

b

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/ NO..... 44..... 2009
R.A./CP/NO..... 2015
E.P./M.P./NO..... 2015

1. Order Sheets..... 3 page..... 1 to..... 5 ✓
2. Judgment/ order dtd. 30.11.2009 page..... 1 to..... 5 ✓
3. Judgment & Order dtd..... received from H.C. / Supreme Court.
4. O.A. A4/2009 page..... 1 to..... 28 ✓
5. E.P/M.P. page..... to.....
6. R.A./C.P. page..... to.....
7. W.S. Page..... 1 to..... 5 ✓
8. Rejoinder..... page..... to.....
9. Reply page..... to.....
10. Any other papers page..... to.....
11. Memo of appearance - 0 ✓

14.7.2015
SECTION OFFICER (JUDL.)

13.7.2015

(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No.: 44 /2009

2. Mise Petition No _____

3. Contempt Petition No. _____ /

4. Review Application No.

Applicant(s) Tai Shankar Prasad Singh

Respondant(s) 4-0-2- Vops.

Advocate for the Applicant(s): Mr. P.K. Tiwari

Mr. R. T. Das

Mr. K. Saxon

Advocate for the Respondant (S) : 6

CGSC

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed/C. P. for Rs. 30/- deposited via IPMD MS. 396, 403206 Date 3.09.2009	16.03.2009	Heard Mr.P.K.Tiwari, learned counsel for the Applicant. Ms.U.Das, learned Addl. Standing counsel is present on behalf of the Respondent.
Copy served to 1st step envelope.		Issue notice to the Respondents returnable after two weeks.
16/03/09		list this matter on 31.03.2009.
True copy of the order 16.3.2009 sent to Section issuing to the Respondent Regd. A/303206 MS. 396, 173-1176 17-3-2009 3.09.2009 Date of Appearance Ms. U. Das Regd. No 176 S. C. G. S. C. 6m 17/3/09	16b/1	 (A.K.Gaur) Member (J)

2
O.A. 44/09

31.03.2009 Mr P.K.Tiwari, learned counsel for the Applicant is present. Miss U. Das, learned Addl. Standing counsel for the Respondents prays for some more time to file written statement.

Call this matter on 04.05.2009 awaiting written statement from the Respondents.

Send copy of this order to the Respondents in the address given in the O.A.


(M.R. Mohanty)
Vice-Chairman

① Service report awaited.


30.3.09.

Order dated 31/3/09
Send to D/Sec. for
issuing to respondents
by post.

D/No. 1845 to 1848


Case No. D/ 16-4-09

pg

W/S not b'led.

04.05.2009

No written statement has yet been filed in this case.


1.05.09

Copies of order
dated 4/5/09 send
to D/Sec. for issuing
to respondents by
post.

D/No. 2413 to 2416


Case No. D/ 15.5.2009

/bb/

08.06.2009

On the prayer of Ms.U.Das, learned Addl. Standing counsel, time till 08.06.2009 is, hereby granted to the Respondents to file their written statement.

Call this matter on 08.06.2009.

Send copies of this order to the Respondents in the address given in the O.A.


(M.R. Mohanty)
Vice-Chairman

W/S not b'led.


5.6.09.

/bb/

No W/S b'led.


21.7.09.


(M.R. Mohanty)
Vice-Chairman

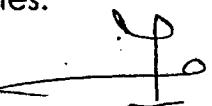
O.A.44/2009

03.07.2009

Mr.P.K.Tiwari, learned counsel for the Applicant is present. No written statement has yet been filed by the Respondents. Mr.P.K.Tiwari, learned counsel for the Applicant, produces a copy of the letter dated 30.06.2009 of the Director of Postal Services, Itanagar addressed to the Chief Post Master General, N.E.Circle, Shillong transmitting the representation of the Applicant; which is perhaps to be transmitted to the Chief Post Master General, Bihar for consideration. Notwithstanding pendency of this case, the Chief Post Master General, N.E.Circle, Shillong shall remain free to transmit the request of the Applicant to the Chief Post Master General, Bihar for necessary consideration.

Call this matter on 30.07.2009 awaiting written statement from the Respondents.

Send copies of this order to the Applicant and to the Respondents in the address given in the O.A. and free copies of this order be also supplied to counsel appearing for both the parties.


(M.R.Mohanty)
Vice-Chairman

None appears for either of the parties.

Call this matter on 07.08.2009.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

Kankdas

Send copies of this order to the Applicant and to the Respondents and free copies to both the counsels.


6/7/09

Received copy of
order dated 3/7/09
Sashi Kishore
Advocate for
the applicant.

Copies of order
dated 3/7/09 send
to D/Sec. for issuing
to applicant and
respondents by post.

Free copies of /bb/
this order issuing to
counsel appearing for
both the parties.

Class 7/09. D/NG-3753 to 3759
Dt 7.7.09 nkm

No W/S filed.

3/
28.7.09

07.08.2009

Written statement is filed in court today after serving a copy on Mr.R.J.Das, Advocate representing Applicant's side.

No W/S filed.

3/
6.8.09

Call this matter on 20.08.2009 awaiting rejoinder from the Applicant.


(M.K.Chaturvedi)
Member (A)


(M.R.Mohanty)
Vice-Chairman

11.8.09 /bb/

W/S filed by
the Respondents
in the Court on
7.8.09 through
Miss U. Das,
Addl. CSC
Copy served.

11/8/09

20.08.2009

On the prayer of counsel for both the parties, call this matter on 12.10.2009.


(M.K.Chaturvedi)
Member(A)


(M.R.Mohanty)
Vice-Chairman

/bb/

19.8.09

No rejoinder filed.

3/
9.10.09

No rejoinder filed.

No rejoinder filed.

12.10.2009

Mr.P.K.Tiwari, learned counsel for the Applicant is present. Ms.Usha Das, learned Addl. Standing Counsel representing the Respondents is also present. Written statement has already been filed.

Subject to legal pleas to be examined at the time of final hearing, this case is admitted and set for hearing on 30.11.2009.

Notwithstanding pendency of this case, the Respondents should process the case of the Applicant for his transfer under Rule 38 of the Postal and Telegraph Manual.

Send copies of this order to the Applicant and the Respondents in the address given in the O.A..


(M.K.Chaturvedi)
Member (A)


(M.R.Mohanty)
Vice-Chairman

Copies of order dt. 12/10/09
sent to D/Sec. for issuing /lm
to the applicant and all
the respondents by post.
D/10-

26/10/09. Dt=

30.11.2009

Heard counsel for the parties.

Hearing concluded. Judgment delivered in open court.

For the reasons recorded separately O.A is disposed of.


 (Madan Kr. Chaturvedi)
 Member (A)


 (Mukesh Kr. Gupta)
 Member (J)

17-12-09

/pg/

Judgments/Order dated
 30/11/09 Send to the
 Dispatch Section for
 issuing the judgment
 and all the judgments.
 File no 12920 to 12923

Delivered — 17-12-2009

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....
O.A. Nos. 44 of 2009

DATE OF DECISION: 30-11-2009.

Shri Jai Shankar Prasad Singh

.....Applicant/s

Mr P. K. Tiwari

.....Advocates for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Miss Usha Das, Addl. C.G.S.C.

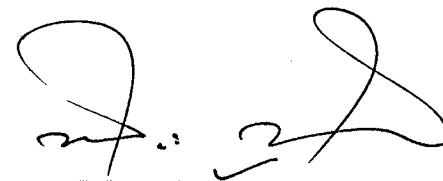
.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)

THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

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



Member (J)/Member(A)

9

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI :**

O.A. Nos.44 of 2009

DATE OF DECISION : THIS IS THE 30th DAY OF NOVEMBER, 2009.

**THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)
THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)**

Shri Jai Shankar Prasad Singh
Sub Post Master, Sub Post Office,
Dirang, District West Kameng,
Arunachal Pradesh – 790101.

.....Applicant

By Advocate Mr P.K.Tiwari.

-Versus –

1. **Union of India**
through the Secretary, Ministry of Communication,
Dak Bhawan, New Delhi 110001.
2. **The Chief Postmaster General (Staff),**
Department of Posts,
North East Circle, Meghalaya,
Shillong – 793001.
3. **The Director of Postal Services,**
Arunachal Pradesh Division,
Department of Posts,
Itanagar – 791111.
4. **The Chief Post Master General,**
Bihar Circle, Patna,
Bihar – 800001.Respondents

By Advocate Miss Usha Das, Addl.C.G.S.C

ORDER (ORAL)

MR MUKESH KUMAR GUPTA, MEMBER (J)

By means of present O.A Shri Jai Shankar Prasad Singh,
Sub Post Master, Sub Post office, Dirang, District West Kameng,
Arunachal Pradesh, who during the pendency of this O.A has been

transferred to Tawang, seeks direction to Respondent No.2 to forward his application for inter circle transfer to Respondent No.4 with all its consequences.

2. Admitted facts are applicant initially joined as Postal Assistant with effect from 2.11.1999. He submitted application for transfer at his own request under Rule 38 of Postal Manual-IV Part II dated 16.11.2002 as well as 13.4.2005 but on both such occasions he did not receive any positive response. On third occasion on 28.11.2008 he once again submitted his application to Respondent No.3 for said purpose. During pendency of present O.A vide communication dated 30.6.2009, he was recommended for his transfer by respondent No.3 to respondent No.2. Vide order dated 3.7.2009 passed by this Tribunal it was observed that: "Notwithstanding pendency of this case, the Chief Post Master General, N.E.Circle, Shillong shall remain free to transmit the request of the Applicant to the Chief Post Master General, Bihar for necessary consideration."

3. His grievance is that despite aforesaid order and direction no action has been initiated till date or decision taken on his request . Shri P.K.Tiwari, learned counsel appearing for the applicant vehemently contends that manner in which he has been dealt with on the alleged ground of shortage of staff is nothing but a mala fide exercise of power. The State functionaries ought to have been acted fairly & justly. Vide para 4.10 of O.A it was pleaded that respondent No.3 who recommended transfer of 17 Postal Assistants for inter circle transfer out of which 5 are junior to him, which transfers were effected

10

during the year 2006-08. It was further pointed out that respondent No.3 who has verified reply to present O.A vide para 8 in specific stated that : ".....this office is not aware if any of those applicants or Shri Mukesh Kumar Singh ranked junior to the applicant." It was also pointed by the applicant that Mukesh Kumar Singh had been appointed in 2000 and transferred to Bihar in 2008. He is one of those 5 juniors as per the applicant's averments made in specific. Learned counsel further stated that no reply has been given to para 4.10 of the O.A, rather observation made in the reply is that : "respondents beg to offer no comment." In the above background it was vehemently contended that it is a fit case where positive direction should be issued to respondents to forward his request for inter circle transfer for necessary consideration.

4. By filing reply, the respondents have projected that this is a case where the actual deployment is much less than sanctioned strength and large number of people have made request under Rule 38, and if such requests are entertained without any reasonable guidelines it will create serious shortage of staff in the Arunachal Pradesh Division. Basic emphasis laid down by the respondents is due to acute shortage of staff for the said Division, his request could not be acceded to.

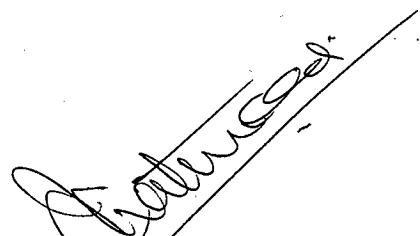
5. We have heard learned counsel for the parties and perused the pleadings very carefully. This indeed a sad affairs on the part of the State to raise the issue of shortage of staff on the one hand and on the other hand act ⁸~~act~~ totally contrary. It is not in dispute that 17 persons who

had been recommended for inter circle transfer during 2006-08, 5 of them were junior to present applicant, whose requests have been positively entertained. It is not in dispute that Director Postal Service, Arunachal Pradesh Division, Itanagar, who has verified present reply himself has made recommendations in respect of 17 such similarly situated officials, including 5 of his juniors. We are of the view that reply filed is an attempt to mislead this Tribunal by not revealing the actual and factual aspects of the case. Hon'ble Supreme Court time and again has observed fairness is the test in administrative decision. Justice should not be done but seen to be done, emphasised time and again by the Apex Court. In present case, we have no hesitation to conclude that respondents action in not forwarding his case is totally unfair, unjust and arbitrary. Rule 38 of the Postal Manual provides guidelines for entertaining such request. The only condition prescribed therein has been that such request cannot be entertained unless person is permanent. Rather said para says : "transfer of officials should not be discouraged if they can be made without injury to the rights of others." It is not in dispute that he is a permanent Postal Assistant. Such being the fact, we fail to understand why respondents have not acted fairly and justly in recommending his case to respondent No.4. Normally we would have issued a direction to respondent No.2 to consider his request but keeping in view the manner in which he has been treated, we deem it fit to issue a positive direction to respondent No.2 to forward his application to respondent No.4 for necessary consideration.

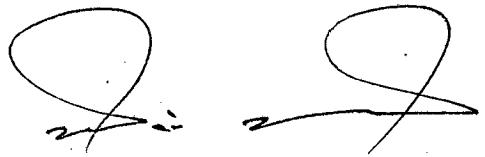
 Accordingly direction is issued to Respondent No.2 to forward his

application to Respondent No.4 within a period of 30 days from the date of receipt of this order.

O.A. stands disposed of. No costs.

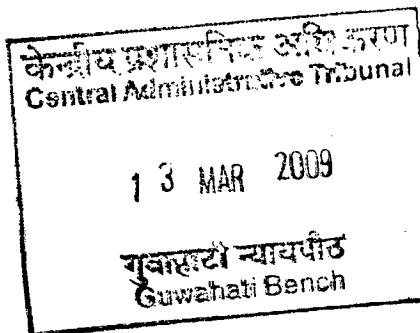


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER



(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

/pg/



SYNOPSIS

The applicant has been serving as Postal Assistant in the Arunachal Pradesh Division, North-East Circle since last 10 (ten) years. Rule 38 of the Post & Telegraph Manual IV Part II provides for inter circle transfer at one's own request. Since the applicant hails from Bihar and has his permanent domicile there, he preferred his first application for inter circle transfer on 16.12.02. The Director of Postal Services who is the competent authority to forward such applications to Chief Post Master General(Staff), Shillong, rejected the application on the ground of shortage of working strength in the Arunachal Pradesh Division (Annexure:A/5, Pg.21).

The applicant submitted his second application on 13.04.05 but the same remained pending with the Director Postal Services, Arunachal Pradesh Division. On the other hand Postal Assistants who were junior to the applicant were granted inter circle transfer on their request during the period 2006 to 2008. During this period there were 17(seventeen) such cases of inter circle transfer of Postal Assistant out of which 5(five) Postal Assistants were junior to the applicant (refer chart at para 4.10 of O.A.).

Being faced with consistent discrimination in the matter of inter circle transfer, the applicant submitted a fresh application dated 28.11.08 under Rule 38 for inter circle transfer to Bihar (Annexure:A/8, Pg.26-28). The application is presently pending with the Director of Postal Services, Arunachal Pradesh Division. Going by the experiences of past, the applicant has reasons to believe that his third application for inter circle transfer to Bihar will not be forwarded/recommended by the Director of Postal Services, Arunachal Pradesh Division to the Chief Post Master General(Staff), North-East Circle, Shillong, for onward transmission to the Chief Post Master General, Bihar Circle

Through the present Original Application the applicant is seeking consideration of his case for inter

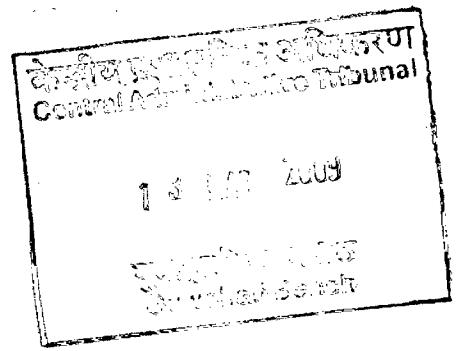
13 MAR 2009

गुवाहाटी न्यायपाठ
Guwahati Bench

circle transfer to Bihar in the same way the cases of his junior colleagues were considered. To ensure such consideration it is necessary that his application under Rule 38 is forwarded by the Director of Postal Services, Arunachal Pradesh Division to the Chief Post Master General (Staff), North-East Circle, Shillong for onward transmission to the Chief Post Master General, Bihar Circle.

Filed by

Rupam Tyti Das
Advocate.



LIST OF DATES

O.A No. 44/2009

Jai Shankar Prasad Singh-Vs- Union of India & Ors.

23.04.02 The order was issued by the Director Postal Services, Itanagar appointing the applicant as Postal Assistant in Arunachal Pradesh Postal Division, Itanagar with effect from 02.11.1999

(Annexure:A/1, Pg.14)

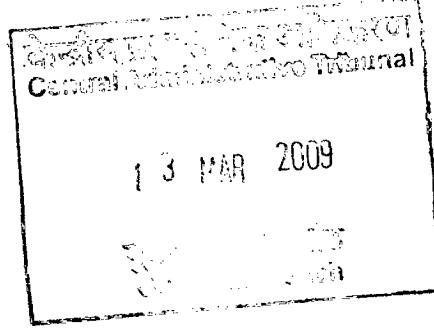
17.07.2004 The applicant was transferred to Doimukh as Sub-Post Master.

21.08.05 The applicant was transferred to Dirang as Sub-Post Master and he is serving in the said capacity since then.

***** The Post and Telegraph Manual-IV, Part-II, contains a provision for inter circle transfer at one's own request. Rule 38(1) provides that transfer of officials when desired for their own convenience should not be discouraged if it can be made without injury to the rights of others.

(Annexure:A/2, Pg.15-18)

Nov 2002 The applicant was keen on his transfer to Bihar Circle, as such he along with two of his junior colleagues, viz, Smti. Sangita Kumari and Mukesh Kumar Singh submitted applications seeking inter circle transfer from Arunachal Pradesh Postal Division, North-East Circle to Bihar circle.



09.12.02 As the applications submitted by the applicant and his two other colleagues, viz, Smti. Sangita Kumari and Mukesh Kumar Singh were procedurally defective being not in the prescribed pro-forma, the Director, Postal Services, Arunachal Pradesh Division, Itanagar informed the applicant and his two other aforementioned colleagues about submission of such applications in prescribed pro-forma in terms of Rule 38 for onward transmission.

(Annexure:A/3, Pg.19)

16.12.02 The applicant in compliance of the suggestion of the Director Postal Services submitted his application for inter circle transfer on request in a prescribed pro-forma.

(Annexure:A/4, Pg.20)

30.12.04 The Director (Incharge) Postal Services, Arunachal Pradesh Division, Itanagar informed the Chief Postmaster General (Staff), North Eastern Circle, Shillong that inter circle transfer of the applicant from Arunachal Pradesh Division to Bihar Circle cannot be recommended due to shortage of working strength in the Arunachal Pradesh Division.

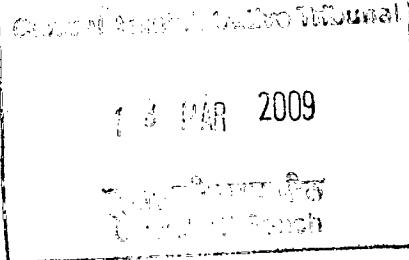
(Annexure:A/5, Pg.21)

13.04.05 The applicant submitted a fresh application (2nd time) under Rule 38 (P & T Manual-IV Part-II) in a prescribed pro-forma for his inter circle transfer. The application remained pending with the Director of Postal Services, Arunachal Pradesh Division.

(Annexure:A/6 Colly, Pg.22-24)

2006-2008 The office of the Director, Postal Services, Arunachal Pradesh Division recommended inter circle transfer of 17 numbers of Postal Assistants on request and

28.11.08



out of these 17 Postal Assistants, 5 were junior to the applicant. Once a junior colleague was Mukesh Kumar Singh who along with the applicant had applied for inter circle transfer to Bihar in December 2002.

08.01.08 When the applicant came to know about inter circle transfer of his junior colleagues he submitted a reminder about his pending application to the Director Postal Services, Arunachal Pradesh Division wherein he gave details of 18(eighteen) earlier reminders send by him.

(Annexure:A/7, Pg.25)

28.11.08 The applicant being faced with consistent discrimination in the matter of inter circle transfer submitted a fresh application under Rule 38 (P&T Manual-IV Part-II) for inter circle transfer to Bihar.

(Annexure:A/8, Pg.26-28)

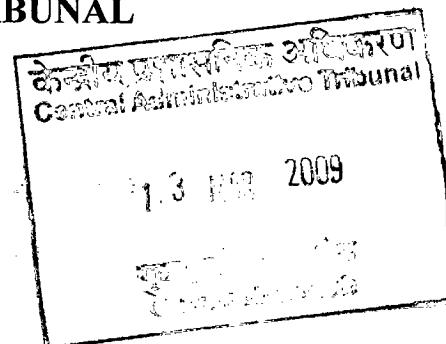
Filed by

Rupam Dutt Das
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Guwahati Bench

O.A. No. 44 /2009



Between

Jai Shankar Prasad Singh,

.....APPLICANT

-AND-

Union of India & Ors

.....RESPONDENTS

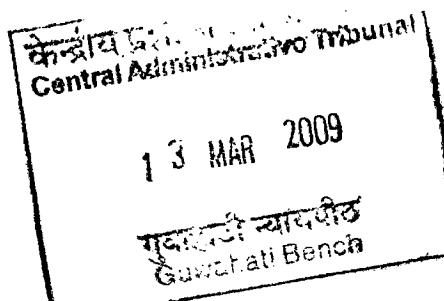
I N D E X

SI.NO.	PARTICULARS	PAGE NOS.
1.	Application -----	1-12
2.	verification-----	13
3.	Annexure A/1----- (Order issued by Director Postal Services, Arunachal Pradesh Division dated 23.04.02)	14
4.	Annexure A/2----- (Relevant portion of Rule 38 of P&T Manual IV Part II)	15-18
5.	Annexure A/3----- (Letter of the Director Postal Services, Arunachal Pradesh Division dated 16.12.02)	19
6.	Annexure A/4----- (Applicant's application for inter circle transfer dated 16.12.04)	20
7.	Annexure A/5----- (Letter of the Director (Incharge) Postal Services, Arunachal Pradesh Division dated 30.12.04)	21
8.	Annexure A/6Colly----- (Applicant's second application for inter circle transfer dated 13.04.05)	22-24
9.	Annexure A/7----- (Applicant's reminder letter dated 08.01.08)	25
10.	Annexure A/8Colly----- (Applicant's third application for inter circle transfer dated 28.11.08)	26-28

Filed by:

Rupam Tyagi Das
Advocate

Jai Shankar Prasad Singh



19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:: GUWAHATI

OA No. 44 of 2009

filed by the applicant
Umesh Kumar Singh Das
Umesh Kumar Singh
Advocate
13/3/09

BETWEEN

Jai Shankar Prasad Singh,
Sub-Post Master, Sub-Post Office,
Dirang, District West Kameng,
Arunachal Pradesh-790101.

APPLICANT

-Versus-

1. Union of India,
through the Secretary, Ministry of
Communication, Dak Bhawan, New
Delhi-110001.

2. The Chief Postmaster General
(Staff), Department of Posts,
North East Circle, Meghalaya,
Shillong-793001.

3. The Director of Postal
Services, Arunachal Pradesh
Division, Department of Posts,
Itanagar 791111.

4. The Chief Post Master
General, Bihar Circle, Patna,
Bihar-800001.

RESPONDENTS

Jai Shankar Prasad Singh

13 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

DETAILS OF APPLICATION

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

The present application is not directed against any specific order but the same is against the deemed refusal of the Respondents to consider the inter Circle transfer of the applicant from North Eastern Circle to Bihar Circle under Rule 38 of the Transfers and Postings Manual providing for transfer at one's own request.

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION:

The applicant declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is presently working as Sub-Post Master at Dirang Post Office, District West Kameng, Arunachal Pradesh. He was initially appointed as Postal Assistant in Arunachal Pradesh Postal Division, Itanagar with effect from 02.11.1999 by order dated 23.04.02 issued by the Director Postal Services, Itanagar. Thereafter on 17.07.2004 he was transferred to Doimukh as Sub-Post Master and subsequently on 21.08.05 he was transferred to the present place of posting, i.e. Dirang where he is serving as Sub-Post Master since then.

A copy of the appointment order No.B-2/42-3/V dated 23.04.2002 is annexed herewith and marked as ANNEXURE:A/1

Jai Shankar Basu Singh

13 MAR 2009

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

4.2 That the Post and Telegraph Manual-IV Part-II, contains a provision for transfer at one's own request. In this connection reference is made to Rule 38 of Post and Telegraph Manual-IV Part-II. Rule 38(2) provides that when an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued including also all persons who have been approved for appointment to that grade as on that date. Further, Rule 38(1) provides that transfer of officials when desired for their own convenience should not be discouraged if it can be made without injury to the rights of others. For the purpose of the present case Rule 38(1) and (2) are relevant and as such the same are quoted herein below for the sake of convenience.

"38. Transfer at one's own request.

(1) Transfer of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another, either within the same circle, or to another circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the officers, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the officials with whom he exchanges appointment, whichever is the lower.

Dei Sharad Prasad Singh

13 MAR 2009

गुवाहाटी बाटी
Guwahati Bench

NOTE- Transfer of officials who are not permanent in the grade, may, in deserving cases, be permitted with the personal approval of the Head of Circle/ Administrative Office.

(2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date."

A copy of the relevant portion of Post and Telegraph Manual-IV Part-II containing Rule 38 and its entirety is annexed herewith and marked as **ANNEXURE:A/2**

4.3 That since the applicant originally hails from Bihar and has his permanent domicile in Bihar, he was interested in going for inter circle transfer from North-East Circle to Bihar Circle. It is pertinent to mention here that Arunachal Pradesh is a Postal Division of North-East Circle. The Head office of the Department of Post, North-East Circle is at Shillong. Those desiring inter circle transfer are required to make an application in prescribed pro-forma which is routed through the office of the concerned Postal Division, i.e. Director of Postal Services and placed before the office of the Chief Post Master General, North-East Circle, Shillong. The application thereafter is forwarded to the circle where the transfer is sought for. The inter circle transfer is possible only if the competent authority of the Circle to which the transfer is sought for agrees to such a transfer and clears the same.

4.4 That since the applicant was keen on his transfer to Bihar Circle, he along with two of his junior colleagues, viz, Smti. Sangita Kumari and Mukesh Kumar Singh submitted

Shankar Basad Singh

13 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

applications seeking inter circle transfer from Arunachal Pradesh Postal Division, North-East Circle to Bihar circle. It is pertinent to mention that both Mukesh Kumar Singh and Sangita Kumari were appointed as Postal Assistants along with the applicant by the common appointment order dated 24.04.02.

4.5 That since the applications submitted by the applicant and his two other colleagues, viz, Smti. Sangita Kumari and Mukesh Kumar Singh were procedurally defective being not in the prescribed pro-forma, the Director, Postal Services, Arunachal Pradesh Division, Itanagar by letter dated 09.12.02 informed the applicant and his two other aforementioned colleagues about submission of such applications in prescribed pro-forma in terms of Rule 38 for onward transmission.

A copy of the letter of the Director, Postal Services, Arunachal Pradesh Division, Itanagar dated 09.12.02 is annexed herewith and marked as ANNEXURE:A/3

4.6 That in compliance of the suggestion of the Director, Postal Services, Arunachal Pradesh Division, the applicant submitted his application for inter circle transfer on request in a prescribed pro-forma by his letter dated 16.12.02. It is reliably learnt by the applicant that his junior colleague Mukesh Kumar Singh also likewise submitted his application for inter circle transfer to Bihar.

A copy of the applicant's covering letter dated 16.12.02 submitting application for inter circle transfer to Bihar under Rule 38 is annexed herewith and marked as ANNEXURE:

A/4

4.7 That the Superintendent of Post, Arunachal Pradesh Division, Itanagar who was then holding the charge of Director of Postal Services, Arunachal Pradesh Division vide letter No.B-3/IC&DV/Rule-38/P-II dated 30.12.04

Jai Shankar Prasad Singh

13 MAR 2009

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informed the Chief Postmaster General (Staff), North Eastern Circle, Shillong that inter circle transfer of the applicant under Rule 38 from Arunachal Pradesh Division to Bihar Circle cannot be recommended due to shortage of working strength in the Arunachal Pradesh Division.

A copy of the letter No.B-3/IC&DV/Rule-38/P-II dated 30.12.04 of the Superintendent of Post, Arunachal Pradesh Division is annexed herewith and marked as ANNEXURE:A/5

4.8 That when the case of the applicant for inter circle transfer was rejected as per the communication letter of Superintendent of Post, Arunachal Pradesh Division, Itanagar vide letter No.B-3/IC&DV/Rule-38/P-II dated 30.12.04, the applicant on 13.04.05 submitted a fresh application (2nd time) under Rule 38 (P&T Manual-IV Part-II) in a prescribed pro-forma for his inter circle transfer. This second application for inter-circle transfer was submitted by the applicant at a point of time when there was increase in working strength of Postal Assistants with appointment of 3(Three) Postal Assistants during the period 24.02.05 to 01.03.05. However on this occasion the Superintendent of Post, Arunachal Pradesh Division, Itanagar did not make any recommendation and simply sat over the matter without forwarding the applicant's second application for inter-circle transfer to the competent authority for appropriate action.

A copy of the application along with the covering letter dated 13.04.05 for inter circle transfer under Rule 38 is annexed herewith and marked as ANNEXURE:A/6 Colly

4.9 That thus the applicant's prayer for inter circle transfer to Bihar was first rejected on 30.12.04. His second application for inter circle transfer to Bihar dated 30.04.05 also failed to get any favorable consideration. The least the Director of Postal Services, Arunachal Pradesh Division, Itanagar could have done in the case of

Jai Shankar Prasad Singh

13 MAR 2009

the applicant was to forward his application for inter circle transfer to Bihar, to the Chief Postmaster General(Staff), North-Eastern Circle, Shillong. However the then Director(Incharge) of Postal Services, Arunachal Pradesh Division, Itanagar on first occasion rejected the application on the ground of inadequate working staff at the level of Postal Assistants and on the second occasion the application was simply kept pending and not forwarded to the Chief Postmaster General(Staff), North-Eastern Circle, Shillong.

4.10 That curiously during the period 2006 to 2008, the office of the Director, Postal Services, Arunachal Pradesh Division recommended inter circle transfer of 17 numbers of Postal Assistants on request and out of these 17 Postal Assistants, 5 were junior to the applicant. For the sake of convenience a chart showing transfer of 5 (five) Postal Assistants from Arunachal Division of North East Circle to other circles who were junior to the applicant is given herein below.

Sl	Name	Year of joining	Year of transfer	Circle
1	Amrinder Kr. Singh	20.01.2000	2007	Bihar
2	Santosh Kr. Singh	17.05.2000	2007	Bihar
3	Mukesh Kr. Singh	20.01.2000	2008	Bihar
4	Smti C.P.Vijaya Laxmi	25.02.2002	2006	Kerala
5	Milan Singh	30.11.2001	2007 (recomd)	Manipur

4.11 That in the year 2008 when the applicant came to know that his junior colleague Mukesh Kumar Singh who had submitted his application for inter circle transfer to Bihar along with the applicant was cleared for transfer to Bihar along with a few more Postal Assistants who were junior to the applicant, he submitted reminder dated 08.01.08 to the Director, Postal Services, Arunachal Pradesh Division seeking appropriate action on his application dated 13.04.05. In his reminder dated 08.01.08

Jai Shankar Prasad Singh

13 मार्च 2009

१३ मार्च 2009
१३ मार्च 2009

the applicant gave details of 18(eighteen)---earlier reminders send by him to the Director, Postal Services, Arunachal Pradesh Division.

A copy of the applicant's reminder dated 08.01.08 to the Director, Postal Services Arunachal Pradesh Division is annexed herewith and marked as **ANNEXURE: A/7**

4.12 That being faced with consistent discrimination in the matter of inter circle transfer the applicant submitted a fresh application dated 28.11.08 under Rule 38 (P&T Manual-IV Part-II) for inter circle transfer to Bihar. The applicant on this occasion in his even dated covering letter to the Director of Postal Services, Arunachal Pradesh Division, stated about the discriminatory treatment meted out to him while considering his case. In his covering letter dated 28.11.08, while applying for inter circle transfer to Bihar in prescribed Pro-forma, it was clearly stated by the applicant that though his prayer for inter circle transfer was earlier rejected on the ground of shortage of working staff but the same authority had recommended names of Postal Assistants in Arunachal Pradesh Division for inter circle transfer even though they were junior to him. Therefore, the applicant prayed for consideration of his application for inter circle transfer within a reasonable period.

A copy of the application under Rule 38 (P&T Manual-IV Part-II) dated 28.11.08 along with the even dated covering letter is annexed herewith and marked as **ANNEXURE:A/8 colly**

4.13 That the applicant's third application for inter circle transfer to Bihar dated 28.11.2008 is presently pending with the Director of Postal Services, Arunachal Pradesh Division (respondent No. 3). Going by the experiences of the past the applicant have reasons to believe that on the third occasion also the respondent No.3 will not forward/recommend his application for inter circle

Jai Shankar Prasad Singh

13 MAR 2009

गवर्नर अधिकारी
General Officer

transfer to respondent No.2 i.e. the Chief Post Master General(Staff), North-East Circle for onward transmission to the Chief Post Master General, Bihar Circle, Patna(respondent No.4).

4.14 That under Rule 38 of the P & T Manual IV Part II, the applicant is entitled to make a prayer for an inter circle transfer to the circle of his choice. Likewise in conformity with the provisions of Rule 38 it is incumbent on the Director of Postal Services to forward/recommend such applications to the Chief Post Master General(Staff), North-East Circle by applying the same yardstick as was done in the case of similarly situated applicants. In the present case it is evident that the applicant has been a victim of hostile discrimination. The Postal Assistants junior to him were considered for such inter circle transfer and their applications were forwarded by the Director, Postal Services, Arunachal Pradesh Division to the Chief Post Master General (Staff), North-East Circle who in turn forwarded the same to the respective circles for due consideration, the applicant was denied any such opportunity and as such he was discriminated against.

4.15 That the applicant has been treated unfairly. His first application for inter circle transfer was rejected by the Director of Postal Services, Arunachal Pradesh Division on the ground of inadequate staff strength at the level of Postal Assistants. The second such application of the applicant was kept pending whereas the cases of the Postal Assistants junior to the applicant were forwarded/recommended to the Chief Post Master General(Staff), North-East Circle who forwarded the same to the respective circles resulting in consideration of such cases for inter circle transfer. It is therefore evident that on extraneous consideration the case of the applicant has not been forwarded/recommended by the respondent No.3 & 2 to respondent No.4.

Jai Shanker Prasad Singh

13 MAR 2009

4.16 That being left with no other alternative the applicant has come before this Hon'ble Tribunal for redressal of his grievances. Hence the applicant is filing this application bonafide for securing the ends of justice.

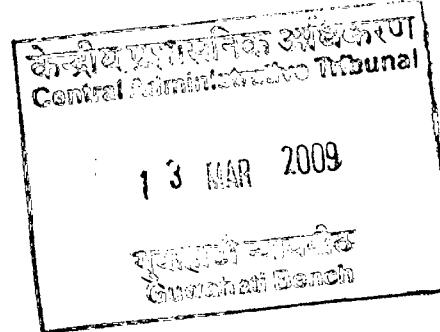
5. GROUNDS FOR RELIEF(S) WITH LEGAL PROVISIONS:

5.1 Because the applicant has been discriminated against in the matter of consideration of his case for inter circle transfer to Bihar. His first application for such transfer was rejected on the ground of inadequate staff strength and the second such application was kept pending but the cases of Postal Assistants junior to the applicant were forwarded/recommended by the respondent No.3 & 2 to the respective circles for such inter circle transfer. Hence the respondent No.3 & 2 by their action have violated the applicant's Fundamental Right of equal and fair treatment under Article 14 of the Constitution.

5.2 Because under Rule 38 of the P & T Manual IV Part II, the applicant has a right to request for inter circle transfer and the respondent No.3 & 2 have a discretion to consider the same and forward/recommend the same to respective circle. However such discretion is not unfettered and has to be exercised reasonably and not arbitrarily in a pick and choose manner. In the present case the respondent No.3 & 2 have exercised the discretion arbitrarily, unfairly and unreasonably by not forwarding/recommending the case of the applicant for such inter circle transfer whereas the cases of other similarly situated Postal Assistants were forwarded.

5.3 Because the applicant has the right of fair consideration of his request for inter circle transfer in conformity with Rule 38. The respondent No.3 & 2 by their action have denied such a fair consideration to the applicant on extraneous grounds.

Jai Shankar Prasad Singh



6. DETAILS OF THE REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to him and there is no alternative remedy available to him.

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

The applicant further declares that he has not filed any application, writ petition or suit regarding the grievances in respect of which this application is made, before any other court or any other bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF(S) SOUGHT FOR:

8.1 Direct the respondent No.3 i.e. the Director of Postal Services, Arunachal Pradesh Division to forward/recommend the applicant's application for inter circle transfer to Bihar dated 28.11.2008 **(Annexure:A/8)**

to the Chief Postmaster General(Staff), North Eastern Circle, Shillong (respondent No.2) without any further delay.

8.2 Direct the Chief Post Master General(Staff), North-East Circle, Shillong (respondent No.2) that on receipt of the applicant's application for inter circle transfer dated 28.11.02 the same should be forwarded to the Chief Post Master General, Bihar Circle, Patna (respondent No.4) without any further delay.

8.3 Pass any such order/orders as may deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

In the facts and circumstances of the case the applicant does not pray for any interim order.

Jai Shankar Prasad Singh

10. The application is filed through Advocates.

11. PARTICULARS OF THE IPO:

(I) IPO No. : 39G 403206
(II) Date : 13/03/09
(III) Payable at : Guwahati.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

13 MAR 2009

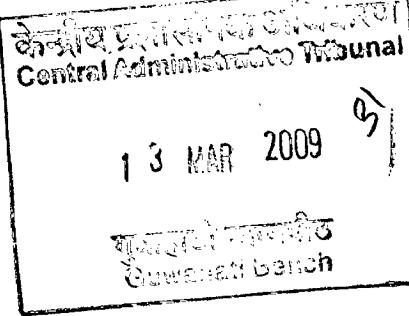
गुवाहाटी न्यायपीठ
Guwahati Bench

12. LIST OF ENCLOSURES:

As stated in the Index.

...Verification

Jai Shankar Prasad Singh

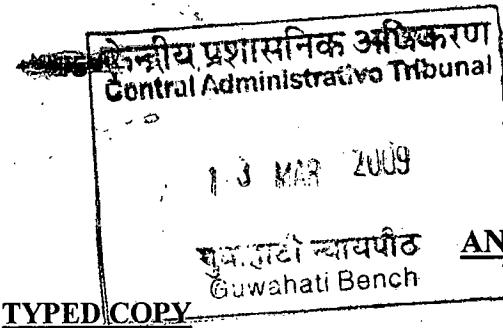


VERIFICATION

I, Jai Shankar Prasad Singh, aged about 33 years, S/o Sitaram Singh, presently serving as Sub-Post Master (SPM), Dirang Post Office, District West Kameng, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.1, 4.2, 4.4, 4.11, 4.13, 4.14 and 4.15 are true to my knowledge, those made in paragraphs 4.3, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10 and 4.12 being matters of records are true to my information derived therefrom and the grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 13th day of March, 2009 at Guwahati.

Jai Shankar Prasad Singh
(APPLICANT)



-14-

DEPARTMENT OF POSTS:: INDIA
OFFICE OF THE DIRECTOR POSTAL SERVICES
ARUNACHAL PRADESH DIVISION
ITANAGAR-791111

NO:B2/42-3/V

Dated::23.4.2002

APPOINTMENT ORDER

The following candidates have been appointed as Postal Assistants of Arunachal Pradesh Postal Division, Itanagar in the pay scale of Rs.4000-100-6000 w.e.f the date as mentioned against them.

1. Shri Raj Kumar Robert Singh	--02.11.1999
2. Shri Jai Shanker Prasad Singh	--02.11.1999
3. Smti. Julie Hazarika	--28.1.2000
4. Shri Amarendra Kr. Singh	--20.1.2000
5. Shri Mukesh Kumar Singh	--20.1.2000
6. Shri Punyo Tatung	--24.1.2000
7. Shri Pranav Kumar	--5.2.2000
8. Smti. Sangita Kumari	--02.3.2000
9. Shri Santosh Kr. Singh	--17.5.2000

Sd/-illegible
(R.K.B.SINGH)
Director Postal Services
Itanagar-791111

Copy to:-

1. P.M. Itanagar H.O. for information & n/a
2. Concerned candidates.
3. P/F of candidates concerned.

Sd/-illegible
Director Postal Services
Itanagar-791111

CERTIFIED OF THE
TRUE COPY
S. Kishan
ADVOCATE

स्थानान्तरण और तनातियां

37-38]

[अध्याय II]

भारत के किसी भी भाग में स्थानान्तरित किए जा सकते हैं। किन्तु जब तक सार्वजनिक सेवा के हित में ऐसा करना उचित न हो, स्थानान्तरण के आदेश नहीं दिये जाने चाहिए। वहाँ ही विषेष कारणों के अलावा डाकियों, ग्राम डाकियों और चतुर्थ श्रेणी के कर्मचारियों को एक सकिल से दूसरे सकिल में स्थानान्तरित नहीं करना चाहिए। सभी स्थानान्तरणों पर मूल नियम 15 और 22 में दी दी केन्द्रीय प्रशासनिक अधिकारी का अधिकारी

Central Administrative Tribunal

37-क. स्थानान्तरण सामान्य रूप से हर वर्ष अप्रैल में किए जाने चाहिए ताकि कर्मचारियों के स्कूल जाने वाले बच्चों की पढ़ाई में गड़बड़ न हो। आपाती मामलों में या पदोन्नती के मामलों में स्वाभाविक रूप से यह प्रतिवध लागू न होगा।

38. स्वयं के अनुरोध पर स्थानान्तरण—

(1) जब कोई कर्मचारी अपनी सुविधा के लिए बदली की व्यक्ति करता है और उस बदली से दूसरों के अधिकारी को हानि नहीं होती है तो ऐसे व्यक्तियों को निःसाहित नहीं करना चाहिए। किन्तु जब तक कोई कर्मचारी स्थायी न हो उसे एक एकक (यूनिट) से दूसरे एकक में चाहे वह उसी सकिल में हो अथवा किसी अन्य सकिल में हो स्थानान्तरण नहीं करना चाहिए। चूंकि एक पदक्रम सूची में दर्ज कर्मचारी को दूसरी सूची के कर्मचारियों को हानि पहुँचाये बिना दूसरी पदक्रम सूची में स्थान देना संभव नहीं है। अतः ऐसे स्थानान्तरणों की अनुमति तभी देनी चाहिए जब वह 'परस्पर बदली' के जरिए किए जाए। यदि परस्पर बदली द्वारा किए जाने वाले स्थानान्तरण अपने आप में आपत्ति जनक न हों तो उनकी अनुमति दे देनी चाहिए परन्तु दोनों कार्यालयों की पदक्रम सूचियों में दर्ज व्यक्तियों के अर्दिकारों की रक्षा के लिए यह आवश्यक है कि ऐसे कर्मचारी को नई पदक्रम सूची में उस स्थान पर रखा जाए जो स्थान यदि वह मूल रूप में उस यूनिट में भर्ती हुआ होता तो मिला होता, या जिस व्यक्ति के साथ उसने परस्पर बदली की है उसके द्वारा खाली किए गए स्थान, इन में से जो भी नीचा हो।

Rule
Postal manual
Vol - IV
Part - II

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ADVOCATE

wise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, village postmen and Class IV servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in *Fundamental Rules* 13 and 22.

13 MAR 2009

Guwahati Bench

Rule - 38 Rule

38. Transfer at one's own request.

(1) Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another, either within the same Circle, or to another Circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower.

R.T.O

टिप्पणी—उपयुक्त मामलों में सर्किल/प्रशासन कार्यालय के अध्यक्ष की व्यक्तिगत स्वीकृति से उन कर्मचारियों की वदली की अनुमति भी दी जा सकती है जो अपने ग्रेड में स्थायी नहीं है।

- (2) जब कोई कर्मचारि स्वयं के अनरोध पर परस्पर वदली की व्यवस्था किए बिना स्थानान्तरित किया जाता है तो वह नए एकक की पदक्रम सूची में उस एकक के उन सभी कर्मचारियों से कनिष्ठ होगा जो स्थानान्तरण के आदेश की तारीख को बहां होंगे। अले ही उनकी सेवा अवधि कितनी भी क्यों न हो। वह उन सभी व्यक्तियों से भी कनिष्ठ होगा जो उस तारीख को उस नए एकक में उस सर्वर्ग में नियुक्ति के लिए अनुमोदित सूची में दर्ज हैं।
- (3) यदि किसी ऊचे सर्वर्ग में पदोन्नति के प्रयोजन के लिए पुरावो और नया एकक किसी बड़े एकक के अंग हैं तो स्थानान्तरित व्यक्ति (चाहे स्थानान्तरण परस्पर वदली से हुआ हो या अन्य किसी प्रकार) बड़े एकक की पदक्रम सूची में अपनी मूल वरिष्ठता बनाए रखेगा।

उदाहरण (1) एक ही सर्किल के महसाना मंडल से कैरा मंडल में स्थानान्तरित डाकघर कर्क, लोयर सेलेक्शन ग्रेड में पदोन्नति के लिए सर्किल पदक्रम सूची में अपनी वरिष्ठता नहीं खोएगा।

उदाहरण (2) यदि कोई टेलीफोन प्रचालक उसी मंडल इंजीनियर, टेलीफोन के अधीन इंजीनियरी कर्क के रूप में स्थानान्तरित किया जाता है तो उसकी वरिष्ठता उपनियम (2) के अनुसार इंजीनियरी कर्कों की मंडल पदक्रम सूची और सर्किल पदक्रम सूची दोनों में विनियमित की जाएगी क्योंकि टेलीफोन प्रचालक और इंजीनियरी कर्कों की सर्किल पदक्रम सूची एक ही नहीं है।

उदाहरण (3) 'ए' मंडल से 'पी' मंडल में स्थानान्तरित होने वाले रेल डाक छंटाईकार की वरिष्ठता 'पी' मंडल और

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer
पदोन्नति के लिए सर्किल पदक्रम सूची में अपनी वरिष्ठता नहीं खोएगा।

13 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

NOTE.—Transfer of officials, who are not permanent in the grade, may, in deserving cases, be permitted with the personal approval of the Head of Circle/Administrative Office.

(2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date.

(3) If the old and the new unit form parts of a wider unit for the purpose of promotion to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit.

Example (i):—A post office clerk transferred from Mehsana Division to Kaira Division in the same Circle will not lose his seniority in the Circle gradation list for promotion to the lower selection grade.

Example (ii):—A telephone operator transferred as an Engineering clerk, even under the same D.E.T, will have his seniority regulated both in the Divisional and the Circle Gradation List of Engineering clerks in accordance with sub-rule (2) as the Circle Gradation Lists of Telephone Operators and Engineering clerks is not common.

Example (iii):—An R.M.S. Sorter transferred from the A. Division to the P. Division will have his seniority in the gra-

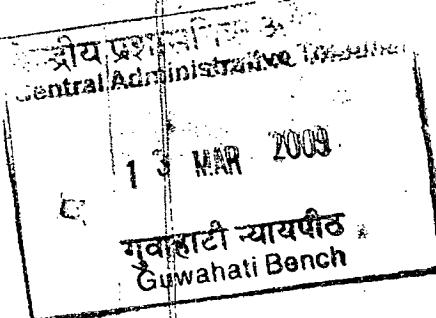
P.T.O

बिहार सर्किल दोनों की पदक्रम सूचियों में उपनियम (2) के अनुसार नियत की जाएगी।

उदाहरण (4) यदि कोई डाक घर कर्क मूल से बम्बई के प्रधान डाक घर में स्थानान्तरित किया जाता है तो उसकी वरिष्ठता उपनियम (2) के अनुसार बम्बई के प्रधान डाक-घर की पदक्रम सूची और बम्बई नगर एककों की पदक्रम सूची, दोनों में नियत की जाएगी क्योंकि लोयर सेलेक्सन ग्रेड में पदोन्नति के लिए बम्बई नगर एककों और मुफस्सिल एककों की पदक्रम सूचियां अलग-अलग हैं।

उदाहरण (5) भांडार संगठन के एक क्षेत्र से दूसरे क्षेत्र में स्थानान्तरित किसी कर्क की वरिष्ठता उपनियम (2) के अनुसार नए क्षेत्र की पदक्रम सूची में नियत की जाएगी।

(4) एक एक से दूसरे एक में स्थानान्तरित स्थायी कर्मचारी अपने पुराने एक में तब तक अपना धारणाधिकार (लिवन) बनाये रखेगा जब तक कि नए एक में उसकी स्थिति के अनुसार जगह नहीं निल जाती। लेकिन वहां धारणाधिकार वना रहने पर भी वह अपने पुराने एक में वापस जाने का दावा नहीं कर सकेगा। इस नियम के अन्तर्गत किसी कर्मचारी को स्थानान्तरित करने से पहले उससे इस अस्थाय की स्थानान्तरित करने के लिए जाहिए कि स्थानान्तरित का एक धोषणापत्र ले लेना चाहिए कि स्थानान्तरित होने पर वह इस नियम के अनुसार वरिष्ठता स्वीकार करेगा और कि वह अपने पुराने एक में वापस जाने कोई दावा नहीं करेगा। स्थानान्तरण से पहले का कोई दावा नहीं करेगा। स्थानान्तरण से पहले किसी कर्मचारी को उस एक की पदक्रम सूची में अपनी स्थिति के कारण यदि कोई खास विशेषाधिकार प्राप्त हो जिससे वह स्थानान्तरित हुआ हो तो नई पदक्रम सूची में बदली होने पर उसका वह अधिकार सामान्य तौर पर खत्म हो जाएगा।



tion list of P. Division as well as of Bihar Circle fixed in accordance with sub-rule (2).

Example (iv):—A post office clerk transferred from Poona Division to the Bombay G.P.O. will have his seniority fixed in gradation list of Bombay G.P.O. as also of Bombay City Units in accordance with sub-rule (2) as the Bombay City Units and the moffusil units have separate gradation lists for promotion to Lower Selection Grade.

Example (v):—A clerk transferred from one zone to another in the Stores Organisation will have his seniority fixed in the gradation list of the new zone in accordance with sub-rule (2).

(4) A permanent official transferred from one unit to another will retain his lien in the old unit until he can be accommodated in the new unit according to his position in the new unit. He will not however have any claim to go back to his old unit even though he holds his lien there. A declaration to the effect that he accepts the seniority on transfer in accordance with this rule, and that, he will not have any claim to go back to the old unit, should be obtained before an official is transferred under this rule. Any special privilege to which an official may be entitled by virtue of his position in the gradation list of the unit from which he is transferred will, ordinarily, be forfeited on his transfer to a new gradation list.

13 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

39. अपने विभाग के नियमों के अनुसार सरकारी चिकित्सा अधिकारी को यह सिफारिश करने की मना ही है कि स्वास्थ्य के आधार पर किसी कर्मचारी को किसी विशेष स्थान पर स्थानान्तरित कर दिया जाए या उसे किसी विशेष स्थान पर न भेजा जाए जब तक कर्मचारी का उच्चाधिकारी उसे अपनी राय देने के लिए अनरोध न करे तब तक सरकारी चिकित्सा अधिकारी को इस बारे में राय देने की भी स्वतंत्रता नहीं है कि किसी कर्मचारी की ड्यूटी किस प्रकार की हो और उसे कहां नियुक्त किया जाए।

40. एक स्थान से दूसरे स्थान को स्थानान्तरित हुए प्रत्येक राजपत्रित अधिकारी को उस अधिकारी के पास, जिसके आसन्न आदेश के अधीन वह कार्य करने जा रहा है, अपनी गतिविधि की सूचना भेजनी चाहिए। ये सूचनाएँ पहले भारमुक्त (रिलीफ) होने पर, किर रवाना हों।

38-40]

स्थानान्तरण और तैनातियां

[अध्याय II]

(5) सर्किल के भीतर या सर्किल से बाहर, सेवा के एक अंग से दूसरे अंग में किसी कर्मचारी की वदली केवल सर्किल अध्यक्ष या संविधित सर्किल अध्यक्षों के व्यक्तिगत अनुमोदन से ही है और नीचे लिखी जाती के अधीन ही की जा सकती है:—

(क) कर्मचारी जिस पद पर वदली कराना चाहता है उसमें भर्ती का तरीका वही होना चाहिए जो उसके वर्तमान पद में भर्ती का तरीका है, और

(ख) जब किसी पद पर नियुक्ति के लिए अतिरिक्त अवधारणा (वालिफिकेशन्स) निर्धारित हों-जैसे टेलीफोन प्रचालक (वालिफिकेशन्स) निर्धारित होना जैसे टेलीफोन प्रचालक के पद के लिए न्यूनतम ऊँचाई, वर्णाधिता की न होना आदि निर्धारित है—तो आवेदक को सभी तरह ये प्रश्न पूरी करनी चाहिए। जब कभी किसी पद के लिए कोई प्रशिक्षण आवश्यक या निर्धारित हो तो आवेदक को सन्तोषजनक रूप से वह प्रशिक्षण प्राप्त करना होगा और ऐसे प्रशिक्षण की अवधि के लिए उसे अपनी प्राप्त और अनुमत (परमिसिबल) छुट्टी में से छुट्टी लेनी चाहिए।

END

73

Chap. II

TRANSFERS AND POSTINGS

[38-40]

-18-

36

(5) The transfer of an official from one arm of service to another within or outside the Circle can be allowed only with the *personal approval of the Head of the Circle or Heads of Circles concerned* and subject to the following conditions:—

(a) the mode of recruitment to the post to which the official seeks transfer is the same for the post he is holding; and

(b) whenever additional qualifications are prescribed for appointment to a certain post e.g. minimum height, freedom from colour blindness, etc., for the post of Telephone Operators, the applicant should satisfy those conditions in all respects; whenever any training is required or prescribed for the post, the applicant must undergo that training satisfactorily and the period of such training must be covered by the official by taking leave due and permissible for the period.

END

39. A Government medical officer is prohibited, under the rules of his Department from recommending that an official be transferred from, or that he be excused from proceeding to a particular station on the score of health: nor he is at liberty to offer an opinion as to the nature of the duties or the place of employment of an official unless requested to do so by the official's superior.

40. Every gazetted officer transferred from one station to another must report his movements to the officer under whose immediate orders he may be proceeding to serve. These reports

Deed

ANNEXURE-A/3

TYPED COPY

Office of the Director Postal Services
Arunachal Pradesh Division
ITANAGAR-791111

No:B-3/IC&DV/Rule-38

Date:09.12.2002

TO

1. Shri Jai Shanker Prasad Singh
PA, Itanagar HPO
2. Smti. Sangita Kumari
PA, Khonsa, MDG
3. Shri Mukesh Kumar Singh
PA Namsai, SO

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

13 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

Sub: Rule 38 Transfer at one's own request.

Your application (in prescribed proforma) with declaration may be submitted to this office for onward transmission.

Sd/- illegible
(M.Lawphnaw)
Director Postal Services

CERTIFIED OF THE
TRUE COPY

S. Kiran
ADVOCATE

ANNEXURE-A/4

TYPED COPY

To,

Dated Itanagar, the 16th DEC/02

The Director of Postal Services
Arunachal Pradesh Division
Itanagar-791111

Sub: Submission of application for circle transfer (Rule 38)

Respected Madam,

I have the honour to submit herewith quadruplicate application for Circle Transfer under Rule 38, vide your letter no. B-3/IC&DV/Rule-38 dated 9.12.02 for favour of your kind consideration and further necessary action please.

Thanking You Madam

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

13 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Yours Faithfully,

Sd/-illegible dated 16.12.02
Jai Shankar Pd. Singh
Itanagar HPO

CERTIFIED OF THE
TRUE COPY
S. Kishan
ADVOCATE

ANNEXURE-A/5

TYPED COPY

DEPARTMENT OF POST:INDIA
Office Of
The Director of Postal Services, Arunachal Pradesh Division
ITANAGAR-791111

B-3/IC & DV/Rule 38/P-II

Dated at Itanagar the 30th of Dec04

To,

The Chief Postmaster General(Staff)
North-Eastern Circle
Shillong-793001

केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

13 MAR 2009

Sub:- Rule-38 transfer case of Shri Jai Shankar Prasad Singh, PA, AP Division to Bhopal
Circle.

Ref :- CO's memo number Staff/152-11/2002 dt. 13.10.04

Since, there are 14(fourteen) approved PA candidates are waiting for their release under Rule-38 transfer from this division and another 6(Six) has already been released from this division. As per working strength 2(two) hands are still falls short.

Hence, it is not possible to recommend more proposals for Rule-38 transfer from this division until staff position is improved.

Sd/-illegible
(N.C.Haldar)
Supdt of Post
Arunachal Pradesh
Itanagar-791111

Copy to:

1. Shri Jai Shankar Prasad Singh, SPM, Doimukh SO for information.

Sd/-illegible dated 30.12.04
(N.C. Halder)

CERTIFIED OF THE
TRUE COPY
S. Kishan
ADVOCATE

Date 13/04/05

The Chief Postmaster General (Staff),
North-East Circle,
Shillong.

Through the Director of Postal Services Arunachal Pradesh Division,
Itanagar.

Sub: - Prayer for Transfer and Posting under Rule 38.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

13 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Sir,

With reference to my earlier representation dated 16/12/02 and subsequent representation, regarding my prayer for transfer and posting in Bihar circle under rule 38 of transfer and posting of postal services from my present place of duty i.e. Doimukh Branch Arunachal Division of North -East circle. And I have the honour to remained you that vide Cos Memo No. staff/152-11/2002, dated 13/10/04 of Chief Postmaster (Staff) North-East circle to consider my case under rule 38, where you had explained vide B-3/IC&DV/Rule-38/P-11, Dated at Itanagar the 30th of Dec/04, inability to consider my case due to short fall of require strength of staff.

From reliable sources it has come to my knowledge that from the period in between 24/02/05 to 01/03/05 three candidate has been appointed /promoted to the post of Postal Assistant, which means the require strength of staff will be fill up by this appointment or promotion.

Therefore, kindly consider my case as I have already stated the reason for seeking transfer to Bihar Circle and enclosed with the letter of request from my aged father explaining his and my mother state of health and some other domestic problem face by them for which my service is utmost necessary because I am only the son of my parent.

Your kind and sympathetic action shall be highly obliged.

Copy to:-

1. The Chief Post Master General (Staff), North-East Circle, Shillong
2. The Director of Postal Services Arunachal Pradesh Division, Itanagar.

लोग नहीं NOT INSURED		D 13/4/05
साथे गए लागतों का मूल्य रु. 22/-		No.
Amount of stamps affixed. Rs 22/-		प्राप्त किया
Received & Received		प्राप्त किया
Addressed to Director of Postal Services		प्राप्त किया
Signature of Head Post Office		प्राप्त किया
Chief Postmaster General		प्राप्त किया
लोग नहीं NOT INSURED		प्राप्त किया
Amount of stamps affixed. Rs 22/-		प्राप्त किया
Received & Received		प्राप्त किया
Signature of Head Post Office		प्राप्त किया
Chief Postmaster General		प्राप्त किया

Yours faithfully,

JSP Singh
13.4.05

(Shri Jai Shankar Prasad Singh)
Postal Assistant Doimukh
Arunachal Pradesh Division,
Itanagar

TRUE COPY
S. K. Singh
178

Re Submitted of Rule-38 Form by your OIC No
 B-3/IC 80/RC/Rule-38 Dt 9/12/2002
APPLICATION FOR TRANSFER UNDER RULE-38 OF P&T MAN. VOL-IV

1. Name of Applicant : JAI SHANKAR PRASAD SINGH

2. Designation : POSTAL ASSISTANT

3. a) Year of recruitment : 02/11/1999
 b) Whether temporary or permanent : PERMANENT

c) Date of appointment : 02/11/1999

d) Present station of duty : DOIMUKH

4. Division in which transfer is sought : (i) VAISHALI (ii) PATNA
 (iii) SAMSTI POK
 केन्द्रीय प्रशासनिक अदायक आयोग
 Central Administrative Tribunal

5. If mutual transfer is sought for state name of the official with the name of that Division/Circle : X

6. Whether you are willing to serve in any Eng. Division : Y

7. Have you any documentary evidence (GGT Title) deeds list Municipality rent receipt indicating your permanent or native address to establish, if so attested copy of such documents should be furnished.

8. a) That you are full or part owner of any house in the unit to which you seek transfer, or : Full Owner
 b) That you case you a permanent residence in any locality in the unit to which you seek transfer, or : (i) Vaishali (ii) Patna (iii) Samstipok
 c) That in case you are not full or part owner of any house and occupy rented accommodation you or your family have stayed in the locality in rented accommodation for the generation i.e. you are born. If so, original of the proof duly attested should be furnished.

9. Whether you are a refugee from Pakistan : Y

10. Are you agreeable to take transfer under Rule-38 of P&T Man. Vol-IV and agreeable to accept all items and conditions thereof into (if agreeable please furnished enclosed declaration in quadruplicate) : Yes.

Amount of stamp affixed	Rs 22/-	No.
Received & Registered	21	Date Stamp
Addressed to	Director of Postal Services	364
Signature of Head Post Master	Signature of Head Post Master	
Chief Post Master	General	
NOT INSURED	131405	
Tata Post Office, Dibrugarh, Assam		
Date 22/12/2002		
365		

Original Picer Resubmited of Rule-38 Form by Your
NO B-3/K SDV/Rule-38 dt 9/12/2002 -24-

DECLARATION OF AN OFFICER SEEKING TRANSFER FROM ONE
DIVISION/CIRCLE TO ANOTHER UNDER RULE-38 OF P&T VOLUME-IV AS
AMENDED WITHOUT MUTUAL EXCHANGE

1. Shri Jai Shankar Prasad Singh son of Shri Sita Ram Singh
of N.E. Circle declare that on my transfer to Vaishali
Division/Circle of Bihar.

केन्द्रीय विधायिका अधिकार
Central Administrative Tribuna

I. I accept the conditions laid down in Rule-38 of P&T Man Vol-IV as amended 3 MAR 2009
from time to time.

II. I am ready to rank junior to all officials including to temporary officials working
in the New Division. Div. N.E. Circle (No. Unit) on the date of Guwahati Bench
my transfer.

III. I will not have any claim for any T.A. and T.P.

IV. I will have to forgo all claim for confirmation in my old unit even if a permanent
vacancy was available or becomes available because of retrospective permanency
of posts of for any other reasons and I was entitled to confirmation against such a
post in my old unit.

V. I will after transfer to a new unit be eligible for confirmation in the new unit only
according to my position on the gradation list of that unit.

VI. I am also ready to rank junior including the approved candidates on the date of
issue of orders.

(vii) I will have no claim to come back
to Arunachal Division old unit for the
reasons that shall be mentioned there

Signature of the applicant

JSP Singh
13/1/05
Domuleh

of all rule accepted
Rule-38.

A/7

ANNEXURE A/7

- 25 -

Remainder-19
Date:- 08.01.2008

To,
The Director Postal Services
Arunachal Pradesh Division, Itanagar

Subject:- Transfer and Posting under Rule 38 Arunachal Pradesh to Bihar circle under Vaishali Patna, Muzzfarpur, Samastipur

Ref: - A humble remainder to my representation of

1) First remainder dated 30.01.2003	ordinary post
2) Second remainder dated 22.04.2003	ordinary post
3) Third remainder dated 10.06.2003	ordinary post
4) Fourth remainder dated 07.01.2004	ordinary post
5) Fifth remainder dated 26.05.2004	ordinary post
6) Sixth remainder dated 16.12.2004	RL No 10577
7) Seventh remainder dated 13.04.2005	RL No. 364 and 365
8) Eighth remainder dated 03.05.2005	RL No. 515 and 516
9) Ninth remainder dated 19.05.2005	RL No. 1015 and 1014
10) Tenth remainder dated 16.07.2005	RL No 866 and 867
11) Eleventh remainder dated 01.08.2006	RL No 3085 with AD
12) Twelfth remainder dated 12.08.2006	RL No 6350 with AD and 6351 with AD
13) Thirteenth remainder dated 19.08.2006	RL No 6466
14) Fourteenth remainder dated 07.10.2006	RL No. 1681
15) Fifteenth remainder dated 26.10.2006	RL No. 6245
16) Sixteenth remainder dated 14.07.2007	RL No. 5135 AD
17) Seventeenth remainder dated 09.10.2007	RL No. 5873 with AD
18) Eighteenth remainder dated 12.11.2007	RL No 10922 with AD

Sir,

With due respect and humble submission I would like to inform you that Sir, I sent to 18 (eighteen) times representation for inter circle transfer under Rule 38 but I have not receive any response from your good

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

13 MAR 2009

गुवाहाटी न्यायालयीठ
Guwahati Bench

प्राप्ति-स्वीकृति (रसीद) / ACKNOWLEDGEMENT

* एक्सेंडरी प्रेस्ट/पोस्ट कार्ड/पैकेट/पार्सल प्राप्त हुआ।

* Received a Registered Letter/Postcard/Packet/Parcel No.

पाने वाले का नाम
Addressed to (name)

- बीमा का मुल्य (रुपयों में)
- Insured for Rupees

दिनांक
Date of Delivery

पाने वाले के हस्ताक्षर/Signature of addressee

* अनावश्यक को काट दिया जाये / Score out the matter not required.

* केवल बीमा वस्तुओं के लिए / For insured articles only.

CERTIFIED OF THE
TRUE COPY
S. Kunch
ADVOCATE

I would like to mention that
Sir, I sent to 18 (eighteen) times representation for inter circle transfer under Rule 38 but I have not receive any response from your good

Circle of their choice.

Sir, I send to you from North-East

circle under Vaishali Patna, Muzzfarpur, Samastipur dated 16.12.2002, the

application for transfer under Rule 38 & DV/Rule-38 dated

08/01/2008
Hankar Prashad Singh
PM, Dirang-790101
Arunachal Pradesh

सेंट्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल
Central Administrative Tribunal

Date 28/11/2008

To,

The Director of Postal Services,
Arunachal Pradesh Division, Itanagar.

Sub: Request for Inter Circle Transfer i.e. from NE Circle to Bihar

Sir,

With respect I submit the following for your kind consideration and necessary action please.

- That since 1999, I am serving in Arunachal Pradesh as Postal Assistant under the Director of Postal Services, Arunachal Pradesh Division.
- That in the year 2002 due to my personal problem, I had submitted an application under Rule 38 (P&T Manual-IV Part-II) for my inter circle transfer from North East Circle to Bihar Circle.
- That the Director of Postal Services, Arunachal Pradesh Division, Itanagar vide its letter No.B-3/IC & DV/Rule-38/P-II dated 30.12.04 rejected my case for inter circle transfer due to shortage of working strength/staff. But thereafter many of the Postal Staff junior to me in the Arunachal Pradesh Division were allowed to go on inter circle transfer on request. The particulars of some of these inter circle transfer of Postal Staff junior to me are given herein below:

Name	Year of joining	Year of transfer
1. Amrinder Kr. Singh	20.01.2000	2007
2. Santosh Kr Singh	02.05.2000 17-05-2000	2007
3. Mukesh Kr Singh	20.01.2000	2008
4. Smti C.P.Vijaya Laxmi	25.02.2002	2006
5. Milan Singh	31.12.2002	

- That I am again submitting a fresh application for inter circle transfer from North East Circle to Bihar Circle to be considered within a reasonable period.

Thanking you,

Encl:

Application for inter circle in prescribed form.

Quarrel & Duplicate Application

Sincerely yours,

J.S. Singh
28/11/2008

(Jai Shankar Prasad Singh)
Sub-Post Master, Dirang,
West Kameng District, Arunachal Pradesh.

RUE COPY

J.S. Singh

- 275

APPLICATION FOR TRANSFER UNDER
RULE-38 OF P&T MAN, VOL-IV

1. Name of Applicant : JAI SHANKAR PRASAD SINGH

2. Designation : POSTAL ASSISTANT

3. a) Year of recruitment : 1999
b) Whether Temporary or permanent : PERMANENT
c) Date of appointment : 02/11/1999
d) Present station of duty : DIRANGI 750101

4. Division in which transfer is sought : (1) VAISHALI (11) PATNA (11) SAMSTIPUR

5. If mutual transfer is sought : for state name of the official with the name of that Divn./Circle.

6. Whether you are willing to serve in any Eng. Division : X

7. Have you any documentary evidence (GGT/Title) deeds list Municipality rent receipt indicating your permanent or native address to establish, if so attested copy of such documents should be furnished.

8. a) That you are full or part owner of any house in the unit to which you seek transfer, or : Full owner X
b) That you are a permanent residence in any locality in the unit to which you seek transfer, or (1) VAISHALI (11) PATNA (11) SAMSTIPUR
c) That in case you are not full or part owner of any house and occupy rented accommodation you or your family have stayed in the locality in rented accommodation for the generation i.e. you are born. If so, original of the proof duly attested should be furnished X

9. Whether you are a refugee from Pakistan : +

केन्द्रीय प्रशासनिक अधिकारपाल
Central Administrative Tribunal

13 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

Enclosed (aind) copy

Full owner X

(1) VAISHALI (11) PATNA (11) SAMSTIPUR

10. Are you agreeable to take transfer under Rule-38 of P&T Man. Vol. IV and agreeable to accept all items and conditions thereof into (if agreeable please furnished enclosed declaration in quaduplicate)

YES

11. I, Jai Shankar Prasad Singh..... declare that the above information furnished by me are true to the best of my knowledge and belief.

J.Singh28/3/2008~~Postal Assistant~~

Signature of Candidate with designation and date

Arunachal Pradesh DivisionREMARKS OF THE HEAD OF THE DIVISION/UNIT/CIRCLE

The above applicant of Sri/Smti..... seeking transfer/mutual transfer under rule-38 of P&T Man. Vol.-IV has been scrutinised by me and I am satisfied with the correctness of the information furnished by the official in the application. The information on the following points are also furnished.

1. Whether the official is involved in any loss, fraud and criminal cases.
2. Whether any disciplinary case is pending against the official.
3. Whether the transfer is recommended :
4. Whether the services of the official can be spared without substitutee
5. Whether direct recruit or promotee
6. Date from which working in the present grade.
7. If the applicant is departmental promotee ? Is he a surplus candidate ?
8. Whether declaration agreeing to conditions of Rule-38 of P&T Man. Vol. IV furnished.
9. Furnish gradation list particulars :
10. Date of birth :
11. Caste :
12. Date of entry in the Deptt. :
13. Date of Subst. appointment :
14. Present pay :
15. Date of next increment :
16. Date of entry in LSG(TBOP Scheme) :

केन्द्रीय प्रशासनिक अधिकारी Central Administrative Tribunal
13 MAR 2009
गुवाहाटी न्यायमौठ Guwahati Bench

Signature of the Head of Units/Division.

13 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

DECLARATION OF AN OFFICER SEEKING TRANSFER FROM ONE DIVISION/CIRCLE TO ANOTHER
UNDER RULE - 38 OF P&T VOLUME - IV AS AMENDED WITHOUT MUTUAL EXCHANGE

1. Shri/Smt. Jai Shankar Prasad Singh son of Shri Sita Ram Singh of N.E. Circle declare that on my transfer to Arunachal Pradesh, Division/Circle of Bihar.

- I. I accept the conditions laid down in Rule-38 of P&T Man Vol-IV as amended from time to time.
- II. I am ready to rank junior to all officials including to temporary officials working in the New Division.
- Bihar..... Circle (No. Unit) on the date of my transfer.
- III. I will have no claim to come back to Arunachal Division (Old Unit) for the reasons that I hold my lien there.
- IV. I will not have any claim for any T. A. and T. P.
- V. I will have to forgo all claim for confirmation in my old unit even if a permanent vacancy was available or becomes available because of retrospective permanency of posts of for any other reasons and I was entitled to confirmation against such a post in my old unit.
- VI. I will after transfer to a new unit be eligible for confirmation in the new unit only according to my position in the gradation list of that unit.
- VII. I am also ready to rank junior including the approved candidates on the date of issue of orders.

J.S.Singh
22/11/2008

Signature of the applicant

Postal Assistant
Arunachal Pradesh
Division.

File in Court on.....

Court Officer.

1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH GUWAHATI

OA NO 44/09

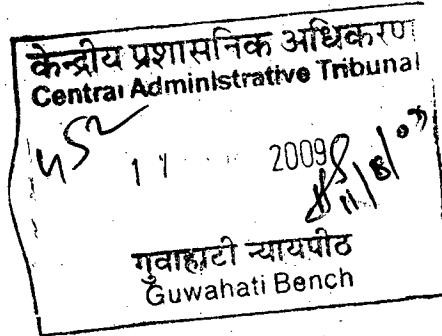
Shri Jai Shankar Prasad Singh

.....Applicant

-VERSUS-

UNION OF INDIA & ORS

...Respondents



WRITTEN STATEMENT SUBMITTED BY THE RESPONDENTS

- 1) That the respondents have received copy of the OA and have gone through the same. Save and except the statements, which are specifically admitted herein below, rest may be treated as total denial. The statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.
- 2) That before traversing various paragraphs of the OA, the respondents would like to place the brief History of the case which may be treated as part of the Written Statement.

Brief History of the Case:

The case for Rule 38 of the applicant, PA, Arunachal Pradesh Division was first received in this Office in 2002 from Chief Post Master General, Bihar Circle and from Postal Directorate being a Minister's case report was called from DPS, Arunachal Pradesh Division who submitted his report on 31.12.002. As per the report there were 22 Rule 38 cases and out of this three officials have completed only two years of service and case of the applicant being one of them. As per rule officials who apply for Rule 38 should have completed 5 years of service to be eligible for said transfer.

Received
Rupan Jaiswal
2/8/09

11 AUG 2009

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Guwahati Bench

2

The case of the applicant was pursued by Postal Directorate being a Minister's case and on 24.9.2004 a report was sent to the Directorate that the request for Rule 38 transfer of the applicant could not be recommended due to acute shortage of staff on Arunachal Pradesh Division. In the meantime Superintendent of Post Offices (SPOs), Arunachal Pradesh Division was requested to send the application of the official along with his comments. As per his report dated 30.12.2004, SPOs, intimated that as there are 14 approved PA waiting for their release under Rule 38 and another six have already been release from the Division. Therefore it is not possible to recommend more proposals for Rule 38 transfer from A.P. Division until staff position improves.

Again on 06.2.2007, Directorate of Postal Services, Itanagar submitted his report stating that out of the sanctioned strength of Pas in A.P. Division, only 114 PAs are available for actual deployment, leaving shortage of 11 PAs. There are 47 Pas who have applied for Rule 38 transfer and while recommending few of these cases; some rational basis like seniority etc. has to be considered. Therefore it was not feasible to recommend Rule 38 transfer case of the applicant due to reasons as above. As the Chief Post Master General, Bihar Circle also pursued case the position of the case was intimated to him on 21.2.2007 and 6.8.2008. On 30.6.2007 and 9.9.2008 the applicant was intimated through DPS, Itanagar that his case could not be recommended due to shortage of staff in A.P. Division.

The position of the case again intimated to Directorate on 16.7.2008 and 20.2.2009.

- 3) That with regard to the statement made in paragraphs 1, 2, 3 and 4 of the OA, the respondents beg to offer no comment.
- 4) That with regard to the statement made in paragraphs 4.2 and 4.3 of the OA, the respondents beg to offer no comment.

11 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

3

5) That with regard to the statement made in paragraphs 4.4, 4.5 and 4.6 of the OA; the respondents beg to offer no comment.

6) That with regard to the statement made in paragraph 4.7 of the OA the respondents beg to state that case for Rule 38 transfer of the applicant, was first received in this office in 2002 from Chief Post Master General, Bihar Circle and from Postal Directorate being a Minister's case report was called from DPS, Arunachal Pradesh Division who submitted his report on 31.12.2002. As per the report there were 22 Rule 38 cases and out of this three officials have completed only two years of service and case of the applicant being one of them. As per Rule officials who apply for Rule 38 should have completed 5 years of service to be eligible for said transfer. Postal Directorate being a Minister's case pursued case and on 24.9.2004 a report was sent to the Directorate that the request for Rule 38 transfer of the applicant could not be recommended due to acute shortage of staff in Arunachal Pradesh Division. In the meantime SPOs, Arunachal Pradesh Division was requested to send the application of the Official along with his comments. On 30.12.2004, SPOs, intimated that as there are 14 approved PA waiting for their release under Rule 38 and another six has already been release from the Division. Therefore it is not possible to recommend more proposals for Rule 38 transfer from A.P. Division until staff position improves.

7) That with regard to the statement made in paragraphs 4.8, 4.9, 4.10, 4.11, 4.12 and 4.13 of the OA, the respondents beg to offer no comment.

8) That with regard to the statement made in paragraphs 4.14 and 4.15 of the OA, the respondents beg to submit that this office received applications for Rule 38 transfer forwarded by the DPS, Arunachal Pradesh Division. One of those cases is of Shri Mukesh Kumar Singh. However this office is not aware

11.01.2009

गुवाहाटी न्यायालय
Guwahati Bench

4

if any of those applicants or Shri Mukesh Kumar Singh ranked junior to the applicant. It is also relevant to mention here that application for Rule 38 transfer in prescribed proforma of the Applicant is still not received in this office although DPS, Itanagar was reminded several times to send the same as this is a Minister's case.

9) That with regard to the statement made in paragraph 4.16 of the OA, the respondents beg to offer no comment.

10) That with regard to the statement made in paragraphs 5.1, 5.2 and 5.3 of the OA, the respondents beg to submit that the respondents have never violated any Rule hence there is no valid ground hence this OA may be dismissed with cost.

11) That with regard to the statement made in paragraphs 6 and 7 of the OA, the respondents beg to offer no comment.

12) That with regard to the statement made in paragraph 8.1, 8.2 and 8.3 of the OA, the respondents beg to submit that in view of the submissions made above the applicant is not entitled to any of the relief for hence the Hon'ble Tribunal may be pleased to dismiss the OA.

13) That the respondents beg to submit that in consideration of the facts and circumstances of the case the OA is liable to be dismissed with cost.

11 A.D. 2009

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Guwahati Bench

VERIFICATION

I, Surenach Praveesh, aged
about 43 years at present working as
Director Postal Services, Itanagar, Arunachal Pradesh ✓
Pradeesh, who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondents,
do hereby solemnly affirm and state that the statement made in paragraph
1, 3, 4, 5, 7 to 13. are true
to my knowledge and belief, those made in paragraph
2, 6, being matter of records, are
true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this 11th day of June 2009 at -----

Itanagar.

DEPONENT

Surenach Praveesh
DIRECTOR OF POSTAL SERVICES
ARUNACHAL PRADESH
ITANAGAR - 791119