

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : GUWAHATI - 5

O.A. No. 215/94
T.A. No.

DATE OF DECISION 7-12-94

Shri Subir Kumar Roy

PETITIONER(S)

Mr. B.L. Singh
Mrs. S.D. Purkeyastha

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. G. Sarma, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)

1. Whether Reporters of local papers may be
allowed to see the Judgement? *yes*

2. To be referred to the Reporter or non ?

3. Whether their Lordships wish to see the fair
copy of the Judgement? *no*

4. Whether the Judgement is to be circulated to
the other Benches?

Subir Kumar Roy
Judgement delivered by Hon'ble Justice SHRI M.G.CHAUDHARI

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.215/94

Date of Order : This the 7th Day of December 1994.

Justice Shri M.G.Chaudhari, Vice-Chairman
Shri G.L.Sanglyine, Member(Administrative)

Shri Subir Kumar Roy
C/O.Telphone Exchange
Dharmanager, Tripura Applicant

By Advocate Mr.B.L.Singh with
Mrs.S.D.Purkayastha

-Versus-

1. Union of India represented by Secretary, Ministry of Tele communication.
2. The Chief General Manager(Telecom)
N.E.Circle, Shillong, Meghalaya.
3. The Chief General Manager(Telecom)
Assam Circle, Guwahati(Assam)
4. The Telecom District Manager
Agartala Tripura
5. Shri P.C.Deka
6. Shri P.B.Basumatary
7. Shri D.Chakraborty
8. Shri A.Bhagabati
9. Shri A.K.Sinha
10. Shri G.C.Goswami
11. Shri G.K.Das Respondents

By Advocate Mr.G.Sharma, Addl.C.G.S.C.

ORDER

CHAUDHARI J (V.C.)

Mr.B.L.Singh with Mrs.S.D.Purkayastha for applicant.

Mr.G.Sharma, Addl.C.G.S.C. for respondents on notice.

In pursuance of the notice for admission issued on 17-11-94. Mr.G.Sarma Addl.C.G.S.C. appears for respondents 1 to 4.

Delay in filing the O.A. has been condoned by order separately passed in M.P.130/94.

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The application is admitted. Respondents 1 to 4 are served. Service on respondents 5 to 11 dispensed with.

By consent taken up for final hearing and disposal. ~~Amendment sought by application dated 30.11.94 is allowed and read in OA.~~

We made it clear to the learned Advocate for the applicant Mr. Singh, that the prayer of the applicant for transfer under TDE (Silchar Division, Assam Telecom Circle) from tenure Station Moirang (N.E. Telecom Circle) cannot be considered as we find that the reason given in paragraph 1 by the respondent No.2 for refusing that prayer cannot be said to be illegal and thus cannot be interfered with. The learned advocate however pressed for setting aside the order dated 16-7-93 by which the request of the applicant for transfer under Rule 38 to a non-tenure posting has been rejected on administrative ground. We are satisfied that the impugned order dated 16-7-93 has been arbitrarily passed and therefore cannot be sustained for the following reasons:

While rejecting the prayer of the applicant for posting at Silchar Division under Assam Circle the Chief General Manager, Telecom, Assam Circle vide letter dated 10-2-89 Annexure B, himself recorded that the applicant may however apply for transfer to Assam Circle under Rule 38 and if his application is recommended by the CGMT Circle the case may be considered at his end. Similarly in the letter dated 20-4-89 Annexure A, from the Chief General Manager, N.E. Telecom Circle, Shillong the applicant was advised to apply in proper proforma for a tenure transfer and submit the same through proper channel indicating the choice of Station (non-tenure Station) of N.E. (Telecom Circle). Both the authorities namely, CGM, Telecom Assam and CGM Telecom N.E. Circle, Shillong had advised the applicant that he may file an application for transfer to non-tenure Station if he were so inclined and that it will be then considered. Apparently the

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said officers were prompted to so advise the applicant as his main prayer for transfer under TDE/Silcher (Assam Telecom) Circle) has been rejected.

The applicant opted for applying for transfer to a non-tenure post in Silchar Engg Divn (Assam Circle) in the prescribed proforma vide Annexure C on 23-1-92. That must be considered to be a step taken by him in the light of Annexures A & B mentioned above. He also made a declaration *inter-alia* accepting the conditions stipulated in Rule 38 of P & T Manual IV and agreeing to rank junior to all others working in the new Silchar Division, Assam Circle, not to claim to come back to Tripura Division, not to claim TA and TP, to forgo ~~all~~ claim for confirmation in his old issue unit even if permanent vacancy was available and ~~claim~~ ^{agreeing} right to confirmation in the old unit and to be eligible for confirmation in the new unit only according to his position in the gradation list of the unit and also to rank junior including the approved candidates on the date of issue of orders. The applicant thus purported to agree to give up several rights which he could have claimed otherwise and opted for transfer to a non-tenure post. Despite of this background the applicant was informed by the PA(ENGG) O/C the Telecom District Manager, Tripura Area Agartala, by the impugned order No. E-57/Pt-V/93-94/118 dated 16-7-1993 (Annexure E) that his transfer under Rule 38 cannot be considered on administrative ground. That really was based on letter No. STB/B-25/LSA/CT/Assam/83 dated 25-5-93. That letter however neither was supplied to the applicant nor produced before us in order to show as to for what reason the concerned authority who issued the said letter had turned down the ^{he} request of the applicant although was advised to so apply vide Annexures A & B.

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We have set out the background in which the aforesaid letter dated 16-7-93 based on letter dated 25-5-93 has been sent and when read ^{in the} context of the background of events it cannot be described but an arbitrary decision taken casually. ^{That} certainly causes prejudice to the applicant. It must be remembered that this grievance was that although junior persons junior to him of 1986 batch have been transferred to Assam Circle from N.E. circle but although he belonged to 1984 batch his request was not considered and he was almost constrained to apply for transfer to non-tenure station in Silchar Division Assam Circle. ^{As all} ^{is taken into account, but from} these aspects were required from the manner in which the decision is communicated to the applicant ^{it is clear} shows that it was taken without proper application of mind. The question therefore, requires re-consideration by the concerned authorities. In the circumstances we ^{do} not think that the respondents 5 to 11 would be affected by the order we propose to make though they have not been served.

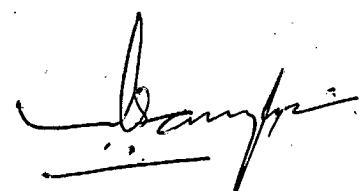
———— We make it clear that this order will be without prejudice to their rights and remedies if any. The applicant is presently posted at Dharamnagar.

In the result the order rejecting the prayer of the applicant for transfer under Rule 38 communicated to the applicant by letter No. E/57/Pt.V/93-94/118 dated 16-7-93 Annexure E is hereby quashed and set aside and the Chief General Manager (Telecom) N.E. Circle, Shillong, is directed to reconsider the request of the applicant under Rule 38 of the P & T Manual IV for transfer to non-tenure station, Silchar Engg Division (Assam circle) as applied on 23-1-92 and take a proper decision in the light of the observations made above in this order expeditiously ^{and} in any event within

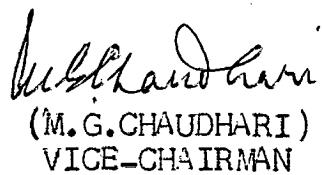
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a period of 3 months from the date of receipt of this order. The decision shall be intimated to the applicant. It is made clear that if the application is required to be considered by some authority other than the CGM(Telecom) N.E. Circle, Shillong, then the respondent No.2 shall forward the same to the appropriate authority for reconsideration of the matter as directed above.

Application is partly allowed in terms of the above directions and stands disposed of. No order as to costs.



(G.L. SANGLYINE)
MEMBER (ADMINISTRATIVE)



(M.G. CHAUDHARI)
VICE-CHAIRMAN

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