tenure of posting of C.P.W.D. officers and staff working in the state of Manipur and Nagaland from two years to one and half years. On 26.05.2008 the Applicant submitted a representation before the Executive Engineer (Civil), Khatkhati Central Division, Assam for seeking his transfer from the North-Eastern Zone to New Delhi Zone, C.P.W.D. The said representation was forwarded by the Executive Engineer, Khatkhati Central Division, C.P.W.D., Khatkhati, Assam. The Office of the Respondent No.2 vide office order dated 05.09.2008 transferred the Applicant from Kohima Central Sub-Division I & II C.P.W.D., Kohima, Nagaland to NR i.e. Northern Region alongwith other Assistant Engineer (C). It is worth to mentioned here that the Respondent No.3 vide its order dated 24.06.2008 directed all the Superintending Engineers & Executive Engineers, C.P.W.D. under Eastern Region to relieve the person under order of transfer immediately. The Applicant submit a representation on 05.12.2008 before the Respondent No. 3 for his early relieved from his present place of posting at Kohima in reference to the Inter-Regional transfer order dated 05th September 2008. The said representation was forwarded by the Respondent No.4. Thereafter, he submitted another

Abid Hossain Biswas

representation on 15.01.2009 before the Respondent No.4 for his early relieve from his present posting to enable him to join at new place of posting. But till date the Respondents have not taken any steps for his early relieve from the present place of posting. Hence, this Original Application for seeking justice in this matter.



Abed Hossain Biswas.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 21 OF 2009.

Abid Hossain Biswas

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

... Applicant

-Versus-

The Union of India & Others

13 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

... Respondents

LIST OF DATES

19.03.1982 The Applicant has joined as Junior Engineer (Civil) in the Central Public Works Department and posted as Central Design Organisation, C.P.W.D., New Delhi.
Para 4.2

16.11.2004 The Respondents have reduced the tenure of posting C.P.W.D. officers and staff working in the state of Manipur and Nagaland from two years to one and half years.
Para 4.3
Annexure 1

14.09.2006 The Applicant was promoted to the post of Assistant Engineer (Civil) C.P.W.D. and joined as Assistant Engineer (Civil) C.P.W.D. at Kohima in the state of Nagaland.
Para 4.2

26.05.2008 The Applicant submitted application for seeking his transfer from North-Eastern Zone to New Delhi Zone, C.P.W.D.
Para 4.4
Annexure 2

02.06.2008 The transfer application of the Applicant was forwarded by the Executive Engineer, Khatkhati Central Division, C.P.W.D.
Para 4.4
Annexure 3

24.06.2008 The Respondent No.3 directed all the Superintending Engineers & Executive Engineers, C.P.W.D. under Eastern Region to relieve the person under order of transfer immediately.
Para 4.6
Annexure 5

05.09.2008 The Respondent No.2 transferred the Applicant from Kohima Central Sub-Division I & II, C.P.W.D., Kohima to N.R. i.e. Northern Region alongwith other Assistant Engineer (Civil) C.P.W.D.
Para 4.5
Annexure 4

05.12.2008 The Applicant submitted a representation before the Respondent No.3 praying for his early relieve from his present place of posting at Kohima.
Para 4.7
Annexure 6

Abid Hossain Biswas.

05.12.2008
Para 4.7
Annexure 7

The Respondent No.4 forwarded the aforesaid representation for favour of further necessary action.

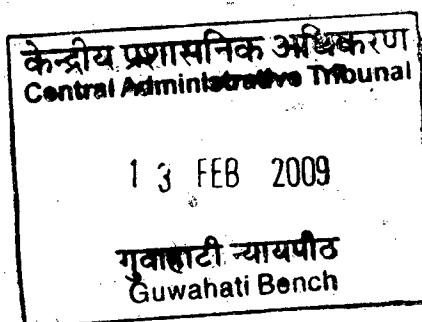
15.01.2009
Para 4.8

The Applicant submitted another representation before the respondent No. 4 requesting him for his early relieve from his present place of posting.

Date- 13.02.2009

Filed by

Nuruddin Ahmed
Advocate



Abid Hassan Biswal

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(An Application Under Section 19 of the Administrative Tribunals Act 1985)

ORIGINAL APPLICATION NO. 21

OF 2009

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

Shri Abid Hassain Biswas

.....Applicant

-Vs-

The Union of India & Others

.....Respondents

13 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

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4	2	Photocopy of the application dated 26th May 2008.	15
5	3	Photocopy of forwarding letter No.21(2)/KCD/2007-08/429 dated 02.06.2008.	16 to 17
6	4	Photocopy of the office order No.225 of 2008 under Office Memorandum No.18/3/2008-EC III dated 05 th September 2008.	18
7	5	Photocopy of the letter No.21(121)/SE(C)/CDN-1/ER/CPWD/Kol/2008/533 dated 24.6.08.	19
8	6 & 7	Photocopy of the representation and forwarding letter dated 05.12.2008.	20 to 21
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Date- 13.02.2009

Filed by

Muraduddin Ahmed
Advocate

Abid Hassain Biswas

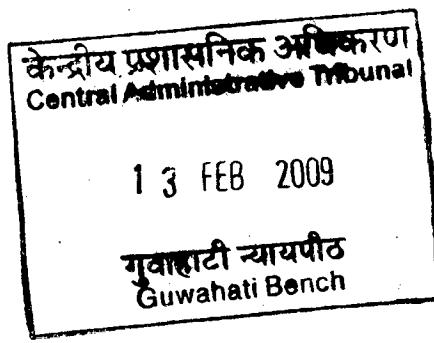
FILED BY

Shri Abid Hossain Biswas
- Proprietor
through Nurdin Khan

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 21 OF 2009.



BETWEEN

Shri Abid Hossain Biswas
Son of Late Abuar Rahman Biswas
Assistant Engineer (Civil)
Central Public Works Department
Khatkhati Central Division,
Group Centre C.R.P.F.,
Post Office-Khatkhati
District-Karbi Anglang, Assam,
PIN-782480 ✓

...Applicant
-And-

1. The Union of India represented by the Secretary to the Government of India, Ministry of Urban Affairs, Nirman Bhawan, New Delhi, Pin Code-110011. ✓
2. The Director General Works, Central Public Works Department, 118-A, Nirman Bhawan, New Delhi Pin Code-110011. ✓
3. The Superintendent Engineer Coordination Circle(ER), 2nd MSO Building, Nizam Palace, 17th Floor, 234/4 A.J.C. Bose Road, Kolkata-700020 ✓
4. The Executive Engineer Central Public Works Department Khatkhati Central Division, Group Centre C.R.P.F., Post Office-Khatkhati District-Karbi Anglang, Assam, PIN-782480 ✓

...Respondents

Abid Hossain Biswas

13 FEB 2009

DETAILS OF THE APPLICATION:-

गुवाहाटी न्यायपीठ
Guwahati Bench

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is not made against any particular order but it is made for seeking a direction from this Hon'ble Tribunal to the Respondents for immediate release of the Applicant from Kohima Central Sub-Division I & II, Central Public Works Department, Kohima, Nagaland to Northern Region in reference to Inter-Regional Transfer of Assistant Engineer (Civil) vide Office Order No.225 of 2008 in Office Memorandum No.18/3/2008-EC III dated 5/9th September 2008 issued by the Directorate General of Works, Central Public Works Department, New Delhi and also seeking a direction from this Hon'ble Tribunal to the Respondents for implementation of the order No. 21(121)/SE(C)/CDN-1/ER/CPWD/Kol/2008/533 dated 24.6.2008 issued by the Respondent No.3.

2) JURISDICTION OF THE TRIBUNAL:

The Applicant declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3) LIMITATION:

The Applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4) FACTS OF THE CASE:

Facts of the case in brief are given below:

Abid Hassan Biswas.

13 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

4.1) That your Applicant is a citizen of India by birth. As such he is entitled to all rights and privileges guaranteed under the Constitution of India and the laws framed thereunder from time to time.

4.2) That your Applicant begs to state that he has joined as Junior Engineer (Civil) in the Central Public Works Department (C.P.W.D. in short) on 19.03.1982 and he was posted at Central Design Organization C.P.W.D., Nirman Bhawan, New Delhi. He was transferred to Jaipur Central Division No-II C.P.W.D. at Jaipur from New Delhi. Thereafter, he was promoted to the post of Assistant Engineer (Civil) C.P.W.D. and posted in C.P.W.D. Eastern Region at Kohima Central Sub-Division I & II under the office of the Executive Engineer (Civil), Khatkhati Central Division, C.P.W.D., Group Centre, CRPF, Khatkhati, Assam. He joined in his post as Assistant Engineer (Civil) on 14.09.2006 at Kohima state of Nagaland.

4.3) That your Applicant begs to state that the office of the Respondent No.2 vide their office Memorandum No.29/1/97-EC.1 dated 16th November 2004 reduced the tenure of posting of C.P.W.D. officers and staff working in state of Manipur and Nagaland from two years to one and half years.

Photocopy of Office Memorandum No.29/1/97-EC.1 dated 16th November 2004 is annexed hereunto and marked as ANNEXURE-1.

4.4) That your Applicant begs to state that on 26th May 2008 he submitted his application for seeking his transfer from North-Eastern Zone to

Abid Hoseain Biswas.

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गुवाहाटी न्यायपीठ
Guwahati Bench

-4-

New Delhi Zone before the Executive Engineer, Khatkhati Central Division, C.P.W.D., Khatkhati, Assam. The said application was forwarded by the Executive Engineer, Khatkhati Central Division, C.P.W.D., Khatkhati, Assam to the Superintendent Engineer, Assam Central Circle No.1 C.P.W.D., Bamunimaidan, Guwahati-21 vide its letter No.21(2)/KCD/2007-08/429 dated 02.06.2008. In this application he has mentioned about his wife serious illness, son's education and completion of tenure in North-East Zone as a grounds of his transfer posting.

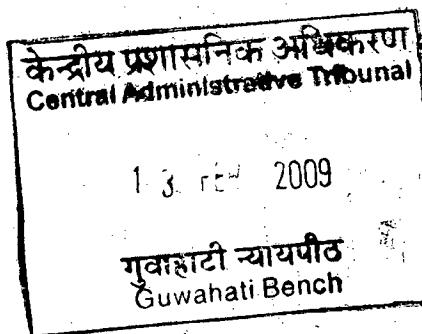
Photocopy of the application dated 26th May 2008 is annexed hereunto and marked as ANNEXURE-2.

Photocopy of forwarding letter No.21(2)/KCD/2007-08/429 dated 02.06.2008 is annexed hereunto and marked as ANNEXURE-3.

4.5) That your Applicant begs to state that the office of the Respondent No.2 vide office order No.225 of 2008 under Office Memorandum No.18/3/2008-EC III dated 05th September 2008 transferred the Applicant from Kohima Central Sub Division I & II C.P.W.D., Kohima, Nagaland to N.R. i.e. Northern Region along with other Assistant Engineer (Civil). In the Inter- Regional transfer order the Applicant name appeared in serial No.3. It is worth to mention here that in the column under the heading of Remarks the Applicants to be relieved on or after 15.09.2008.

Photocopy of the office order No.225 of 2008 under Office Memorandum

Abiel Hossain Biswas.



No.18/3/2008-EC : III dated 05th
September 2008 is annexed hereunto
and marked as ANNEXURE-4.

4.6) It is worth to be mentioned here that the Respondent No.3 vide order No.21(121)/SE(C)/CDN-1/ER/CPWD/Kol/2008/533 dated 24.6.08 directed all Superintending Engineers & Executive Engineers, C.P.W.D. under Eastern Region to relieve the person under order of transfer immediately. In the said letter the Respondent No.3 has stated that "it has been observed that in-spite of issue of transfer posting order, the concerned Officers/Staff members are not being relieved by their controlling Officers. Also persons are not relieved even after joining of substitutes. This practice is creating a lot of administrative problem in this office".

Photocopy of the letter
No.21(121)/SE(C)/CDN-
1/ER/CPWD/Kol/2008/533 dated 24.6.08
is annexed hereunto and marked as
ANNEXURE-5.

4.7) That your Applicant begs to state that he filed a representation before the Respondent No.3 praying for his early relieved from his present place of posting at Kohima in reference to his transfer order dated 05/09 September 2008. In his representation he has also stated that his only son who is now studying at class X going to appear Board Examination of CBSE, Delhi in the month of March 2009 and his wife who is almost bed ridden at New Delhi needs regular Medical Treatment and nobody is present their to help them, therefore he should be with them in this critical moments. The

Ahmed Hossain Biswas.

13 FEB 2009

aforesaid representation was forwarded to the Respondent No.4 for favour of further necessary action.

Photocopy of the representation and forwarding letter dated 05.12.2008 are annexed hereunto and marked as ANNEXURE-6 & 7.

4.8) That your Applicant begs to state that he filed another representation on 15.01.2009 before the Respondent No.4 requesting him for his early relieve from his present place of posting to enable him to join at new place of posting. However till date the Respondents have not taken any steps for his early relieve from the present place of posting. As such finding no other alternative the Applicant is compelled to approach this Hon'ble Tribunal for seeking justice in this matter.

Photo copy of the representation dated 15.01.2009 submitted by the applicant before the Respondent No.4 is annexed hereunto and marked as ANNEXURE-8.

4.9) That your Applicant begs to state and submit that in a similarly situated case in O.A. No.412 of 2001 and O.A. No.431 of 2001 this Hon'ble Tribunal vide its Judgment & Order dated 27th March 2002 held that "Admittedly the transfer order was issued as far back as May 2001. When the transfer orders were passed on 31.5.2001 the respondents were will aware about the situation and the fact that these applicants were working in the North Eastern Region. On the pretext of non-availability of person one is not at liberty not to give effect to its own decision rendered by it. The communication dated 28.9.2001 keeping the matter in abeyance was issued as a purely stop gap arrangement. The said order also cannot dilute the order of transfer dated 31.5.2001. I do not find

Abid Hossain Biswas

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গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

any justifiable reason for not giving effect the transfer order for these two applications. On the pretext of want replacement the authority cannot procrastinate a lawful order. Considering all the aspects of the matter, I do not find any discernible reason for sitting over the matter as regards the posting out of these two Applicants on the purported ground of non-availability of substitutes. It was the responsibility of the Respondents to take steps for finding out the surrogate. The inaction on the part of the Respondents in not giving effect to the transfer order in the set of circumstances cannot be legally sustained. The Respondents are directed to take all out effort to give effect to the order of transfer dated 31.05.2001 with utmost expedition and at any rate within a period of two months from the date of receipt of this order, in respect of the Applicants".

Photocopy of Judgment & Order dated 27th March 2002 in O.A. No.412 of 2001 and O.A. No.431 of 2001 passed by this Hon'ble Tribunal is annexed hereunto and marked as ANNEXURE-9.

4.10) That your Applicant begs to state that the Respondents particularly Respondent No.3 & 4 have deliberately and intentionally discriminated instant Applicant by not releasing him from this Region in spite of Inter-Regional transfer of Assistant Engineer (Civil) vide Office Order No.225 of 2008 in Office Memorandum No.18/3/2008-EC III dated 05/09th September 2008 and also order No.21(121)/SE(C)/CDN-1/ER/CPWD/Kol/2008/533 dated 24.6.2008. As such it is fit case for giving adequate direction to the Respondents by the

Abid Hussain Biswas.

13 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench
Applicant

Hon'ble Tribunal to relieve the instant ~~Applicant~~ immediately in compliance of his Transfer Order issued by the office of the Respondent No.2.

4.11) That your Applicant submit that he has got reason to believe that the Respondents are resorting the colorable exercise of power to accommodate their interested persons in their favorable place.

4.12) That your Applicant submit that the action of the Respondents is mala fide, illegal and with a motive behind.

4.13) That your Applicant submit that the action of the Respondents is highly illegal, improper, whimsical and also against the policy adopted by the Government of India.

4.14) That in view of the facts and circumstances it is a fit case for interference by the Hon'ble Tribunal to protect the interest of the Applicant and his family members.

4.15) That this application is filed bona fide and for the interest of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1) For that, due to the above reasons narrated in detail the action of the Respondents is in *prima facie* illegal, mala-fide, arbitrary and without jurisdiction.

5.2) For that, the Respondents have reduced the tenure of posting of C.P.W.D. Officers and Staff working in the State of Manipur and Nagaland from two years to one and half years. In the instant

Md. Sossain Biswas

केन्द्रीय प्रशासनिक अधिकार परिषद
Central Administrative Tribunal
13 FEB 2009
गुवाहाटी न्यायालय
Guwahati Bench

case the Applicant is working in the State of Nagaland for more than two years. As such the Respondents have violated their own guideline about the tenure posting of C.P.W.D. Officers and Staff in the state of Nagaland.

5.3) For that, the Applicant has been transferred from Kohima Central Sub-Division I & II, C.P.W.D., to Northern Region in reference to Inter-Regional Transfer of Assistant Engineer (Civil) vide Office Order No.225 of 2008 in Office Memorandum No. 18/3/2008-EC III dated 05/09th September 2008. However, till date the Respondents are not giving effect to their own Inter-Regional transfer order.

5.4) For that, the Respondents have not considered their own direction and guideline contained in Office Order No.21(121)/SE(c)/CDN-I/ER/CPWD/Kol/2008/533 dated 24.06.08 regarding relieve of the persons under order of transfer immediately.

5.5) For that the action of the Respondents is in violation of Article 14, 16 and 21 of the Constitution of India.

5.6) For that, the action of the Respondents is arbitrary, mala fide and discriminatory with an ill motive.

5.7) For that, in any view of the matter the action of the Respondents are not sustainable in the eye of law and as well as fact.

Abid Hassan Bisal

13 FEB 2009

The Applicant craves leave of this Hon'ble Tribunal advance further grounds the time of hearing of this instant application.

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the Applicant except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

That the Applicant further declare that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, Writ Petition or suit is pending before any of them.

8) RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the Applicant most respectfully prayed that Your Lordships may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relief(s) sought for by the Applicant may not be granted and after hearing the parties may be pleased to dispose up this application on the admission stage and may be pleased to direct the

Abid Hossain Biswas.

नियन्त्रित प्रशासनिक अधिकारण
Central Administrative Tribunal

13 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Respondents to give the following relief(s):

8.1) That the Respondents, particularly the Respondent No.3 & 4 may be directed by this Hon'ble Tribunal to relieve the Applicant immediately from the present place of posting in pursuance to Inter-Regional Transfer of Assistant Engineer (Civil) vide Office Order No.225 of 2008 in Office Memorandum No. 18/3/2008-EC III dated 05/09th September 2008 issued by the office of the Respondent No.2.

8.2) To Pass any other relief or relieves to which the Applicants may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

8.3) To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

The Applicant most humbly prays before this Hon'ble Tribunal following interim relief(s).

This Hon'ble Tribunal may be pleased direct the Respondents to give effect the transfer order of the Applicant in reference to Inter-Regional Transfer of Assistant Engineer (Civil) vide Office Order No.225 of 2008 in Office Memorandum No. 18/3/2008-EC III dated 05/09th September 2008. This Hon'ble Tribunal may also be pleased to pass any appropriate order(s) as your lordships may deem fit and proper.

Abid Hossain Biswas.

10) Application is filed through Advocate.

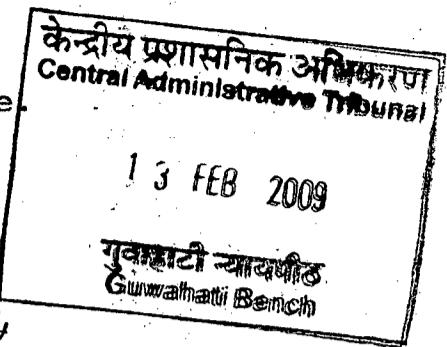
11) Particulars of I.P.O.:

I.P.O. No. : 39 G 363694

Date of Issue : 7.10.2008

Issued from : Guwahati G.P.O.

Payable at : Guwahati



12) LIST OF ENCLOSURES:

As stated above.

Abid Hossain Biswas.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

13 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

VERIFICATION

I, Abid Hossain Biswas aged about 51 years, son of Late Abur Rahman Biswas, working as Assistant Engineer (Civil) office of the Executive Engineer, Khatkhati Central Division, Central Public Works Department, Group Centre C.R.P.F., Khatkhati, P.O.-Khatkhati, District-Karbi Anglong, Assam, Pin-782480 do hereby solemnly verify that the statements made in paragraph nos. 4:1, 4:2, 4:4 (Partly), 4:7 (Partly), 4:8, 4:10 are true to my knowledge, those made in paragraph nos. 4:3, 4:4 (Partly), 4:5, 4:6, 4:7 (Partly), 4:9..... are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 13th day of February 2009.

Abid Hossain Biswas.

DECLARANT

13 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

No. 29/1/97-EC.I
Government of India
Directorate General of Works
Central Public Works Department

Nirman Bhavan, New Delhi - 110 011
Dated the 16th November, 2004.

Office Memorandum

Subject:- Reduction of tenure of posting of CPWD officers & staff in Manipur and Nagaland from two years to one and half years - reg.

Reference:- O/o ADG(ER), letter No. 4/6/2003-ADG(ER) dated 16th September, 2004.

The proposal regarding reduction of tenure of posting in respect of officers and staff of C.P.W.D., in the states of Manipur & Nagaland has been examined in this Directorate. After due consideration it has been decided that the tenure of posting may continue to be 2 years in these two states but it may be ensured that substitutes against officers and staff who will be completing their tenure in these states are posted after one and half years, so that stay at these two states do not exceed 2 years in any case.

This issues with the approval of ADG(S&P).

(B.B. BABBAR)
Dy. Director (EC.I)

To

The Additional Director General(ER)
C.P.W.D., 234/4, Acharya J.C. Bose Road,
Kolkata - 700 020

Copy to:-

1. ADG(NR), ADG(SR), ADG(WR), ADG(Training), E-in-C, PWD, NCTD.
2. PPS to DGW, ADG(S&P), PS to ADG(TD), ADG(Border), CE(P&S), DDG(W).
3. Director of Administration.

D.W.(F.P.)
S.E.(C.)
S.E.(T.O. & Q.)
AD.D(ER)
F.O

Copy to all CEs & 956 (B)

6/2

A-955
15/12/04

Dy. Director (EC.I)

No. 4/1/2004-ADG(ER)

Dated 13/02/09

Copy forwarded to:-

- ① The CE(EX)-I, CPWD, K.L.
- ② The CE(EX)-II, CPWD, Patna
- ③ The CE(NEZ), CPWD, Shillong
- ④ The CE(SI) EX, CPWD, K.L.
- ⑤ The SO(Comd) ER, CPWD, K.L.

DD(ER)
J. K. S. (ER)

ATTESTED
M
ADVOCATE

:- Application for seeking transfer from North East Zone (NEZ) to Delhi (NDZ)

1. Name and designation: A.H. Biswas, Assistant Engineer

2. Date of birth: 16-03-1957

3. Date of entry in CPWD: 19-03-1982

4. Date of entry in present grade: 15-09-2006

5. Present home address: Flat No.-286, Sector-2, Pocket-5, Rohini, Delhi-110085

6. Name of present office and station where actually working: Kohima Central Sub Division-I and II (Under Khatkhati Central Division) CPWD, Kohima, Nagaland

7. Date of joining at present station: 15-09-2006

8. Details of posting in present grade:

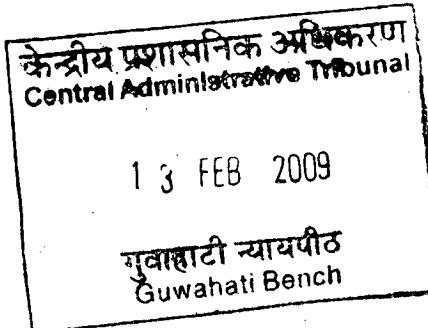
S. No.	Name of office	Station of actual posting	Period: From	To
1.	Khatkhati Central Division, CPWD, Khatkhati, Assam	Kohima, Nagaland	15-09-2006	Till date

9. Ground of transfer of posting: Wife's serious illness, son's education, completion of tenure in North East Zone (NEZ)

10. Area and offices where transfer is sought: Delhi / New Delhi Zone (NDZ)

Certified that the above information is correct and nothing has been concealed.

Date:- 26th May, 2008



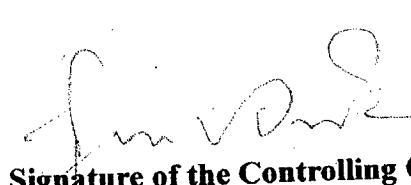
(A. H. BISWAS)

Assistant Engineer,

Kohima Central Sub-Division-I & II
C.P.W.D., Kohima, Nagaland.FOR OFFICE USE ONLY

Certified that the particulars given in the application have been checked from the office record and are correct.

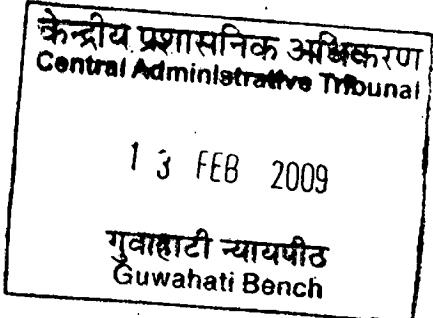
Date:- 02-06-08



Signature of the Controlling Officer
Executive Engineer
Khatkhati Central Division
C.P.W.D., Khatkhati, Assam

ATTESTED
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ADVOCATE

-16-



-TYPED COPY-

GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT
OFFICE OF THE EXECUTIVE ENGINEER
KHATKHATI CENTRAL DIVISION
G.C., CRPF COMPLEX, KHATKHATI

No.21(2)/KCD/2007-08/429

Dated 2/6/08

To,

The Superintending Engineer,
Assam Central Circle No.I, CPWD,
Bamunimaidan, Guwahati-21.

Sub: Regarding change of region and transfer from KCD, CPWD, Khatkhati to
Delhi in respect of Sri A. H. Biswas, Assistant Engineer (C).

Shri A. H. Biswas, Assistant Engineer (C) attached to Kohima Central Sub
Division No.I, CPWD, Kohima under this division has sought transfer from
Khatkhati Central Division, CPWD, Khatkhati, Assam to Delhi (NDZ). His self
explanatory representation is enclosed herewith for favour of further necessary
action please.

Encl: As stated above.

EXECUTIVE ENGINEER

Copy to:

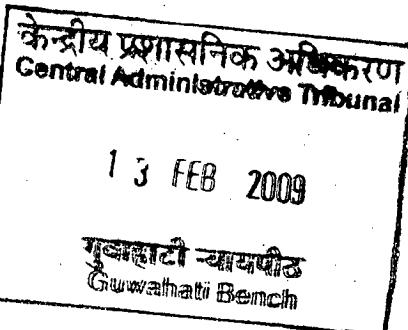
Shri A. H. Biswas, Assistant Engineer (C), KCSD No.I, CPWD, Kohima.

Sd/-
Illegible

EXECUTIVE ENGINEER

ATTESTED
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ADVOCATE

-17-



GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT
OFFICE OF THE EXECUTIVE ENGINEER
KHATKHATI CENTRAL DIVISION
G.C., CRPF COMPLEX, KHATKHATI

No.21(2)/KCD/2007-08/ 429

Dated 2/6/08

To

The Superintending Engineer,
Assam Central Circle No. I, CPWD,
Bamunimaidan, Guwahati - 21.

Sub : Regarding change of region and transfer from KCD, CPWD, Khatkhati to
Delhi in respect of Sri A. H. Biswas, Assistant Engineer (C).

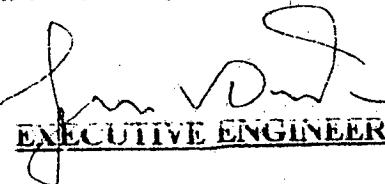
Shri A. H. Biswas, Assistant Engineer (C) attached to Kohima Central Sub
Division No. I, CPWD, Kohima under this division has sought transfer from
Khatkhati Central Division, CPWD, Khatkhati, Assam to Delhi (NDZ). His self
explanatory representation is enclosed herewith for favour of further necessary
action please.

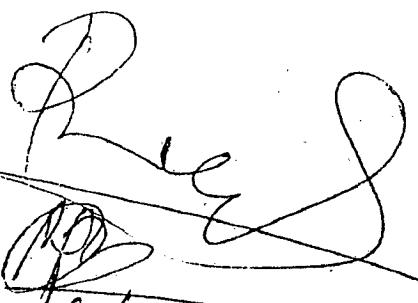
Encl : As stated above.

EXECUTIVE ENGINEER

Copy to

✓ Shri A. H. Biswas, Assistant Engineer (C), KCSD No. I, CPWD, Kohima.


EXECUTIVE ENGINEER


3/6/08

ATTESTED
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ADVOCATE

No.18/3/2008-EC III
GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF WORKS
CENTRAL PUBLIC WORKS DEPARTMENT

Nirman Bhavan, New Delhi

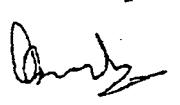
Dated the 5th September, 2008.

OFFICE ORDER No. 225/2008.

Director General of Works, CPWD, New Delhi is pleased to decide the following
Inter - Regional Transfers in the grade of Assistant Engineers (Civil) with immediate effect.

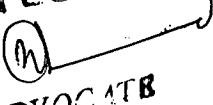
Sl. No.	Name (S/Shri) & (Date of Birth)	From	To	Remarks
1.	H.C. Bhatt (DOB : 22.4.1959)	Civil Construction Unit, Ministry of Environment and Forests, Vadodara.	NR	No TA / DA & Joining time will be granted. To be relieved on or after 19.09.2008.
2.	D.L. Pakrashi (DOB : 19.08.1960)	Murshidabad Central Maintenance Circle, CPWD, Berhampore, Murshidabad.	NR	To be relieved on or after 21.9.2008.
3.	A.H.Biswas (DOB: 16.03.1957)	Kohima Central Sub- Division I & II, CPWD, Kohima, Nagaland.	NR	To be relieved on or after 15.09.2008.
4.	P.C.Gupta (DOB : 7.8.1958)	IBBR Maintenance Sub Division-II, CPWD, Islampur, Siliguri.	NR	To be relieved immediately.
5.	Hement Panrui (DOB:02.08.1963)	O/o CE(CZ),Bhopal	NR	No TA / DA & Joining time will be granted. To be relieved immediately.

2. The officers under order of transfer and posting should proceed to their respective places of posting and two copies of TR-1 Form with name in capital letters be sent to the Section Officer, EC-III, giving reference to this Order. They should send certificate of having written self-appraisal and the CR in respect of Officers under them in the prescribed format.


(SURESH CHANDRA)
DEPUTY DIRECTOR (ADMIN.)

To
The Pay and Accounts Officers, CPWD, NR / ER / SR / WR.

Copy to:-
L ADG(NR) / ADG(ER) / ADG(SR) / ADG(WR), CPWD.

ATTESTED

ADVOCATE

- 19 -

GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT
OFFICE OF THE SUPERINTENDING ENGINEER, COORDINATION CIRCLE (ER),
2ND MSO BUILDING, NIZAM PALACE, 17TH FLOOR, 234/4 A.J.C. BOSE ROAD, KOLKATA - 20.
TEL: (033) 2287-7416. FAX NO. (033) 2281-3183.

No.21(121)/SE(C)/CDN-I/ER/CPWD/Kol/2008/ 533 के द्वाय प्रशासनिक अधिकारी 24.6.08.
Central Administrative Tribunal

To

All Superintending Engineer's & Executive Engineer's
CPWD, Under Eastern Region,

13 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

Sub : Relieve of Assistant Engineers, Junior Engineer's (Civil & Elect) & Other Gr. 'C'
& 'D' staff members.

It has been observed that in-spile of issue of transfer posting order, the concerned Officers / Staff members are not being relieved by their controlling Officers. Also persons are not relieved even after joining of substitutes. This practice is creating of administrative problem in this office.

All the controlling Officers are, therefore, requested to relieve the persons under order of transfer immediately under intimation to this office.

a lot

SE/ACC-I/Guwahati

SUPERINTENDING ENGINEER, COORD(ER)

'मान्य संस्कार'

असम के-टी-ए परिषद नं. 1

के ० लो. निः वि. ०, गुवाहाटी।

दिनांक: ०७-०७-०८

प्रकल्प नं: 21(8)/ACC-1/08/ 975

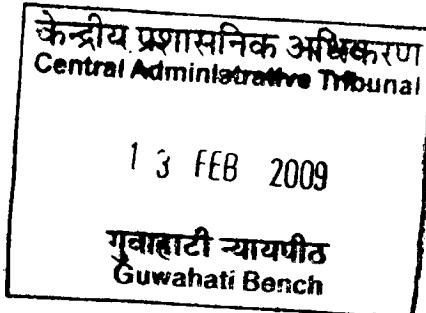
उल्लिखित: कार्यालय अधिकारी, गुवाहाटी/लेन्सुर/खटखटी के-टी-ए माल, के ० नी. निः
(वि. ०) को सूचनाये शब्द में अधिकृत विधेय कार्यालय है तथा उन्हें

Executive Engineer(Admn.)
Assam Cent. Circle No-1
CPWD, Guwahati-21

ATTESTED
W
ADVOCATE

- 20 -

The Superintending Engineer, (Co Ordination)
Eastern Zone
Central Public Works Department
17th floor, 2nd MSO Building,
234/4 AJC Bose Road,
Nizam Palace, Kolkata - 700 020.



(Through Proper Channel)

Subject: Posting of Substitute Assistant Engineer (Civil) in place of Shri. A.H. Biswas, AE (C) under transfer.

Reference: 1- DG(W)'s office order No 225/2008 dated 05-09-2008 (No 18/3/2008 - EC-III)
2- SE's (Co-ordination) ER's letter No- 21(121)/SE(C)/CDN - I/ER/CPWD/KOL/2008/533
dated 24 - 06 - 2008.

Respected Sir.

I have got my transfer Order from Eastern Region to Northern Region vide DG(W)'s office order no 225/2005 on 05-09-2008 referred above (copy enclosed) but still I am not relieved from my present office as no substitute is posted against me.

Sir, my only son who is now studying class -X going to appear Board Exams of CBSE, Delhi in the month of March 2009 and my wife who is almost bed ridden for diseases, needs regular medical treatment, but at present nobody is there to help her, so I should be with them in these crucial moments.

With reference to your letter referred above (copy enclosed) it is mentioned that officers under transfer should be relieved immediately and I have already served in Eastern Region for more than 26 (twenty six) month

So, considering these genuine reasons sympathetically, my humble request to your good self to please posted Assistant Engineer (C) against me as early as possible so that I can be relieved.

I shall be highly grateful and obliged to you.

Thanking You,

Encl.: - As stated above.

Yours faithfully,

(A.H. Biswas)

Assistant Engineer (C)
Kohima Central Sub-Division No-I & II
(Under Khatkhati Central Division)
CPWD, Kohima, Nagaland

Copy to:

- 1- The Superintending Engineer, Assam Central Circle-I, CPWD, Bamunimaidan Guwahati-21 for information and consideration sympathetically please.
- 2- The Executive Engineer, Khatkhati Central Division, CPWD, Khatkhati, Assam for information and humble request to take up my case with the concerned authority.
- 3- The Secretary, CPWD Assistant Engineers' Association (EZ). 234/4 AJC Bose Road, Nizam Palace, Kolkata- 20 for information and to take up my case to Superintending Engineer (Co-Ord), ER for pos of substitute please.

(A.H. Biswas)

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ADVOCATE

GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT
OFFICE OF THE EXECUTIVE ENGINEER
KHATKHATI CENTRAL DIVISION
CPWD, GC, CRPF, KHATKHATI
KARBI ANGLONG, ASSAM.

Phone. 03675 - 213900.
Phone & Fax. 03675 - 249020.

No. 21(4)/KCD/2008-09/ 4384

Dated 05/12/2008.

To,

The Superintending Engineer (Co-ord)
Co-ordination Circle (ER)
CPWD, Nizam Palace,
234/4, A.J.C. Bose Road,
Kolkata - 700 020

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

13 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Sub: - Request for posting of Substitute against Shri. A.H. Biswas, Assistant Engineer (C) under Transfer.

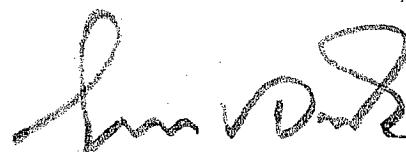
Enclosed please find herewith an application duly recommended received from Shri. A.H. Biswas, Assistant Engineer, Kohima Central Sub-Division No. I, CPWD, Kohima, Nagaland attached to this office for the above cited subject for favour of further necessary action please.

Encl.: - As stated above.

✓
M. GUNASEELAN
EXECUTIVE ENGINEER

Copy to: -

1. The superintending Engineer, ACC-I, CPWD, Bamunimaidan, Guwahati - 21
Enclosed an application received from Sri. A.H. Biswas, AE for favour of information & further necessary action please.
- ✓ 2. Shri. A.H. Biswas, Assistant Engineer, Kohima Central Sub-Division No.I, CPWD, Kohima, Nagaland.


EXECUTIVE ENGINEER

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ADVOCATE

To,

The Executive Engineer,
Khatkhati Central Division,
C.P.W.D. Khatkhati, Assam.

Sub: - Request for relieving of Sh. A.H. Biswas, A.E.

Ref: - Your letter No. 21(4)/KCD/2008-09/1384, Dt. 05/12/08.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

13 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

Sir,

I have got transfer order from Eastern Region to Northern region vide DGWs Office Order No. 225/2005 Dt 5/9/08, that means more than four months passed but no relievers posted against me though I have requested to SE (Co-ordination), EZ for a substitute vide letter referred above. But till date nothing has been taken place.

Earlier I have expressed my concern regarding my wife's illness several times. She is still under medical treatment and is in great distress. More over my only son is going to appear in the coming Board exam Conducted by CBSE (Class X) in Delhi. So it is my basic duty to look after/ help them.

So my humble request to your good self for sympathetic consideration and necessary action so that I can be relieved as early as possible.

With regards,

Yours faithfully,


(A.H. BISWAS)
Assistant Engineer, KCSD I&II,
CPWD, Kohima.

ATTESTED

ADVOCATE

-TYPED COPY-

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original application No. 412 of 2001 and 431 of 2001

Date of order: This the 27th Day of March, 2002

The Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman

Shri Sushil Kumar Yadav (O.A. No. 412/2001)
 Junior Engineer (Civil)
 Demagiri Central (Mtc) Sub Division,
 Central Public Works Department,
 Demagiri, Mizoram

and

Shri Bipin Kumar, (O.A. No 431/2001)
 Office of the Assistant Engineer,
 I.B.B.R (Mtc) Sub-Division, CPWD,
 Mela Road, Malugram
 Silchar 2.

By Advocate Sri Adil Ahmed

-Versus-

1. Union of India
 represented by the Secretary to
 the Government of India,
 Ministry of Urban Affairs,
 New Delhi.

2. The Director General (Works)
 C.P.W.D., Nirman Bhawan,
 New Delhi-11.

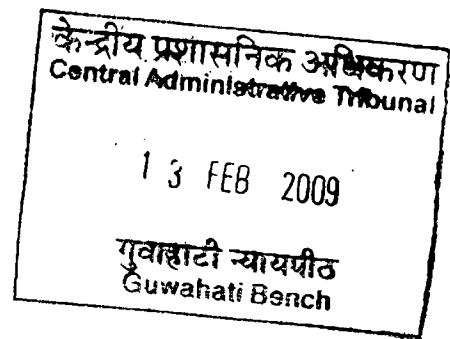
3. The Superintending Engineer (Co-ordination)
 Circle, C.P.W.D., Eastern Region,
 Nizam Palace, Kolkata-20.

4. The Executive Engineer
 Indo Bangladesh Boarder Road, (Mtc),
 Division, C.P.W.D., Malugram,
 Silchar, Assam.

5. The Assistant Engineer,
 Demagiri Central (Mtc) Sub-Division,
 C.P.W.D., Demagiri, Mizoram.

6. The Assistant Engineer,
 I.B.B.R. (Mtc) Sub Division,
 C.P.W.D. Mela Road, Malugram,
 Silchar-2.

..... Respondents



ATTESTED
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 ADVOCATE

केन्द्रीय प्रशासनिक अदालत करण
Central Administrative Tribunal

13 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

By Sri B.C. Pathak, Addl. C.G.S.C. (O.A.No. 412/2001)
Sri A.K.Choudhury, Addl. C.G.S.C. (O.A.No. 431/2001)

ORDER

CHOWDHURY J. (V.C.)

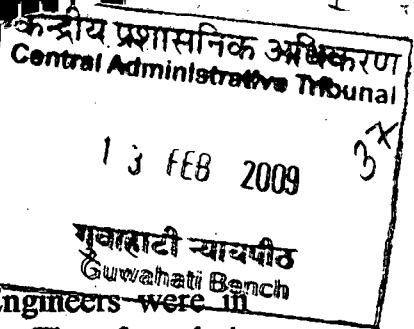
Both the applications involve common facts and common question of law and therefore both are taken up for hearing together.

2. The applicant in O.A.412/2001 is a Junior Engineer (Civil) in the Central Public Works Department. Presently he is working at Demagiri Central (Mtc) Sub Division, C.P.W.D., Demagiri, Mizoram under respondents No.4 and 5. The applicant in O.A. No. 431/2001 is also working as a Junior Engineer (Civil) in Indo Bangladesh Boarder Road (Mtc) Sub Division, C.P.W.D., Malugram, Silchar-2 under respondents No.4 and 5. By order No.21(1)SE(C)/JE(C)/ER/CPWD/CAL/2001/444 dated 31.5.2001 the two applicants were posted out and transferred in their respective place of posting. The applicant in O.A.412/2001 by the said order was transferred to Kolkata. By the same order the applicant in O.A.431/2001 was also transferred to DCD/Dhanbad vice Shri R.N. Singh promoted by the said order issued by the respondent No.3. Despite the transfer order passed by the aforesaid order the respondents in a most illegal fashion failed to give effect to the said orders so far these two applicants are concerned, contended the applicants. It was pleaded that since the order was passed effecting about 57 persons there was no justification for not giving effect to the transfer of these two applicants. The applicants are similarly placed like that of other officers but in a most arbitrary manner the respondents failed to adhere to the order of transfer so far as the applicants were concerned contended the applicants. The applicants also contended that as per office memorandum dated 14.12.83 the applicants were entitled to be posted to the place of their on completion of their tenure.

3. The respondents contested the claim and stated that office memorandum dated 14.12.83 was not applicable and therefore these two applicants are not entitled for the benefit of the said circular. It was also stated that after issuance of the transfer order dated 31.5.2001 the respondent No.3 issued another order vide Memo No.21(7)/SE(C)/ER/CPWD/GEN/KOLKATA/2001/714 dated 28.9.2001 whereby it was ordered that all transfer posting order of Group C and D staff including the Junior Engineers from Eastern Region to North Eastern Region and vice versa already issued but not implemented was to be kept in abeyance with immediate effect till further order. The respondents also pleaded that applicants could not be released from their present place of posting due to exigencies of service as the applicants were deputed to look after the works of maintenance or International Border Roads which could not be left unattended due to National security reasons. The respondents also pleaded that Silchar Maintenance Division of CPWD was responsible to maintain the Indo Bangla Border Roads in three states viz, Mizoram, Meghalaya and Tripura covering a total length of 183 kms. In O.A.412/2001 it was stated that the Division was new one started functioning from 1998 with 13 numbers of sanctioned strength of Junior Engineers out of 13 posts only five Junior Engineers were posted. After completion of tenure order of transfer for three Junior Engineers were issued by respondent No.3 out of five

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posts and accordingly they were released. Only two Junior Engineers were in position to look after the entire jurisdiction under the division. Therefore their posting out would undoubtedly affected the movement of the B.S.F. personnel and causing threat to the national security.

4. I have heard Mr. A. Ahmed, learned counsel for the applicants and Mr. B.C. Pathak, learned Addl. C.G.S.C. for respondents in O.A.412/2001 and Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents in O.A.412/2001 at length. Admittedly the transfer order was issued as far back as May 2001. When the transfer orders were passed on 31.5.2001 the respondents were well aware about the situation and the fact that these applicants were working in the North Eastern Region. On the pretext of non availability or persons one is not at liberty not to give effect to its own decision rendered by it. The communication dated 28.9.2001 keeping the matter in abeyance was issued as a purely stop gap arrangement. The said or also cannot dilute the order of transfer dated 31.5.2001. I do not find any justifiable reason for not giving effect to the transfer order for these two applicants. On the pretext of want replacement the authority cannot procrastinate a lawful order. Considering all the aspects of the matter, I do not find any discernible reason for sitting over the matter as regards the posting our or these two applicants on the purported ground of non availability of substitutes. It was the responsibility of the respondents to take steps for finding out the surrogate. The inaction on the part of the respondents in not giving effect to the transfer order in the set of circumstances cannot be legally sustained. The respondents are directed to take all out effort to give effect to the order of transfer dated 31.5.2001 with utmost expedition and at any rate within a period of two months from the date of receipt of this order, in respect of the applicants.

Both the applicants are accordingly allowed. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

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