

0/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Farukh
6/2/88

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH : GUWAHATI

ORIGINAL APPLN. NO. 221 OF 1995

TRANSFER APPLN. NO. OF 1995

CONTIEMPT APPLN. NO. OF 1995 (IN NO.)

REVIEW APPLN. NO. OF 1995 (IN NO.)

MISC. PETITION NO. OF 1995 (IN NO.)

A.K. Sinha ~~A.K. Sinha~~ ~~By~~ ~~Boxed~~ APPLICANT(S)

-vs-

..... C. I. T. ... RESPONDENT(S)

For the Applicant(s) ... Mr. M. Chanda

Mr.

Mr.

Mr.

Mr. G. Sarma

..... Addl. C. E.

OFFICE NOTE

DATE

ORDER

22.9.95

Learned counsel Mr. M. Chanda moves this application on behalf of the applicant, Shri Ajay Kr Sinha, Junior Accountant, in the office of the Telecommunications District Engineer, Silchar. Notice has been served on the learned Addl. C.G.S.C., Mr. G. Sarma, who is present. By consent this application is disposed of.

This application is in form and within time.
C. F. of Rs. 50/- deposited vide
IPO/BD No. 327310
dated 14.9.95

in *km249*

Perused the application and the reliefs sought by the applicant. The applicant has been transferred from Silchar to Nagaon. His grievance is on the ground that the transfer is not in accordance with the transfer guidelines as laid down in Rule 37-A of the P & T Manual. According to him he has two school going children, one is appearing in B.S. final and the other in the HSLC final examination in next year. He submits that his case is neither of emergency nature nor on promotion. Therefore transferring him in the mid of academic year of his children is unjustified. Apart from this he does not oppose the transfer order and on the other hand

(contd. to Page No. 2)

OA/RAX/CR/RAX/MP No. 22169519

OFFICE NOTE

DATE

ORDER

22.9.95

is willing to carry out the transfer order, but only after the academic year of the children is over.

The applicant has his personal problem as indicated above. It is not known what administrative problem the respondents have so as to by-pass the rule No.37-A of the P&T Manuals in transferring the applicant. Whatever may be the reason, it is considered just to dispose of this application with the following directions:

1) The applicant may submit his representation before the competent authorities of the respondents within 10 days relating to his transfer from Silchar to Nagaon vide order No. STES-15/3(Loose-11)/2 dated 17.8.95 (Annexure-1) and No.E-27/TSP/79 dated 22.8.95 (Annexure-2).

2) The respondents are directed to consider the representation of the applicant sympathetically taking into consideration his personal problems that may be stated by him in the representation, as well as the administrative problems. The representation, if any, received from the applicant should be disposed of as expeditiously as possible.

3) The respondents are directed not to release the applicant pursuant to the aforesaid transfer orders till disposal of the representation.

4) If the applicant has since been relieved before receiving this order, even then the respondents are directed to consider his representation.

OFFICE NOTE	DATE	COURT'S ORDER
<p>11.12.95 copy of order dtd. 22.9.95 issued to the counsel of the parties vide D.No. Dtd.</p> <p>gts.</p>	22.9.95	<p>The application is disposed with the above directions.</p> <p>Copy of the order to be supp to the counsel for the parties.</p> <p>nkm</p> <p><i>Re</i> 25/9</p>

60 Member 22.9.

OFFICE NOTE	DATE	COURT'S ORDER
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22 SEP 1995

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

567

An Application under Section 19 of the
Administrative Tribunals Act, 1985.

O.A. No. 221 / 95

Sri Ajoy Kr. Sinha

Vs.

Union of India & Ors.

I N D E X

Sl. No.	Annexure	Particulars	Page No.
1	-	Application	1-10
2	-	Verification	11
3	1	O.M. dated 17.08.95	12
4	2	O.M. dated 22.08.95	13

Filed by :

Mr. Ajoy Kr. Sinha

Advocate

Re: *Copy*
Mr. Ajoy Kr. Sinha
221 (4)
(AT)
22.9.95

Ajoy Kr. Sinha

Filed by the applicant
Court Branch
2

1. Particulars of the Applicant

Sri Ajoy Kumar Sinha

S/o late D. Sinha

Junior Accountant

Office of the Telecom. District Engineer,

Silchar,

Cachar,

Assam

2. Particulars of the Respondents

1. The Union of India

through Secretary, Govt. of India

Ministry of Telecommunication,

New Delhi

2. The Chief General Manager, Telecom.

Govt. of India

Ministry of Telecommunication

Ulubari, Assam Circle,

Guwahati-7

3. The Telecom District Engineer

Department of Telecommunication

Govt. of India

Office of the Telecom District Engineer,

Silchar-788001

3. Particulars for which this application is made.

This application is made against the transfer and posting order dated 17.8.95 and 22.8.95 issued by the Chief General Manager, Telecom, Guwahati-5 & Telecom

Ajoy Kumar Sinha

8

District Engineer, Silchar respectively and pray for retention at Silchar for a period of at best 9 months or final examination of his children are over.

4. Limitation

The applicant begs to state that this application is filed within the prescribed limitation period under Section 21 of the Administrative Tribunals Act, 1985.

5. Jurisdiction

The applicant declare that the the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

6. Facts of the case

6.1 That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant is presently serving as Junior Accountant in the Office of the Telecom District Engineer, Silchar Govt. of India, Ministry of Telecommunication.

6.2 That the applicant was initially appointed as telecom clerk in February 1979, thereafter the applicant is found suitable for promotion to the post of Junior Account, and accordingly promoted to the pos of Junior Accountant.

6.3 That the applicant had worked in different places, in the North Eastern Region under the Ministry

Ajoy Kr Saha

of Telecommunication, Govt. of India, such as Shillong, Guwahati, Aizawl and Silchar and the applicant being a very sincere employee always carried out the transfer and posting order, wherever he is transferred and posted. The applicant was posted at Silchar in the month of October 1989 as Junior Accountant, under Telecom District Engineer, Silchar.

6.4 That your applicant is working as Junior Account with full satisfaction to all concerned at Silchar. The applicant in the month of August, 1995 left for 'Bharat Darshan' after obtaining approval of his leave and Leave Travel Concession by the appropriate authority of the Department. The applicant left for

Bharat Darshan ^{in the month August, 1995.} and returned at Guwahati on

^{1995.} ^{September, 1995.} ^{3rd week of} after arriving at Guwahati he visited the Office

of the Chief General Manager, Telecom, Guwahati and then surprisingly came to know about his transfer and posting at Nagaon which was issued vide letter No. STES-15/3 (Loose-11)/2 dated ~~xxx0825~~ 17.08.95 whereby the applicant is transferred and posted from the office of the T.D.E. Silchar to the office of the T.D.E., Nagaon. This impugned order was issued during the Leave period when the applicant left for 'Bharat Darshan'.

A copy of the transfer and posting order dated 17.8.95 is enclosed as Annexure-1.

Ajoykr Sinha

6.5 That the applicant begs to state that in pursuance of the transfer order dated 17.8.95, the Telecom District Engineer, Silchar again issued another order vide Order No. E-27/T&P/79 dated 22.8.95 whereby it is also informed that the applicant is transferred and posted at Nagaon, with immediate effect.

A copy of the letter dated 22.8.95 is enclosed as Annexure-2.

6.6 That the applicant begs to state that the transfer and posting, is incidence of service therefore the applicant is duty bound to carry out the transfer and posting order dated 17.8.95 and 22.8.95 but the difficulty stands on the way to dislocate his family at this critical juncture when his eldest son is appearing in the B.Sc. Final Examination in June/July 1996 and daughter appearing in H.S.L.C. Final Examination in the month of March 1996. Therefore to carry out this transfer and posting order at this stage will cause irreparable loss to the applicant. Be it stated that the applicant is now under possession of Govt. accommodation at Silchar, therefore, under the facts and circumstances justice demand that the order of transfer and posting be stayed at least for a period of 9 months or till completion of the Final Examination of his son and daughter i.e. the applicant.

6.7 That the applicant beg to submit the detail particulars of his son and daughter as under :

Ajoy Kr. Saha

1 Sri Sanjoy Kr. Sinha,
Son of the applicant

Appearing in final B.Sc.
Examination which is sched-
led to be held in the month
of June/July 1996 at
Silchar.

2 Miss Jaya Rani Sinha,
Daughter of the
applicant

Appearing in the final
H.S.L.C. Examination which
is scheduled to be held in
the month of June/July 1996
at Silchar.

Therefore, it is difficult to shift the family at Nagaon
and it is also desirable for the applicant to retain at
Silchar with the family as there is none to look after
his family and for the interest of the education of his
children.

6.7 That the applicant came to know from Guwahati
office that the respondents now purported to release the
applicant although in the post of the applicant no junior
Accountant is posted, therefore respondents be directed to
allow the applicant to continue in the present post place
of posting at Silchar at least for a period of 9 months
more or till the final examination of his children are
over.

6.8 That the applicant submitted a representation
dated ^{could not submit any} stating in detail the Educational problems
of his children and requested for his retention till final
examination of his children are over but no decision as
yet taken against his representation. Therefore finding no
other alternative, the applicant approached this Hon'ble
Court for a writ of Habeas Corpus.

Tribunal for immediate relief to retain at Silchar, till the Examination of his children are over. Moreover there is none to look after his family, therefore his retention at Silchar is absolutely necessary, so the transfer and posting order be stayed at least for a period of 9 months or till the final examination of his children are over.

6.9 That the departmental rules and guidelines of the department also clearly laid down that transfers and postings should generally be made in April of each year so that the education of school going children of employee is not dislocated. The relevant portion is quoted below from the Posts and Telegraphs Manuals :

~~37-A Transfers should generally be made in April of each year so that the education of school going children of the staff is not dislocated. In "emergent cases or cases of promotion this restrictions will naturally not operate".~~

From above, it appears that the respondent did not follow the the above instructions/guidelines of transfer and postings. Moreover, nobody is yet replaced or posted in the place of the applicant and therefore there cannot be any difficulty for the respondents to accommodate the applicant at least for a period of 9 months at the present place of posting.

Ajoy for Lihau

6.10. That this application is made bonafide and for the ends of justice.

7. Reliefs prayed for :

Under the facts and circumstances the applicant prays for the following reliefs :-

1. That the transfer and posting order issued under letter No. STES-15/3 (Loose-11)/2 dated 17.08.95 & Letter No. E-27/T&P/79 dated 22.8.95 be set aside and quashed.
2. That the respondents be directed to allow the applicant to continue in the present place of posting at Silchar for at least 9 months or till the final examination of his children are over.
3. To pass any other order/orders as deemed fit and proper under the facts and circumstances of the case.

The above relief prayed on the following amongst other -

- G R O U N D S -

1. For that the transfer & posting order passed in total violation of the departmental rule/guideline i.e. in the middle of the academic session of the children of the applicant.

Ajoykrishna

2. "or that the son & daughter are appearing in final B.Sc. & H.S.L.C. examinations in the month of June/July 1996 & March 1996 therefore dislocation of his family at this stage will cause irreparable loss to the education of his children.

3. For that as a consequence of transfer and posting order the applicant is required to vacate the Govt. accommodation which will further cause irreparable loss to the education of his children.

4. "or that the applicant is ready to carry out his transfer & posting order as soon as the final examination of his son and daughter are over.

5. For that there 3 more post of Junior Accountant are lying vacant at Silchar under the C.G.M.T. Guwahati.

8. Interim reliefs prayed for :

During the pendency of the application the applicant prays for the following interim relief

1. That the transfer and posting order dated 17.8.95 and 22.8.95 (Annexure-1 and 2 be stayed till final disposal of this application and the applicant be allowed to continue at Silchar.

The above reliefs are prayed on the grounds explained in para 7 of this application.

Ajoy Kr. Sinha

9. That the applicant has not riled any other application in any other Court/Tribunal.

10. That the applicant declares that all the remedy available have been exhausted by him. The Hon'ble Tribunal is the only remedy.

11. Particulars of the Postal Order :

Postal Order No. : 09 32731

Date of Issue : 14.9.95.

Issued from : G.P.O., Guwahati

Payable at : G.P.O., Guwahati

12. An Index of documents is enclosed.

13. Documents enclosed

*s per Index.

It is with

Ajoy Kumar Saha

V E R I F I C A T I O N

I, Shri Ajoy Kr. Sinha, Son of late D. Sinha, working as Junior Accountant under the office of the Telecom. District Engineer, Silchar do hereby declare and verify that the statements made in this application are true to my knowledge and belief and I have not suppressed any material facts.

And I sign this verification on this the day of September, 1995.

Ajoy Kr Sinha

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X

ANNEXURE -1

Government of India
Department of Telecommunications
Office of the Chief General Manager, Assam
Telecom Circle, Ulubari, Guwahati-781007.

No. STES-15/3 (Soose+11)/2 Dated at Guwahati the 17.
95.

The Chief General Manager, Assam Circle, Guwahati
is pleased to issue the following orders of transfer
and posting in the cadre of Junior Accountant in the
interest of service to have immediate effect.

Shri A.K. Sinha, Junior Accountant O/o T.D.E.
Silchar is transferred and posted as Junior Accountant
to the office of the T.D.E. Nagaon.

Normal charge report may be sent to all concerned

Sd/- K.S.K. Prasad Sarma
Asstt. Director Telecom (Staff)
O/o Chief General Manager,
Assam Telecom Circle, Guwahati

Copy to :

1. The A.M.T., Guwahati
2. The T.D.E., Silchar. He is requested to release the official immediate.
3. The T.D.E. Nagaon.
4. The D.F.A., C.O. Guwahati
5. The C.A.O., C.O. Guwahati
6. The Official concerned. Shri A.K. Sinha, Junior Accountant, O/o T.D.E., Silchar.
7. P.F. of Official
8. Guard File
9. Spare

Ajoyker Sinha

Sd/- 17.8.95
For Chief General Manager
Assam Telecom. Circle, Guwahati

AM 7/ed
Ajoyker
Sinha

ANNEXURE - 2

DEPARTMENT OF TELECOMMUNICATIONS
 OFFICE OF THE TELECOM DISTRICT MANAGER
 SILCHAR, ~~788001~~ 788001

No. E-27/T&P/79

Dated at Silchar, the 22.8.95

In pursuance of the C.G.M.T., Assam Circle, Guwahati Memo No. STES-15/3 (Loose-II)/2 dated 17.8.95 the following orders of transfer and posting in the cadre of Junior Accountant is issued in the interest of service to have immediate effect.

Shri A.K. Sinha, Junior Accountant o/o the TDE/Silchar is transferred and posted as Junior Accountant to the office of the TDE Nowgang.

The official may apply for TA/DA if required.

Sd/-

TELECOM DISTRICT ENGINEER
 SILCHAR-788001

Copy to :-

1. The C.G.M., Telecom, Assam Circile Guwahati-7 for favour of kind information with reference to above.
2. The Area Director Telecom, Rajgarh Road, Guwahati-7 for favour of kind information.
3. The Accounts Officer (cash) o/o the TDE/Silchar. He is requested to release the official immediately.
4. The D.F.A. o/o the CGMT/Guwahati for favour of information.
5. The C.A.O/o/o the CGMT/Guwahati for favour of kind information.
6. Sri A.K. Sinha, Junior Accountant under A.O. (Cash) o/o the TDE/Silchar.
7. Personal file of the official concerned
8. Office Copy
9. Spare.

Sd/-

TELECOM DISTRICT ENGINEER
 SILCHAR-788001

*Approved
 A.H. Chakraborty
 P.W.*