

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:
ORDERSHEET

1. ORIGINAL APPLICATION No : -----/2009

2. Transfer Application No : -----/2009 in O.A. No.-----

3. Misc. Petition No : -----/2009 in O.A. No.-----

4. Contempt Petition No : -----/2009 in O.A. No.-----

5. Review Application No : 4 / 2010 in O.A. No. 272/2009

6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Sri Nripen Chandra Mahanta

Respondent (S) : Union of India & ops.

Advocate for the : Dr. J.L. Sarkar
{Applicant (S)} Mr. S. Sarma & Mr. H.K. Das

Advocate for the : -----
{Respondent (S)} CSC.

Notes of the Registry

Date

Order of the Tribunal

13.5.2010

This Review Application has been filed by the Applicant through his Advocate with a prayer for reviewing the judgment and order dated 21.4.2010 passed in OA No. 272/2009 by this Hon'ble Tribunal.

Laid before the Hon'ble Court for favour of order.

(Signature)
Section Officer (S)
13/5/2010

14.05.2010

Heard Dr. J.L. Sarkar, learned counsel for Applicant. It was alleged that Tribunal did not take into consideration the factual as well as legal aspects in the order. Mr. C.H. Hazarika, Jr. of Mrs. M. Das, learned Sr. Standing Counsel for Respondents makes a prayer that opportunity of being heard be given to the Sr. Standing Counsel also. Considering the aforesaid prayer, the R.A. is adjourned to 17th May 2010. Dr. Sarkar is required to give summary of factual as well as legal aspects (separately), which were alleged to be not considered in the order. Copy of this order be served on both the counsel.

List the matter on 17th May 2010.

(Signature)
(Madan Kumar Chaturvedi)
Member (A)

/pb/

R.A. 4 of 2010 in O.A. 272 of 2009

01.5.2010

Judgment pronounced in open Court.
Kept in separate sheets. Application is
dismissed. No costs.

(Madan Kumar Chaturvedi)
Member (A)

/Lm/

14.05.2010
Hearings in the matter of the
counsel for Applicant. It was alleged that
Tribunal did not take into consideration
the factual as well as legal aspects in the
order. Mr. C. H. Haxar, Jr. of Mrs. M.
has learned Sr. Standing Counsel for
Respondents makes a prayer that
opportunity of being heard be given to
the Sr. Standing Counsel also.
Considering the aforesaid prayer, the
R.A. is adjourned to 17th May 2010. The
Sarkar is required to give summary of
factual as well as legal aspects
(separately) which were alleged to be
not considered in the order. Copy of this
order be serve on both the counsel.

Let the matter be on 17th May 2010.

(Madan Kumar Chaturvedi)
Member (A)

17.05.2010

Heard both the parties. Dr. J.L. Sarkar, submitted that copy of the order dated 14.05.2010 by which he was required to give summary of factual as well as legal aspects (separately), which were alleged to be, not considered in the order, was not served on him. As such, the details could not be prepared.

Both the parties agreed that the matter may be fixed on 21.05.2010.

List the matter on 21.05.2010.


(Madan Kr. Chaturvedi)
Member (A)

/bb/

21.05.2010

Dr. J.L. Sarkar, learned counsel appeared for Applicant and Mrs. M. Das, learned Sr. CGSC appeared for Respondents.

Both parties made prayer for adjournment.

List the matter on 25th May 2010 after rising of the Division Bench.



(Madan Kr. Chaturvedi)
Member (A)

/pb/

25.05.2010

Heard Dr. J.L. Sarkar & Mr. H.K. Das, learned counsel for Applicant and Mrs. M. Das, learned Sr. CGSC for Respondents.

Hearing concluded. Reserved for orders.


(Madan Kumar Chaturvedi)
Member (A)

/pb/

R.A. 4 of 2010 in C.A. 272 of 2009

01.6.2010

0025071 Judgment pronounced in open Court. Kept in separate sheets. Application is dismissed. No costs.

(Madan Kumar Chaturvedi)
Member (A)

/Lm/

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Washington, D.C. 20540
(202) 696-6100

6109 AG.12.

1st the matter on 25th May 2010 after

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orders

11/10/2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

R.A 4/2010 (In O.A. No. 272 of 2009)

DATE OF DECISION: 01-06 -2010.

Shri Nripen Chandra Mahanta

.....Applicant/s

Dr J.L. Sarkar & Mr. H.K. Das

.....Advocates for the
Applicant/s

-Versus -

U.O.I & Ors.

.....Respondent/s

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

.....Advocate for the
Respondent/s

CORAM

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

Judgment delivered by


Member(A)

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

Review Application No. 4/2010 (In O.A. No.272/2009).

DATE OF DECISION : THIS IS THE 1st DAY OF JUNE, 2010.

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

Shri Nripen Chandra Mahanta
Son of Late Kashi Ram Mahanta
S.G. Duftry, Office of the
Chief Postmaster General,
Assam Circle, Guwahati,
Quarter No.42 (T-11),
Panbazar, Guwahati-1.

.....Applicant

By Advocate Dr J.L.Sarkar & Mr H.K.Das

-Versus-

1. Union of India,
Through Chief Postmaster General,
Assam Circle, Meghdoot Bhawan,
Guwahati-781001, Assam.
2. Director of Postal Services,
Office of the CPMG, Assam Circle,
Meghdoot Bhawan,
Guwahati-1.
3. Director of Accounts (P)
Meghdoot Bhawan,
Guwahati-1.
4. Senior Superintendent,
RMS 'GH' Division,
Guwahati-1.
5. Director General,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi - 110001.
6. Shri Pawan Kumar Singh
Director Postal Services (H.Q)
Office of the CPMG,
Meghdoot Bhawan,
Guwahati-1.

.....Respondents

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



ORDER

MR MADAN KUMAR CHATURVEDI, MEMBER (A)

By this application under Section 22(3) (f) of the Administrative Tribunals Act 1985 the applicant requires this Tribunal to review the judgment and order dated 21.4.2010 passed in O.A.272/09.

2. Dr J.L.Sarkar, learned counsel appeared along with Mr H.K.Das for the applicant. Respondents were represented by Mrs M. Das, learned Sr. Standing counsel.

3. At the outset it was pointed out that the Director of Accounts (P) is a separate establishment. Being a separate cadre having their own staff, as such employee in the office of the Chief Postmaster General cannot be subjected to transfer to the Director of Accounts (P). Learned counsel invited my attention on Rule 38 of the P&T Manual Vol. IV. This reads as under :

“38. Transfer at one's own request

Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the right 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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

R.A 4/2010 (In O.A. No. 272 of 2009)

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.....Applicant/s

Dr J.L. Sarkar & Mr. H.K. Das

.....Advocates for the
Applicant/s

-Versus -

U.O.I & Ors.

.....Respondent/s

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

.....Advocate for the
Respondent/s

CORAM

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

Judgment delivered by


Member(A)

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

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Son of Late Kashi Ram Mahanta
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Panbazar, Guwahati-1.

.....Applicant

By Advocate Dr J.L.Sarkar & Mr H.K.Das

-Versus-

1. Union of India,
Through Chief Postmaster General,
Assam Circle, Meghdoot Bhawan,
Guwahati-781001, Assam.
2. Director of Postal Services,
Office of the CPMG, Assam Circle,
Meghdoot Bhawan,
Guwahati-1.
3. Director of Accounts (P)
Meghdoot Bhawan,
Guwahati-1.
4. Senior Superintendent,
RMS 'GH' Division,
Guwahati-1.
5. Director General,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi - 110001.
6. Shri Pawan Kumar Singh
Director Postal Services (H.Q)
Office of the CPMG,
Meghdoot Bhawan,
Guwahati-1.

.....Respondents

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



ORDER

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official with whom he exchanges appointments, whichever is the lower."

4. It was submitted that with effect from 1.4.1976 the accounts works related to postal branch of the Postal Department was separated from Post and Telegraph office. The Director of Accounts (P) is a separate establishment and it cannot be associated with Chief Postmaster General. Therefore, as per prescription of Rule 38 this transfer is not valid.

5. Learned counsel further stated that the post of SG Duftry is a single cadre post and the applicant is the only incumbent to hold such post. Therefore, applicant cannot be declared to be surplus. Besides the transfer order was not issued by competent authority. APMG is vested with the transfer of only Group D. As applicant belongs to Group C as such the transfer order is void ab initio.

6. Commenting on the recommendation of the 6th Pay Commission, as regards the merger of Group D and C, learned counsel stated that till date no recruitment rules has been published by the DOP&T. Therefore, despite merger transfer cannot be affected. It was pointed out that two transfer orders were issued in a day one in morning and one in the evening. This is sufficient to establish mala fide on the part of the respondents. According to learned counsel there was no administrative exigency on the part of the respondents while passing the order of transfer dated 5.6.2009.

7. It was alleged that while adjudicating the issue Tribunal failed to consider the aforesaid aspects as such error has crept in the order of the Tribunal for which learned counsel prayed for review.




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7. It was alleged that while adjudicating the issue Tribunal failed to consider the aforesaid aspects as such error has crept in the order of the Tribunal for which learned counsel prayed for review.



8. Mrs M.Das, learned Sr. Standing counsel appearing for the respondents vehemently opposed the aforesaid arguments. It was submitted that transfer can be made from one establishment to other. There is absolutely no legal bar in relation to the same. It was pointed out that in 1998 applicant got transferred from Circle office to Regional office by way of routine transfer. Commenting on the applicability of Rule 38 as reproduced in para 2, learned Standing counsel submitted that it is not applicable in the context of the present case. This rule applies only in the context of request transfer. In the present case there was no request transfer, as such the prescription of Rule 38 cannot be applied.

9. Mrs Das further stated that consequent upon the recommendation of 6th Pay Commission Group C & D posts got merged. Now there exists no Group D post. It is re-designated as Multi Skilled Employee (MSE). The applicant was transferred in the same grade.

10. Our attention was invited to page 19 (Annexure-V of the O.A) which reads as under :

"With the approval of the competent authority the following transfer/posting orders in respect of the following Group "D" officials of Circle Office, Guwahati are issued with immediate effect in the interest of service.

Sl.No	Name of the official	Name of office presently working	Posted on transfer
01	Sri Nripen Ch Mahanta	Caretaker, Holiday Home, Meghdoot Bhawan Guwahati-781001	RMS "CH" Division, Guwahati
02	Sri Moneswar Haloi	C.O.Guwahati	Caretaker, Holiday Home, Meghdoot Bhawan Guwahati-781001

The relevant Charge report to be issued to all concerned.

Sd/-
(L.K.Barman)
Asstt. Postmaster General (Staff)
Assam Circle: Guwahati-781 001.

Copy to :-

01 : The Sr. Supdt. RMS "GH" Dn, Guwahati-7810 01. He will kindly issue posting order in respect of the official at Sl 1 above immediately.

.....rendered."

In this order clear cut direction was given to the Sr. Superintendent, RMS "GH" Division, Guwahati to issue posting order in respect of the applicant. In conformity with the aforesaid order Sr. Superintendent, RMS, "GH" Division, Guwahati passed the order transferring the applicant from Holiday Home, Meghdoot Bhawan, Guwahati to RMS, Shillong. Being aggrieved with the said order applicant submitted representation on 8.6.2009. Considering his prayer the order was modified on 28.7.2009 and applicant was transferred to Director of Accounts (P), Guwahati. On the basis of the aforesaid order Mrs M. Das, learned Sr. standing counsel submitted that it is absolutely incorrect to say that the transfer order was issued with mala fide intention.

11. We have heard the rival submissions ~~parties~~ in the light of the materials placed before us. As regards the question whether Director of Accounts (P) is a separate establishment and employees in the office of Chief Postmaster General cannot be subjected to transfer reliance was placed on Rule 38. "TRANSFER AT ONES OWN REQUEST, is the title ^{of} Rule 38. The literal meaning of the phrase of A RUBRO AD NIGRUM is "FROM THE RED TO THE BLACK". Formerly the title of a statute was written in red while its body was written in black, and the phrase meant the process of interpreting a

statute with reference to its title. I find that this is a case of simple routine transfer and not a transfer at ones own request, as such prescription of Rule 38 cannot be invoked in the facts of the present case. Transfer can be made from one establishment to other. There is no legal bar for the same.

12. While adjudicating the issue the Tribunal duly considered all the factual aspects. Consequent upon the recommendation of 6th Pay Commission Group C and D posts were merged and cadre was modified as MSE (Multi Skilled Employee). The applicant was termed as Care Taker while working in the Holiday Home. The post of Care Taker and Duftry was subsequently termed as MSE post. As such Group D post was not existing at that point of time. At the time of hearing of the O.A learned Sr. Standing counsel admitted that this is only a typographical mistake, as such necessary directions were issued for rectification of such mistake. Tribunal given ^a categorical finding that there was absolutely nothing on record to indicate that official intended to lower the rank of the applicant. His salary was not touched. The applicant was holding the same rank on his transfer. The transfer was affected with the approval of the competent authority. As such there was no infirmity in the transfer order.

13. According to Dr Sakar applicant was working in the DPS Headquarter since he joined in the Circuit House. He prayed for leave at which he was scolded by the wife of the DPS Headquarters and she insisted for his transfer, as such transfer was mala fide. A categorical finding in this regard was given in the order. Dr Sarkar stated that the two transfer orders were issued in a day on 5.6.09 one in morning and

one in the evening which itself is sufficient to establish mala fide on the part of the respondents. This is not correct. In fact there was only one order. The other order is only consequential which was passed pursuant to the directions given in the first order. Even if the order dated 28.7.09 is ~~considered that it is~~ only in partial modification of the transfer order passed earlier to accommodate the applicant at Guwahati as per his request. Mere allegation, that the power is exercised, mala fide, would not be enough. To buttress the claim it is, sine qua non, on the part of the applicant to place the specific materials before the Court on the basis of which, mala fide, is alleged. The burden of establishing mala fide, is very heavy on the person who alleges it. The allegation of mala fide, are often made very easily and light heartedly without placing any material in support of such a plea. Normally the very seriousness of the allegation demands a credible prove of high order in support of allegation, more so, when the allegations are made against Government or a statutory body. Hon'ble Apex Court in the case of Rajendra Roy vs. Union of India, 1993 SCC (L&S) 138 has held that for inference of mala fide there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions.

14. Learned counsel invited my attention on the decision of Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi & others, AIR 1978 SC 851. Emphasis was laid on para 8 of the judgment which reads as under :

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons

in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p. 18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Facts of the present case are different. In this case no fresh reasonings are supplemented by the respondents. Mentioning of Group D post was a typographical mistake as held by the Tribunal. No fresh reasoning was supplemented in the present case. In the case of *Union of India and another vs. Kartick Chandra Mondal & another*, (2010) 2 SCC 422, it was held that internal communications while processing a matter cannot be said to be orders issued by the competent authority unless they are issued in accordance with law. Nothing was placed before me to demonstrate how this reasoning is relevant in the facts of the present case. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. In the case of *Sow. Chandra Kanta & another vs. Sheik Habib*, AIR 1975 SC 1500 it was held that it is neither fairness to the court which decided nor awareness of the precious public time lost what with a huge back log of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. In the guise of review applicant is not permitted to re-argue his case. Hon'ble Supreme Court in *Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhury (Smt.)*, 1995 (1) SCC 170 referring to certain earlier judgments, observed that an error apparent on the face

of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error can not be cured in a review proceeding.

15. The power of review available to this Tribunal is the same as has been given to a Court under Section 114 read with Order 47 Rule 1 of the Civil Procedure Code. The Apex court has clearly stated in *Ajit Kumar Rath Vs. State of Orissa and others*, (1999) 9 SCC 596 that: "a review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it". This Tribunal can not review its order unless the error is plain and apparent. It has clearly been held by the apex court in the case of *Ajit Kumar Rath* (supra) that: "[Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment]".

16. It is also settled principle of law that the Tribunal cannot act as an appellate court for reviewing the original order. This proposition of law is supported by the decision of the Hon'ble Supreme Court in *Union*



of India Vs. Tarit Ranjan Das, 2004 SCC (L&S) 160 wherein their lordships have held as under:

"The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and *rehearing of the matter to facilitate a change of opinion on merits*. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application".

(emphasis supplied)

17. In Gopal Singh Vs. State Cadre Forest Officers' Assn. and others, 2007 (2) SCC(L&S) 819 Hon'ble Supreme Court held that after rejecting Original Application of appellant, there was no justification for the Tribunal to review its own judgment and allow review application of the appellant. It was further held therein that "[No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible.....and the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment]".

18. Recently, Hon'ble Supreme Court in (2008) 2 SCC (L&S) 735 State of West Bengal and others Vs. Kamal Sengupta and another, scanned earlier judgments and summarized the principle laid down therein vide para 35 which reads thus:

"35. The principles which can be culled out from the above-noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/ analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/ decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

Taking into consideration the entire conspectus of facts, it is evident, that no mistake has crept in the impugned order. In the guise of review, applicant is trying to re-argue his case. This is not permissible. Accordingly review application stands dismissed. No costs.


(M.K.CHATURVEDI)
ADMINISTRATIVE MEMBER

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:
ORDERSHEET

CAVEAT PETITION
NO. 3/2010

1. ORIGINAL APPLICATION No : 272 / 2009
2. Transfer Application No : -----/2009 in O.A. No.-----
3. Misc. Petition No : -----/2009 in O.A. No.-----
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Applicant (S) : Union of India & ors.

Respondent (S) : Sri Nripen Ch. Mahanta

Advocate for the : Ms. M. Das, Pr.CS.C.
{Applicant (S)}

Advocate for the : -----
{Respondent (S)}

Notes of the Registry	Date	Order of the Tribunal
<p>14.5.2010</p> <p>This Caveat Petition has been filed by the Union of India, represented by the Director of Postal Services, O/o the CPMG, Assam Circle, Guwahati, against the order dated 5.5.10. wherein the Hon'ble Gauhati High Court was pleased to dispose of the WP(c) 2571/10 filed by Sri Nripen Ch. Mahanta by giving him the liberty to approach the Hon'ble Tribunal by filing a review application in O.A. 272/09. The application filed by the Applicant has been listed for admission to-day. Laid before the Hon'ble Court for perusal of order.</p>	14.05.2010	<p>Union of India, represented by the Director of Postal Services, Office of the CPMG, Assam Circle, Meghdoot Bhawan, Guwahati - 1 (hereafter called Caveator) filed an application under Section 148 - A of Civil Procedure Code, 1908. It is not clear whether Caveator served a notice of the caveat on Applicant in O.A. No. 272 of 2009 as required under Sub Section - 2 of Section 148 - A of Civil Procedure Code, 1908, as Dr. J.L. Sarkar did not mention about the Caveat. However, when Mr. C.H. Hazarika, Jr. of Mrs. M. Das, learned Sr. CGSC for Respondents mentioned about the factum of the Caveat (albeit application was not placed before the bench) the Bench took notice</p>

Contd/-

Section Officer (S).
14/5/2010.


Caveat Petition 03 of 2010 (in R.A. No. 4 of 2010)

Contd/-

14.05.2010

of it and adjourned the case so as to enable the Caveator to make proper representation. Date had already been communicated to both counsel present in court. Bench also directed to serve the copy of the order on both sides. As such the requirement of Section 148 - A (3) of the Code of Civil Procedure 1908 has been complied with.

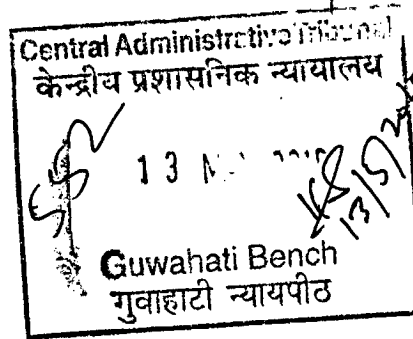
List the matter on 17.05.2010 along with R.A. No. 4 of 2010.


(Madan Kumar Chaturvedi)
Member (A)

/pb/

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

Review Application No. 4 of 2010.

In O.A No. 272 of 2009

Sri Nripen Chandra Mahanta

Applicant

- Versus -

Union of India & ors

Respondents

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4.	Annexure- B (Copy of the order dated 05.05.10 passed in WP(C) no. 2571/10).....	16-17

Filed by

Hridip Kr. Das
13/5/10

Hridip Kr. Das
Advocate

Filed by: 1
The Applicant
through
Hidayat M. Das.
Advocate
13/5/10

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

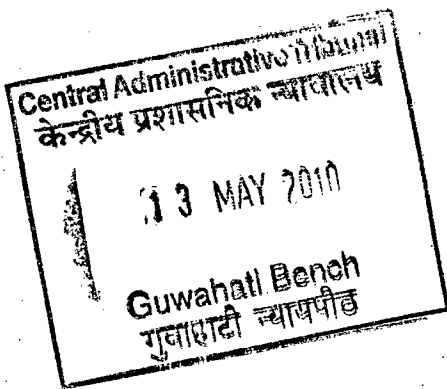
Review Application No. 4 of 2010.

In O.A No. 272 of 2009.

Sri Nripen Chandra Mahanta.

- Versus -

Union of India & ors



IN THE MATTER OF:

An application under Sec 22 (3) (f) of the administrative Tribunal Act 1985 for review of the judgment and order dated 21.4.2010 passed by the Hon'ble Central Administrative Tribunal Guwahati Bench, in O.A No. 272/09.

- AND -

IN THE MATTER OF:

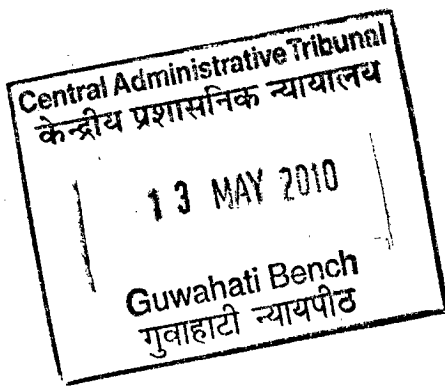
Sri Nripen Chandra Mahanta,
Son of late Kashi Ram Mahanta,
Selection Grade Duftry, O/o The
Chief Postmaster General, Assam
Circle, Meghdoot Bhawan,
Panbazar, Guwahati- 1.

Applicant

- Versus -

Nripen ch. mahanta

Received copy
for Mrs. M. Das
Sr. Case
Deka
14.5.10



1. The Union of India & Others, represented by the Chief Postmaster General, Assam Circle, Meghdoot Bhawan, Guwahati- 1.

2. The Director of Postal service, O/o The Chief Postmaster General, Assam circle, Meghdoot Bhawan, Guwahati- 1.

3. The Director Accounts [Postal], Silpukhuri, Guwahati- 3.

4. The Senior Superintendent, Railway Mail Service, [RMS] Guwahati Division, Panbazar, Guwahati- 1.

5. The Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-1.

6. Sri Pawan Kumar Singh, Director Postal Service [HQ], O/o The CPMG, Meghdoot Bhawan, Guwahati- 1.

RESPONDENTS

The humble application on behalf of the applicant above named;

MOST RESPECTFULLY SHEWETH :-

Nripen Ch. Mahanta

13 MAY 2010

Guwahati Bench
गुवाहाटी न्यायालय

1. That the applicant seeking redressal of his grievances against the order of transfer dated 28.07.09 transferring the applicant, ex-facie by way of punishment, reading the order de-hors extraneous elements preferred the aforesaid O.A. before the Hon'ble Tribunal. The Hon'ble Tribunal while taking up the matter for admission was pleased to pass an interim order dated 22.12.09 protecting the interest of the applicant. The applicant made the challenge against the aforesaid action on the part of the respondents in issuing the said order of transfer on the ground that the respondents have sought to transfer him to an establishment which has got a separate set up, the order of transfer amounts to his downgrading status, the order of transfer has an effect of curtailing his promotional avenue, the order of transfer has been issued to a place or establishment where there is no post, and order of transfer has been issued as a result of malafide action on the part of the respondents.

2. That the respondents have filed their reply and indicated that fact that the applicant has been transferred as he has been found to be surplus. The said contention has been denied by the applicant by filing rejoinder that the applicant who has been holding the post of Selection Grade Duftry, on regular basis against a single post can not be subjected to transfer wrongly indicating him to be surplus.

That the applicant craves leave of the Hon'ble Tribunal to rely and refer upon the pleading of the OA at the time of hearing of the case.

Nripen ch Mahanta

3. That the Hon'ble Tribunal on 21.04.2010 heard the OA and held that the order of transfer dated 28.07.2009 has been issued without there being any violation of the norms and guidelines. The Hon'ble Tribunal also held that there is no malafide in issuing the impugned order of transfer. Accordingly the Hon'ble Tribunal dismissed the OA, vide judgment and order dated 21.4.2010.

A copy of the judgment and order dated 21.4.2010 is annexed herewith and marked as **ANNEXURE - A.**

4. That the applicant making a grievance against the judgment and order dated 21.4.2010, instituted a writ proceeding which was registered and numbered as Writ Petition (C) No. 2571/2010 before the Hon'ble Gauhati High Court. The Hon'ble High Court while taking note of the facts as well as the pleadings of the OA and the impugned judgment and order dated 21.4.2010, was pleased to dispose of the said writ petition with expression of view of filing review application before the Hon'ble Tribunal. Hence this Review application seeking review of the judgment and order dated 21.04.2010 passed in OA No 272/09.

A copy of the judgment and order dated 05.05.2010 passed in WP(C) No 2571/10 is annexed herewith and marked as **ANNEXURE - B.**

5. That the applicant begs to state that till date the applicant is serving in the office of the Chief Postmaster General as Selection Grade Duftry and impugned order dated 28.07.09 and 21.04.10 has not been given effect to.

Nrupen ch. Mahanta

6. That the applicant having regard to the aforesaid facts and circumstances has filed this review application against the judgment and order dated 24.01.2010 passed in OA No 272/09, by this Hon'ble Tribunal, on amongst the following;

G R O U N D S

- What facts and legal aspects have not been taken into consideration*
- A. For that the learned Tribunal did not take into consideration the factual as well as legal aspect of the matter in passing the impugned judgment and order dated 21.04.10.
- Can there be review of non-est order?*
- B. For that the impugned transfer order is void ab initio and nonest in so far as the transfer is said to be against existing vacancy and pleadings and records establish that this is a false/untrue ground.
- C. For that the learned Tribunal failed to take into consideration the fact that the establishment of Chief Postmaster General, Assam Circle as well as the Director Postal Accounts are two separate establishment. The applicant can not be subjected to transfer from the establishment of Chief Postmaster General Assam Circle, to the establishment of Director of Accounts (Postal). The Director of Accounts (Postal) has got its head office at Kolkata (Director General of Postal Accounts) and the staff of the said Accounts wing of Postal is regulated by the Head Office at Kolkata.
- D. For that the learned Tribunal while adjudicating the issue raised in the OA have overlooked the fact that respondent No. 6 has failed to deny the

Nrupen ch. Mahanta

13 MAY 2010

Guwahati Bench
 गुवाहाटी न्यायपीठ

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*What material
 was furnished
 to support the
 plea of mala fide?*

allegations of mala fide and this has caused miscarriage of justice. Since the applicant raised the allegation of mala fide against the named respondent and he being the authority instrumental for issuance of the impugned order of transfer it was incumbent on the Hon'ble Court to adjudicate the issue of mala fide on the basis of the stand taken by the said Respondent No. 6, more so when he was a named party to the said proceeding. Following Hon'ble Apex Court's Nasim Banus' dictum the Hon'ble Tribunal ought to have proceeded that the mala fide has been established.

E. For that the Hon'ble Tribunal ought to have addressed on the pleaded issue of indicating him to be surplus resulting issuance of the impugned order of transfer dated 28.07.2009, more so when respondents failed to deny the statement of applicant regarding cadre position and incumbents, and that the applicant could not be surplus.

*What was the
 issue in question?*

F. For that the Hon'ble Tribunal has not dealt with the issue relating to effect on the promotional avenue of the applicant in the event of implementation of the order of transfer order dated 28.07.09.

G. For that the Hon'ble Tribunal has failed to take into consideration the fact that the impugned order of transfer has got an effect in his present status i.e., Selection Grade Duftry in the event of implementation of the impugned order of transfer dated 28.07.09 as Group D staff.

Nrupen ch. Mahanta

H. For that the Learned Tribunal failed to take into consideration the fact that the case of the applicant was never taken as a case of surplus at the time of passing of the impugned order of transfer dated 28.07.09, however the respondents subsequently in the reply has made some development that the order of transfer has been issued as he was found surplus. The law is well settled that an order impugned has to be judged at the touchstone of the materials available as on that date and the respondents can not improve their case by way of filing counter affidavit. The laws laid down by the Apex Court which are patently in favour of the said proposition though placed during hearing was not taken into consideration in the order dated 21.04.10.

discussed in the room

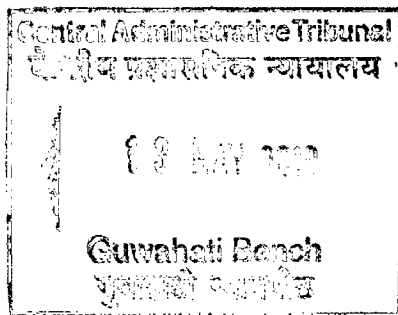
I. For that the respondents in their written statement acted on the premises that the order of transfer was issued by an officer on whom power was vested to transfer Group- D officer.

J. For that the respondents in their written statement elaborated their stand on the premises of applicant's transfer and posting in Group- D.

Plea taken by the Sr. Advocate

K. For that extraneous term and consideration of the word as a result of typographical mistake is per- se contradictory and addition by the Hon'ble Tribunal what is not there in the records/pleadings, rendering the judgment bad in law, violative of the process of law/procedure established by law ignoring principles of natural justice and Wednesbury's principles of law.

Nripam Ch. Mahanta



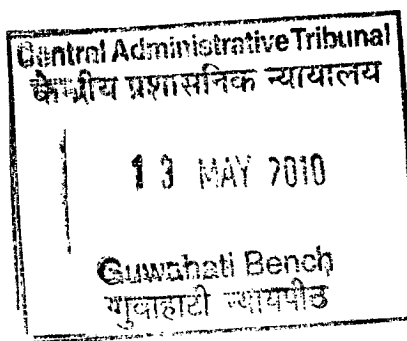
L. For that the transfer order was issued in competent officer and therefore the written statement was not also signed by a competent officer i.e. was signed by an incompetent officer.

H. For that in any view of the matter for the ends of justice the impugned judgment and order dated 21.04.10 is required to be reviewed.

In the premises aforesaid it is most respectfully prayed that Your Lordships would graciously be pleased to admit this review application, issue notices to the respondents, call for the records of the case and on perusal of records be further pleased to recall the judgment and order dated 24.04.10 passed in O.A. and hear the matter on merit considering the entire materials on record and thereafter pass necessary order quashing and setting aside order dated 28.07.09 and grant him all consequential benefits and/or pass any such further orders/orders as Your Lordships may deem fit and proper considering the facts and circumstances of the case.

- AND -

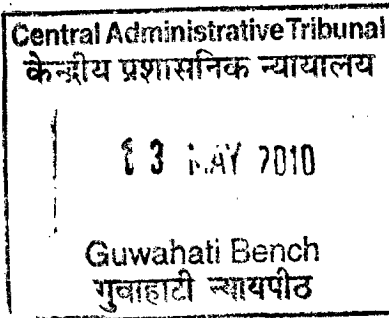
Nripen Ch. Mahanta



Pending disposal of the review application the applicant further prays for an interim order suspending the effect and operation of the judgment and order dated 21.04.10 and impugned order dated 28.07.09 with a further direction to the respondents to allow the applicant to continue in his present post of Selection Grade Duftry under the Chief Postmaster General, Assam Circle.

And for this act of kindness the applicant as in duty bound shall ever pray.

Nripam ch. Mahanta



• 10

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A F F I D A V I T

I, Sri Nripen Chandra Mahanta, Son of late Kashi Ram Mahanta, aged about 40 years Selection Grade Duftry, Office of the Chief Postmaster General, Assam Circle, Guwahati, Quarter No 42(T-11), Panbazar, Guwahati-1, Assam, do hereby solemnly affirm and state as follows:

1. That I am the petitioner in the instant petition. I am well conversant with the facts and circumstances of the case and as such I am competent to swear this affidavit.
2. That the statements made in this petition and in the accompanying application in paragraphs 1 and 2 are true to my knowledge and those made paragraphs 3, 4 and 5 being matters of records are true to my information derived there from and also contains information to the best of my knowledge. The rest are my humble submissions before this Hon'ble Court.
3. The Annexures are true copies of their originals and I have not suppressed any material facts.

And, I sign this affidavit on this the 13th day of May, 2010.

Identified by me

Hridy Kr. Das
12/5/10
Advocate

Nripen ch. Mahanta
DEPONENT

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI :

O.A. Nos.272 of 2009.

DATE OF DECISION : THIS IS THE 21st DAY OF APRIL, 2010.

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

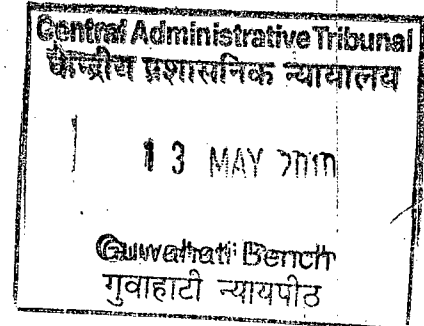
Shri Nripen Chandra Mahanta
Son of Late Kashi Ram Mahanta
S.G. Duftry, Office of the
Chief Postmaster General,
Assam Circle, Guwahati,
Quarter No.42 (T-11),
Panbazar, Guwahati-1.

.....Applicant

By Advocate Dr J.L.Sarkar

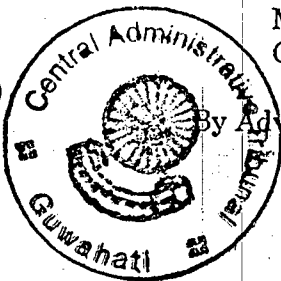
-Versus-

1. Union of India,
Through Chief Postmaster General,
Assam Circle, Meghdoot Bhawan,
Guwahati-781001, Assam.
2. Director of Postal Services,
Office of the CPMG, Assam Circle,
Meghdoot Bhawan,
Guwahati-1.
3. Director of Accounts (P)
Meghdoot Bhawan,
Guwahati-1.
4. Senior Superintendent,
RMS 'GH' Division,
Guwahati-1.
5. Director General,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi - 110001.
6. Shri Pawan Kumar Singh
Director Postal Services (H.Q)
Office of the CPMG,
Meghdoot Bhawan,
Guwahati-1.



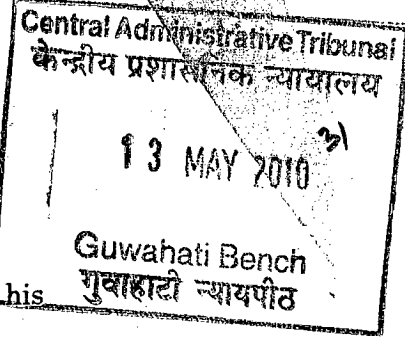
.....Respondents

By Advocate Mr M.U.Ahmed, Addl.C.G.S.C & Ms M. Das, Sr.C.G.S.C.



Attested

[Signature]
Advocate.

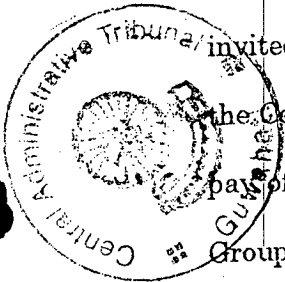
ORDERMR MADAN KUMAR CHATURVEDI, MEMBER (A)

By this O.A applicant makes a prayer for quashing his transfer order dated 5.6.09 and 28.7.09.

2. The applicant was initially appointed in the Postal department as Peon in Group D service with effect from 13.10.1983 under Director of Postal Services, Uzanbazar, Guwahati, now Meghdoot Bhawan, Panbazar, Guwahati. He was promoted as Duftry vide order dated 6.9.1988 on temporary and ad hoc basis. He was regularized as Duftry on 2.12.1992 in the scale of pay of Rs.775-1025/-. Consequent upon the implementation of the recommendation of 6th Pay Commission the pay scale of S.C.Duftry has become Rs.5200-20,200/- in Pay Band-1, with Grade Pay of Rs.1800/-.

3. Vide order dated 5.6.2009 applicant was transferred from Caretaker, Holiday Home, Meghdoot Bhawan to RMS "GH" Division, Guwahati. This order was passed by Asstt. Postmaster General (Staff) for Chief Postmaster General, Assam Circle with approval of the competent authority. Again in partial modification of the said transfer order applicant was transferred and posted as Group D, in the office of the Director of Accounts (P) Guwahati against vacant post.

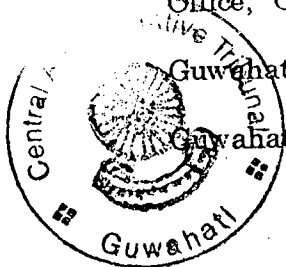
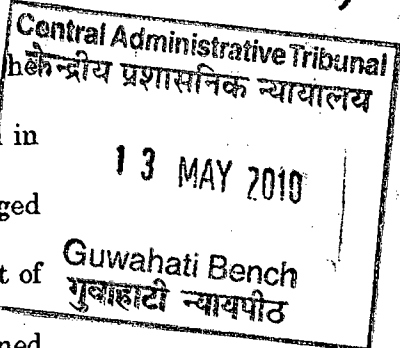
4. Dr J.L.Sarkar, learned counsel appearing for the applicant invited my attention on S.O.946(E) dated 9.4.09 to demonstrate that the Central civil post carrying the grade pay of Rs.1800/- in the scale of pay of Rs.5200-20200/- in Pay Band-1 comes within Group C and not Group D. On that basis it was argued that competent authority was



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wrong in taking the applicant in Group D official whereas in fact he was in Group C. According to learned counsel the order was issued in hurry without considering rules and decision. It was further alleged that the order has been issued in a vindictive manner at the behest of the Director Postal Services for some personal reasons. Learned counsel invited my attention to letter dated 4.12.09 addressed to the Secretary to the Government of India by name wherein it was alleged that the transfer of the applicant was insisted by the wife of DPS Headquarter. The applicant was working in the DPS Headquarter since he joined in the circuit house. He prayed for leave at which he was scolded by the wife of the DPS Headquarters, as such, according to learned counsel the transfer was mala fide. Besides, Asstt. Postmaster General has power to transfer only Group D employees. He cannot touch the applicant as he belongs to Group C employee.

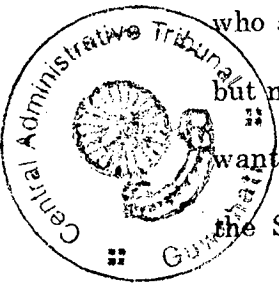
5. Mrs. M.Das, learned Sr. C.G.S.C and Mr M.U.Ahmed, learned Addl. C.G.S.C appearing for the respondents submitted that Care taker and Duftry are of Group D cadre which is modified as MSE (Multi Skilled Employee) after the recommendation of the 6th Pay Commission. In the year 1992 applicant was posted to Regional office Guwahati as Duftry under the establishment of Regional Office and not Circle Office. However he was allowed to work in the circle office without any transfer order till 2007 when he was subsequently promoted to S.G.Duftry and posted as Care taker/Holiday Home, Circle Office, Guwahati. At that time Regional Office was shifted from Guwahati to Dibrugarh. The applicant was allowed to work at Guwahati. The APMG(Staff) vide order dated 5.6.09 transferred the



applicant to RMS GH Division which order was subsequently modified by order dated 28.7.09 and applicant was posted in the office of the Director of Accounts (P) Guwahati. The applicant was termed as Caretaker while working in the Holiday Home. The Post of Caretaker and Duftry were under Group D but subsequently termed as Group C (Multi Skilled Employee). According to learned Sr. standing counsel applicant was earlier holding the post of Group D. The respondents used the nomenclature of Group D in the transfer orders. After the recommendation of the 6th Pay Commission Group C and Group D staff are termed as Musti Skilled Employee (MSE). It is not relevant to raise any grievance as to why he was posted in the Group D vacant post. There is no mala fide established on the part of the respondents authority inasmuch as there is not at all reversion or any reduction of rank. This is a simple transfer order.

6. Who should be transferred where is in the domain of the authority. Unless the order of transfer is vitiated by mala fide or violation of any statutory provisions, Court cannot interfere. On the basis of bare allegation of mala fide which cannot be proved by the applicant, the Court cannot interfere. Applicant failed to establish mala fide. The burden of establishing mala fide is very heavy on the person who alleges it. The allegation of mala fide are often very easily made but not proved. In the facts of the present case we find that applicant wants to establish mala fide only with reference to the letter written to the Secretary, which is mere ipse dixit. Coming to the allegation of violation of statutory provisions in lowering the rank I find that there is absolutely nothing on record to indicate that official intended to

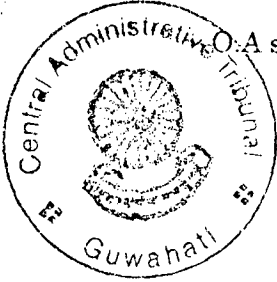
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
13 MAY 2010
Guwahati Bench
गुवाहाटी न्यायपीठ



[Handwritten signature]

lower the rank of the applicant. His salary was not touched. Mrs M. Das, learned Sr. C.G.S.C stated that mentioning of Group D post is a typographical mistake which will be corrected. The applicant will hold the same rank on his transfer. The transfer was effected with the approval of the competent authority. As such there is no infirmity in the transfer order. On this factual matrix I hold that order of transfer is not vitiated by mala fide and the rank of the applicant is not lowered by such transfer. Ex consequenti the O.A is bereft of merit. As such it is dismissed.

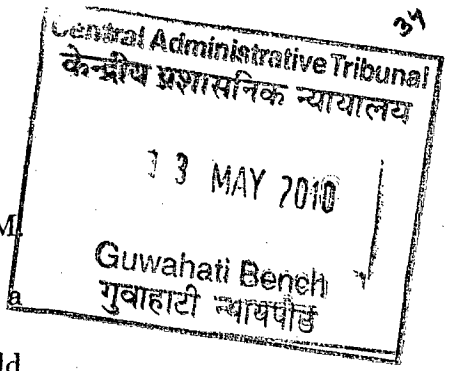
O.A stands dismissed. No costs.



Sd/-
M.K. Chaturvedi
Member (A)

/pg/

TRUE COPY
प्रतिलिपि
अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी न्यायपीठ
Guwahati Bench
गुवाहाटी





-16-

ANNEXURE - B

35

THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Page No. 1

CASE NO : WP(C) 2571/2010

District : Kamrup

Category : 10060 (Other service matters.)

1 NRIPEN CHANDRA MAHANTA
S/O LT. KASHI RAM MAHANTA, SELECTION GRADE
DUFTRY, O/O THE CHIEF POSTMASTER GENERAL,
ASSAM CIRCLE, GUWAHATI, QUARTER NO. 42[T-11],
PANBAZAR, GHY-1.

Petitioner/appellant/applicant

Versus

1 THE UNION OF INDIA & ORS
REP. BY THE CHIEF POSTMASTER GENERAL, ASSAM
CIRCLE, MEGHDOOT BHAWAN, GUWAHATI-1,
ASSAM.
2 THE DIRECTOR OF POSTAL SERVICES,
O/O THE CHIEF POSTMASTER GENERAL, ASSAM
CIRCLE, MEGHDOOT BHAWAN, GUWAHATI-1, ASSAM
3 THE DIRECTOR ACCOUNTS [POSTAL]
MEGHDOOT BHAWAN, PANBAZAR, GUWAHATI-1,
ASSAM
4 THE SR. SUPERINTENDENT,
RAILWAY MAIL SERVICE, [RMS] GH, DIVISION,
PANBAZAR, GUWAHATI-1
5 THE DIRECTOR GENERAL,
DEPTT. OF POSTS, DAK BHAWAN, SANSAD MARK,
NEW DELHI-1
6 PAWAN KUMAR SINGH,
DIRECTOR POSTAL SERVICE, [HQ], O/O THE CPMG,
MEGHDOOT BHAWAN, GUWAHATI-1

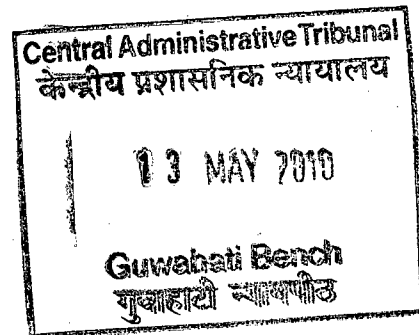
Respondent/Opp. Party

Advocates for Petitioner/appellant

1 S SARMA
2 G GOSWAMI
3 B DEVI
4 H K DAS

Advocates for Respondents

1 ASSTT.S.G.I.
2 M DAS
3 S N TAMULI
4 N VASHUM



Summary Of Case And Prayer In Brief

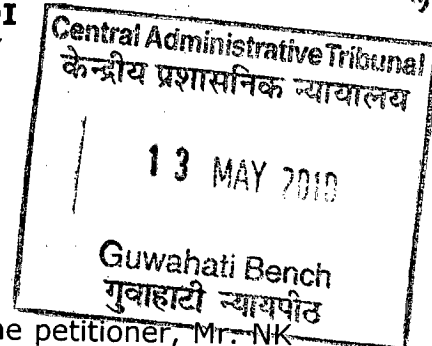
CERTIFIED COPY OF JUDGEMENT / ORDER

DATE OF FILING APPLICATION	DATE WHEN COPY WAS READY	DATE OF DELIVERY
05/05/2010	06/05/2010	06/05/2010

Attested

Advocate

BEFORE
THE HON'BLE MR. JUSTICE RANJAN GOGOI
THE HON'BLE MR. JUSTICE B.P. KATAKEY



DATE OF ORDER : 05/05/2010

(By Ranjan Gogoi, J.)

We have heard Mr. S. Sarma, learned counsel for the petitioner, Mr. NK Borah, learned Central Government Counsel appearing on behalf of Respondent Nos.1, 3, 4 and 5 and Mrs. Manjula Das, learned counsel appearing on behalf of Respondent Nos. 2 and 6.

It has been submitted before us by Shri S. Sarma, learned counsel for the petitioner that the impugned order of transfer dated 28.7.2009 challenged before the learned Tribunal is null and void as by the said order the petitioner has been transferred to the Directorate of Accounts (P) which is a separate establishment. In this regard, Shri Sarma has drawn out attention to the statements made in paragraph 4.2 of the Original Application No. 272 of 2009 as well as the averments contained in paragraph-3 of the rejoinder affidavit to show that the aforesaid ground was pleaded in the Original Application filed before the learned Tribunal. However, a reading of the order dated 21.4.2010 passed by the learned Tribunal does not indicate any finding on the said question now urged before us.

In the above circumstances, we are of the view that instead of filing this writ petition, the petitioner ought to have moved the learned Tribunal by way of review with a prayer to recall the order dated 21.4.2010 and hear the application before it on the aforesaid issue i.e. whether the Directorate of Accounts (P) is a separate establishment and, if so, whether the petitioner could have been transferred to the said establishment.

Consequently, we decline to admit this writ petition and deem it appropriate to leave it open for the petitioner to move the learned Tribunal by way of review.

The writ petition stands disposed of in the above terms.

Sd/ B.P. Katakey
Judge

Sd/ Ranjan Gogoi
Judge

CERTIFIED TO BE TRUE COPY

Date: 6/5/2010

Superintendent (Copying Section)

Gauhati High Court

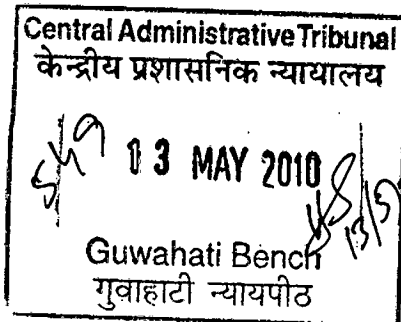
Authorised U/S 76, Act 1, 1872

S2 no - 139884
dtd 5/5/10.

18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Caveat Petition.....3...../2010



IN THE MATTER OF:

An application under Section 148 -A of Civil Procedure Code, 1908.

-AND-

IN THE MATTER OF:

Order dated 05.05.10 wherein the Hon'ble Gauhati High Court was pleased to dispose of the WP (C) 2571/10 filed by Sri Nripen Chandra Mahanta by giving him the liberty to approach the Hon'ble Central Administrative Tribunal, Guwahati Bench by filing a review application in O.A. 272/09.

-AND-

IN THE MATTER OF:

Judgement and order dated 21.04.10 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. 272/09 wherein the Hon'ble Tribunal was pleased to dismiss the O.A. filed by the applicant, Sri Nripen Chandra Mahanta, holding that there was no infirmity with the transfer order dated 05.06.09 and 28.07.09

-AND -

IN THE MATTER OF:

O.A. No. 272/09

Sri Nripen Chandra Mahanta

...Original Applicant

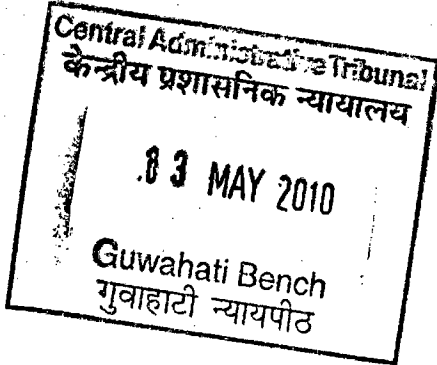
-VS-

Union of India & Ors.

...Respondents

-AND -

Filed by:-
The caveat
through
Mr. Nripen
Chandra
Mahanta
Sr. E. G. S. C.
CAT
12/5/2010
Pawan K. Singh

**IN THE MATTER OF:**

WP (C) No. 2571/2010

Sri Nripen Chandra Mahanta

...Writ Petitioner

-vs-

Union of India & Ors.

...Respondents

IN THE MATTER OF:

Union of India, represented by the
Director of Postal Services, Office of the CPMG,
Assam Circle, Meghdoot Bhawan, Guwahati-1

...Caveator

- AND -

IN THE MATTER OF:

Sri Nripen Chandra Mahanta,
S/o Late Kashi Ram Mahanta,
SG Duftry,
O/o Chief Postmaster General, Assam Circle,
Guwahati, Quarter No. 42 (T-11),
Panbazar, Guwahati-1

...Proposed Review Applicant

-Vs-

1. The Union of India represented by the
Chief Post Master General, Assam Circle,
Meghdoot Bhawan, Guwahati-1, Assam..

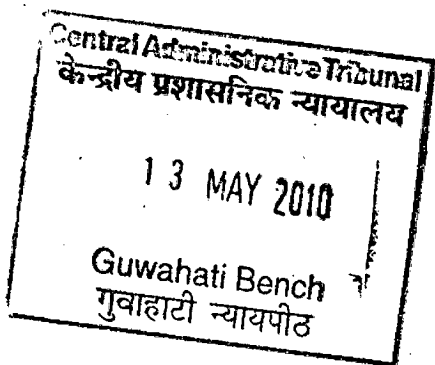
2. Director of Postal Services, Office of the
CPMG, Assam Circle, Meghdoot Bhawan,
Guwahati-1

3. Director of Accounts (P), Meghdoot
Bhawan, Guwahati-1.

4. Senior Superintendent, RMS 'GH'
Division, Guwahati-1

5. Director General, Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi-1

19
385
Saran K. Singh



6. Sri Pawan Kumar Singh, Director Postal Services (HQ), Office of the CPMG, Meghdoot Bhawan, Guwahati-1

....Proposed Respondents

The humble petition of the abovenamed caveator-:

Pawan K. Singh 39

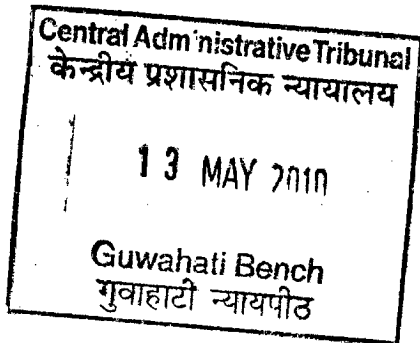
MOST RESPECTFULLY BEGS TO STATE:

1. That in the instant caveat petition, the caveator Union of India is represented by the Director of Postal Services, Office of the CPMG, Assam Circle, Meghdoot Bhawan, Guwahati-1.
2. That the Chief Post Master General had issued transfer order to the proposed review applicant vide order dated 05.06.09 and thereafter the said order was partially modified by the subsequent order issued on 28.07.09. The proposed respondent thereafter approached the Hon'ble Tribunal by filing O.A. 272/09 praying, inter alia, that the said transfer orders be set aside. The Hon'ble Tribunal was pleased to dismiss the O.A. so filed by the proposed review applicant (who was the applicant in the O.A.) holding that there was no infirmity with the transfer order. Thereafter, the proposed review applicant approached the Hon'ble Gauhati High Court by filing WP (C) No. 2571/10. The Hon'ble High Court was pleased to dispose of the said writ petition by giving liberty to the proposed review applicant (who was the applicant in the O.A. 272/09 and the writ petitioner in WP (C) 2571/10) to file a review application, if he so chooses, before the Hon'ble Tribunal against the O.A. 272/09.
3. That the caveator therefore apprehends that the proposed review applicant may file a review application against the judgement and order dated 21.04.10 passed by the Hon'ble Tribunal, as liberty for filing such a review application has been granted by the Hon'ble Gauhati High Court.
4. That the caveator is legally entitled to notice of such review application, if so filed. He will suffer irreparable loss and injury if notice of such proposed review petition is not served upon him before such review application is moved in this Hon'ble Tribunal.
5. That this caveat has been filed bona fide and for the ends of justice.

6. That all necessary particulars of the parties and the proposed review petition are mentioned in the Annexure-A to this caveat.

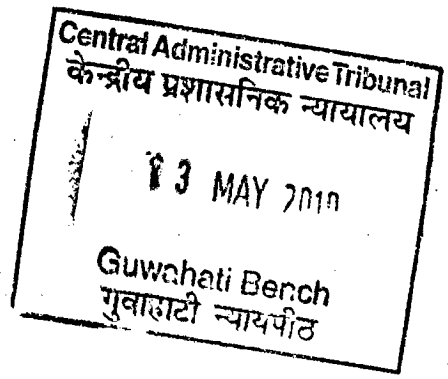
In the premises aforesaid, it is respectfully prayed that Your Lordships may be pleased to entertain any review application to be filed by the proposed review applicant only after service of notice of such review application on the caveator.

And for this the caveator as in duty bound shall ever pray.



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Ranjan K. Singh

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ANNEXURE-A

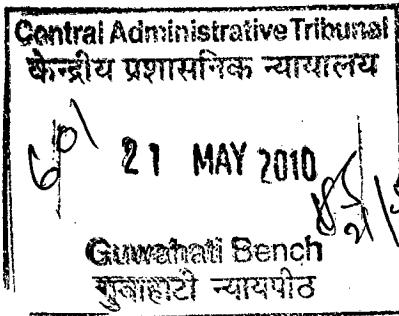
1. Name & address of the Caveator:	Director of Postal Services, Office of the CPMG, Assam Circle, Meghdoot Bhawan, Guwahati-1
2. Name & address of the Proposed Review Applicant:	Sri Nripen Chandra Mahanta, SG Duftry, O/o Chief Postmaster General, Assam Circle, Guwahati, Quarter No. 42 (T-11), Panbazar, Guwahati-1
3. Impugned Order:	Judgement and order dated 21.04.10 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. 272/09
4. Name & address of the Advocates for the caveator:	Smt. Manjula Das, Sr. CGSC, Central Administrative Tribunal, Guwahati Bench
5. Nature of the case:	Review Application
6. Registered Postal Receipt:	Guwahati GPO RL No. PS-RLF 3239 Dated 11-05-2010



, 12:53

Filed by:

Manjula Das
Sr. CGSC, CAT
Ghy Bench



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI:

Review Application No. 309/07 4/2010

In O.A. no. 272/09

IN THE MATTER OF:

Nripen Chandra Mahanta.

Applicant

- VS -

Union of India & Ors.

Respondents

- AND -

IN THE MATTER OF:

Written submission by counsel for
the applicant as per order of the
Hon'ble Tribunal dated 14.05.10.

The Counsel most respectfully submits as under:

1. The impugned office order dated 28.07.09 [Annexure- XI]
of the O.A. speaks:

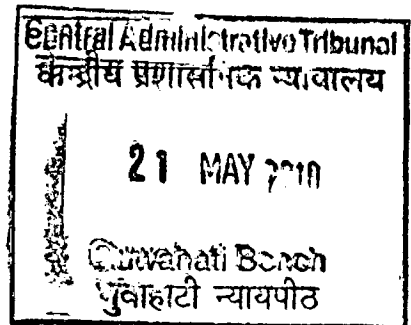
- (i) Transferred and posted as Group- D.
- (ii) Against a vacant post.
- (iii) Transferred to the Director of Accounts
(P).

The Sl. No. (iii) above is taken first. This is Ground No. C
in the Review Application. In the original application at
Para No. 4.2 it has been categorically stated that the
Director of Accounts (P) is a separate establishment having
their own staff. The reply of the respondents in their
written statement "4.2 The humble answering respondents beg

to offer no comments as being matter of records of the case." Therefore the fact of separate establishment is an admitted position. It is stated that as per **Rule 38 of the P & T Manual Vol- IV** Transfer from one unit to another is not permissible except by way of mutual exchange because it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to other the members in that gradation list. It is further stated that in the Chapter- I of the Post & Telegraph Financial Handbook, Vol- I it has been categorically stated that from 1st April' 1976 the accounts work relating to Postal Branch of the P & T Department was separated from P & T Audit office. However, the respondents failed in totality to consider such aspect of the matter while passing the impugned order of transfer. As regards records, no records were produced in the court during the course of hearing to disapprove the statements made in Para 4.2 of the O.A. The statements made in Para 4.6 of the O.A. has been evaded (Para 4.6 of W.S.), but new ground of 'surplus group- D' has been resorted to. This is also without any supporting records.

That while taking Sl No. (ii) above i.e. 'Against Vacant Post', the office order does not disclose what is the designation of the post sought to be filled up? What is the vacant post? What and how it has occasioned for applicant's posting thus, the plea of 'Surplus' having failed in the pleadings. These speak malice in the order. It is common administrative discipline that designation of posting kept open and declared, not secret in office orders. There is no post of S.G. Duftary in "Director of Accounts (P) office, Guwahati [Annexure- XIV of the rejoinder]. This has not been considered in the judgment. This is glaring omission.

That while taking Sl. No. (i) above, this is not administratively clear nor permissible under just and administrative fair play. Applicant is Group- C, it has



force of Constitutional and Statutory force- Annexure- IV of O.A 9 Authority under Article 309 of the Constitution). The judgment dated 21.04.10 has ignored this aspect, though the respondents in W.S. repeatedly treating the applicant as Group- D. It is respectfully submitted, the ~~question~~ is not of salary etc., but of transparency and status granted by the Presidential order i.e. statutory order. It has been repeatedly urged that an 'office order' in law deserves to be tested as it is in the published order. Cases cited during hearing are (i) **Gordhandas Bhanji (AIR 1952 S.C. 16)**, (ii) **M.S. gill & Anr. -vs- The CEC & Ors. (AIR 1978 SC 851)**. By presidential notification the applicant is Group- C employee. Any order describing/treating the applicant as Group- D is malicious, bad in law and non-est, is also couched with inherent mischief.

"It is well settled principled in law that the Court can not read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent....." **Union of India - vs- Kartik Chandra Mondal. (2010) 2 SCC 422.**

In the W.S. the respondents without any ambiguity wanted the applicant to be treated as Group- D.

Para 3.1 of W.S.- both care taker and duftary are Gr. D cadre posts.

Para 3.5 of W.S.- Repeatedly speaks of Troup- D post.

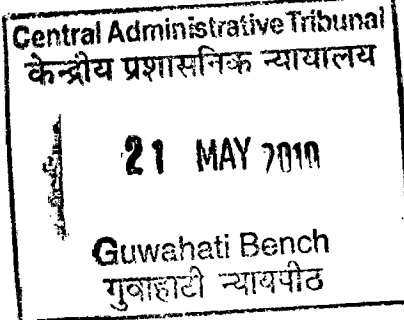
Para 3.8 of W.S.- Posting against Group- D post.

Para 4.6 of W.S.- Applicant treated as Group- D.

Para 4.11 of W.S.- Shortage in Group- D post.

All the above administrative maneuvering is intended with malice, malafide has been unambiguously stated in O.A., not denied regarding malafide.

2. That malafide has been explicitly stated and narrated in Para 4.6 and 4.11. The officer concerned has been implied as respondent No. 6 and no written statement filed

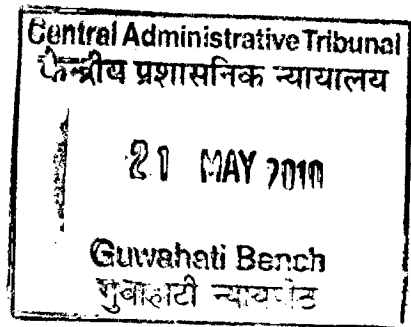


on his behalf and statements against him not denied thereby resulting in admission on his part. The law is well settled that if written statement was filed, procedural law would vindicate the truth to his detriment. In **Naseem Banu -vs- state of U.P. (AIR 1993 SC 2592)** has laid down the law in this respect. By the law of non traverse the allegation against respondent no. 6 stands established.

Order VIII Rule 5 (i) of the CPC states "every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted."

3. That malafide having been taken to be admitted as per law as above, the Hon'ble Court had the discretion to require the same to be proved. Moreover, the representation dated 04.10.09 of the applicant very categorically stated the aspect of malafide (Annexure- XIII). The above representation is a document under section 19 (2) for 'redressal of grievance' under section 20 of the A.T. Act, 1985. In Para 4.12 the applicant stated that personal services to the Director of Postal services and his family. The applicant felt shy and derogatory for himself for the nature of the works got done, the reply in W.S. (Para 4.12) admitted allegation of the domestic work for family and stated "if the Government is asked to provide jobs based on shyness of candidates, then needless to say, the administration shall be crippled." The counsel respectfully submits before the Hon'ble Court, both applicant and the Government official should feel shy in utilizing the services of government employees in domestic/family works of Superior officers, and try to perpetrate Group- D status ignoring presidential order as to status, malafide is explicit.

Rule 7 Order XIV of CPC also mandates to deliver the document or a copy thereof to be filed with the plaint.



The Annexure- XIII (representation dated 04.10.09) is a part of the pleadings under the A.T. Act' 1985 and the CPC. The counsel humbly submits that treating the said document as ipse dixit is a mistake of law, glaring omission of the provisions of the AT Act, 1985 and CPC. The document deserves to be read as a whole with the prayer and similarly dealt with like other representations.

The law is regarding malafide is well settled by the Hon'ble Apex Court in the case of **Rajendra Roy -vs- Union of India & Others reported in (1993)1 SCC 148** wherein the Hon'ble Court held that it may not always be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of malafide action from the pleadings and antecedent foundation of facts pleaded and established. Such inference can not be drawn on the basis of insinuation and vague suggestion.

Order by incompetent authority:

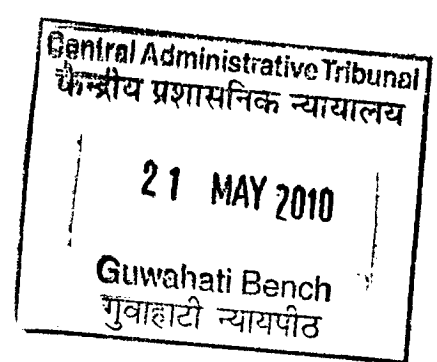
The order of transfer has been issued by the officer treating the applicant as 'Group- D' with clear statement in W.S. In Para 4.10 of the W.S. the respondents have stated that the APMG has been vested with the power to transfer Group- D. The transfer by APMG has been illegal, beyond competency. It is submitted that mere statement that with approval of competent authority, without any supporting documents, is vague and not legal.

Surplus:

The respondents have tried to cover up the mistake by adding element of surplus which is glaring mistake. The applicant is the only S.G. Duftary. One post and one incumbent. The allegation of surplus is concocted.

- (i) There is no declaration of surplus.
- (ii) Law of dealing with surplus employees is totally ignored being a patently wrong ground.

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- (iii) No records produced.
- (iv) Applicant's denial of surplus in Para 7 of the rejoinder with facts and figures has not been controverted by the respondents.

There has been grave omission in not considering these aspects in the judgment.

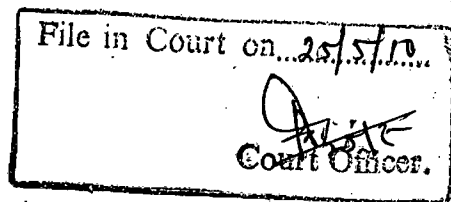
Typographical mistake:

The Hon'ble Tribunal has been pleased to agree about the patent mistake, but has been pleased to treat the same as typographical mistake. The statements in W.S. as already explained above, that the applicant has been treated as 'Group- D' has been omitted to be considered. This is grave error and glaring omission calling for review. Facts are found in the pleading, counsels' statement of fact when W.S. is patent and clear in humble submission of this counsel should be relevant, except in rare cases supported by records with permission of Court. The words "Typographical mistake" is extraneous not supported by records and amounts to grave error causing injustice. It is stated that when the Hon'ble Tribunal came to the conclusion of mistake, the order deserves to be set in the verification. However, in the verification mention has been made on records but no records were produced. This is gross violation of procedure established by law leading to glaring omission causing injustice.

Submitted please

J.L. Sarkar

(Advocate)



Filed by:
Abidur R. Dal
Asst. Secy
25/5/10

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI:

Review Application No. 309/07
In O.A. no. 272/09

IN THE MATTER OF:

Nripen Chandra Mahanta.

Applicant

- VS -

Union of India & Ors.

Respondents

- AND -

IN THE MATTER OF:

Summary of factual as well as legal aspect of the matter not taken into consideration by the Hon'ble Tribunal while passing the order dated 21.04.10.

The humble application on behalf of the applicant above named;

MOST RESPECTFULLY SHEWETH:-

Facts not considered by the Hon'ble Tribunal

1. That the Hon'ble Tribunal while passing the order dated 21.04.10 did not take into consideration the significant fact that the Director of Accounts (P) is a separate establishment being a separate cadre having their own staff. The applicant who is an employee in the office of the Chief Postmaster General can not be subjected to transfer to the Director of Accounts (P).

2. That the Hon'ble Tribunal failed to take into consideration the fact that the post of S.G. Duftary which is a single cadre post and the applicant is the only incumbent to hold such post. In such an eventuality in the event of existence of a post the applicant can not be declared to be surplus.

3. That the Hon'ble Tribunal failed to take into consideration the fact that as per the recommendation of the 6th CPC the cadre of Group- D & C have been merged and given a new name Multi Skilled Employee (MSE), therefore as a consequence there will be change in the recruitment rules due to merger of the cadres. However, till date no such recruitment rule has been published by the DOPT and in such an eventuality without finalization of the merger of the cadre the hasty action on the part of the respondents in changing the status of the applicant to MSE is clearly malafide.

4. That the Hon'ble Tribunal failed to take into consideration the fact that the 2 (two) transfer order issued in a day one in morning and one in evening is sufficient to establish malafide on the part of the respondents. There is no administrative exigencies on the part of the respondents while passing the order of transfer dated 05.06.09.

5. That the Hon'ble Tribunal failed to take into consideration the fact that after the merger of the Group- C and D category to the Multi Skilled Employee (MSE), the post like Duftary, S.G. Duftary, Jamadar, Peon will not be abolished. The said posts will be in existence along with its cadre strength, however only the heading of the cadre will be changed.

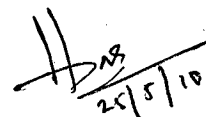
Same as
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Legal Aspects of the case

6. The Hon'ble Tribunal failed to take into consideration the provisions and mandate of Rule 38 of the P & T Mannula Vil- IV. As per the Rule 38 transfer from one unit to another is not permissible except by way of mutual exchange because it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to other the members in that gradation list.

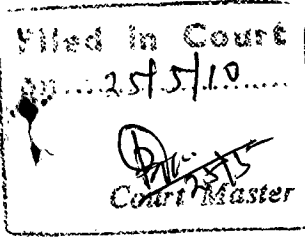
7. That the Hon'ble Tribunal failed to take into consideration the fact that in Chapter- I of the Post & Telegraph Financial Handbook, Vol- I it has been very categorically mentioned that w.e.f. 1st April' 1976 the accounts work relating to Postal Branch of the P & T Department was separated from P & T Audit office. Therefore, the Director of Accounts (P) is a separate establishment and the staff under the CPMG can not be subjected to transfer to the Director of Accounts (P).

Filed by


25/5/10

Hridip Kumar Das

(Advocate)



32
In the Central Administrative Tribunal
Guwahati Bench : Guwahati

RA No. /2010

In

OA No. 272/2009

Shri N.C Mahanta

-v-

U.O.I and Ors

Gist of the case

The applicant is regularly promoted S.G. Duftry in Assam Circle,CPMG's office(Annexure- III of OA).He is now Group C employee (Annexure- IV and para 4.4 and 4.5 of OA).By order dated 28.7.2009 (Annexure - XI) he has been transferred to office of director of A/s (p),Guwahati, which is a separate establishment (not denied in WS).Transfer order is vague, does not disclose designation, no reason, says 'against vacant post'.No public interest is involved. Status of the applicant downgraded to group D.(Applicant's case is not salary).There is no S.G.Duftry Post in the office where transferred (Annexure - XIV of rejoinder).Transfer order is to a separate seniority unit, which clogs future avenue of promotion.

Malafide has been clearly alleged impleading party, which is admitted by law of non-traverse, and also malice is explicit in the facts and circumstances of the case. Respondents allege new ground 'Surplus' in WS, to improve the office order. Explained by applicant in rejoinder, one post one incumbent S.G Duftry i.e applicant not surplus.Not denied by respondents. The transfer order not issued by competent authority ,saying ' APMG has been vested with the power to transfer group D '. (WS, Para 4.10)

On the face of the order itself the same is illegal ,no transfer order is issued as per practice and procedure without designation. The transfer is against Presidential order , against public interest , by incompetent officer ,alleging surplus which is not factual,that too without following law of 'surplus'; and malafide , malice in fact and malice in law is explicit. The office order deserves to be tested by the contents of the order itself.

W.P.(c) was filed before the Hon'ble Gauhati High Court against the Judgment dated 21.4.2010 of the Hon'ble Tribunal, and the High Court was pleased to order that the applicant ought to file review application .Hence this RA.

Submitted please

Hridip K. Das
25/5/10
Advocate