

30/100  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 126/95.....

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH  
GUWAHATI

ORIGINAL APPLN. NO. 126 OF 1995  
TRANSFER APPLN. NO. OF 1995  
CONTEMPT APPLN. NO. OF 1995 (IN OA NO. )  
REVIEW APPLN. NO. OF 1995 (IN OA NO. )  
MISC. PETN. NO. OF 1995 (IN OA NO. )

Sukanta Kumar Dhar. APPLICANT(S)

Ministry of India. ResONDENT(S)

FOR THE APPLICANT(S)

...MR.  
MR.  
MR.  
MR.

Ranjit Das

FOR THE RESPONDENTS

...MR. S. Ali, Sr. CSSC

OFFICE NOTE DATE

7-7-95

ORDER

Learned counsel Mr. Ranjit Das for the applicant, Sri S.K. Dhar. Learned Sr. C.C.S.C. Mr. S. Ali has received copy of the application and seeks to appear for the respondents.

The applicant is a U.D.A. in Assam Rifles, Silchar. He had been transferred vide Sig. No. A 2902 dated 31-1-95 and he submitted representation dated 4-2-95 to retain him in Silchar due to illness of his wife who is suffering from Cancer (Annexure 7). His order of transfer was modified and he was posted to 13 A.R. for two years on medical ground due to illness of his wife in place of 7 A.R. (Annexure 8) and he has been ordered to complete movement within 20-7-95 (Annexure 9). He contented that the fact that his wife is under treatment of Cancer is known to the respondents. There is no facility of such treatment in Imphal or in Nigini Mara, Nagaland but in Silchar. She is under treatment in the Cachar Cancer Hospital Society. Therefore his contention is that he should be retained in Silchar so that his

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

Seal

.....

contd/-

2  
O.A.126/95.

21/7/95

7-7-95

wife can receive treatment.

Heard counsel of the parties on the question of admission of this application. Issue notice on the respondents to show cause why this application should not be admitted and relief sought allowed returnable on 21-7-95. List on 21-7-95 for show cause and consideration of admission.

Heard counsel for parties regarding interim relief prayer. Mr.S.Ali opposes the interim relief. Issue notice on the respondents to show cause why interim relief prayer should not be granted returnable on 21-7-95.

Pending disposal of the show cause operation of the impugned order dated 6-6-95 (Annexure 8) and impugned order No.VIII. 13013/18/A/95/511 dated. 22-6-95(Annexure 9) is hereby stayed, List on 21-7-95 for show cause and consideration of interim relief prayer. Liberty to respondents to seek vacation of the stay order in the meantime.

List on 21-7-95 for show cause, admission and further order.

Copy of order be furnished to the counsels of the parties.

6  
Member 7-7-95

7-7-95

- 1) Service reports are still awaited
- 2) show cause should be filed

20/7

21.7.95. Show cause has not been received.

List on 28.7.1995 for disposal of show cause and consideration of admission.

Interim order dated 7.7.95 continues till disposal of show cause.

Issue order dtd. 21.7.95  
immediately to all  
concerned.

21/7/95

*60*

Member

PG

Order d. 21.7.95 is issued  
from. 3195-308-21.7.95

28.7.95

Learned counsel Mr R. Das for the applicant.

Mr S. Ali, learned Sr. C.G.S.C., for the respondents.

No show cause has been received for admission as well as for interim relief prayer in response to order dated 7.7.1995.

Heard learned counsel for admission and perused the application submitted by the applicant. The application is admitted. Issue notice on the respondents by Registered Post. Written statement to be filed on 8.9.95 as prayed by Mr Ali.

Heard counsel for the parties on the interim relief prayer. Pending disposal of the application the operation of the impugned order dated 6.6.1995 (Annexure-8) and impugned order No. VIII.13013/18/A/95/511 dated 22.6.1995 (Annexure-9) are stayed. The respondents are given liberty to apply for variation or cancellation of this interim order if so advised.

By Order:

*Mr. 28/7/95*

okm

*Mr. 31/7*

*60*  
Member

Show cause has not been issued.

28/7/95

Show cause has not been issued.

28/7/95

Copy of the order to be furnished to the counsel for the parties.

By Order:

*Mr. 28/7/95*

okm

*Mr. 31/7*

*60*  
Member

(5)

Order of 28.2.95. contd  
 to Counsel v. no. 3428-29  
 D. 2-8-95...

8.9.95.

Learned counsel Mr R.Das for the applicant is present. None is present for the respondents. Written statement has not been submitted.

Adjourned to 3.11.1995.

60  
Member

Requisition to show cause has already been sent. Notice w/o copy & association of all respondees issued w/o adjournment  
 Mr 3418-20 D. 2-8-95 pg

10.11.95

Counsel of the parties are present. Written statement has not been submitted. Since this is a transfer matter list for hearing on 8.12.95 In the meantime the respondents are directed to submit written statement with copy to the counsel of the applicant.

60  
Member

Notice duly served  
 on P. no. 1, 2 & 3.

60  
24/18

w/statement has not  
 been submitted

pg

3.11.95

8.12.95

Counsel of the parties are present. Learned Sr.C.G.S.C Mr Ali seeks further adjournment for filing written statement.

Adjourned to 5.1.96 for hearing.

60  
Member

w/statement has not  
 been submitted

pg

(3) O.A. 126/95

W/statement, his and  
sum filed

5.1.96

Counsel of the parties are present.  
Hearing adjourned to 9.2.96 on  
the request of learned Sr.C.G.S.C Mr S.  
Ali. Mr R.Das has no objection.

(60) Member

29.1.96

pg

9-2-96

Mr.S.

9-2-96

Learned Sr.C.G.S.C. Mr.S.Ali  
is present. Hearing adjourned to 15-3-96.

(60) Member

lm

15.3.96

Mr R. Das, learned counsel for the applicant  
is present. None is present for the respondents.  
No written statement has been submitted till  
now though the application was admitted as far  
back as on 28.7.1995. In the circumstances an  
adverse inference can be drawn against the  
respondents. However, as a last opportunity the  
hearing of this O.A. is adjourned to 24.4.96. The  
respondents may in the meantime submit the  
written statement, if so desire, with copy to  
the counsel for the applicant.

Inform the respondent No.2, Director General,  
Assam Rifles, Shillong.

(60) Member

nkm

30.4.96

W/s submitted  
to the Regd. 1, 2, 3 & 4.

(60) Member

25.4.96

Mr S. Ali, learned Sr. C.G.S.C.,  
for the respondents.

List on 65.5.96 for hearing.

*60*  
Member

nkm.

6.5.96

Mr R.Das for the applicant and M  
S.Ali, Sr.C.G.S.C for the respondents are  
present.

Written statement has been submitted  
and copy served on Mr Das today. Mr  
Das seeks short adjournment for considera-  
tion of the written statement. Time  
allowed.

Hearing adjourned to 9.5.96.

*60*  
Member

pg

9.5.96

Mr R.Das for the applicant is  
present. However, Mr A.Ahmed seeks adjour-  
nment on behalf of Mr S.Ali due to his  
indisposition. Mr Das desires to have a  
longer adjournment due to personal rea-  
sons.

Hearing adjourned to 14.6.96.

*60*  
Member

1) Notices duly served  
on O.P. Nos 1-3

2) W/Statute - by Ban  
J.W.

pg

18-6-96

Mr.S.Ali Sr.C.G.S.C. is present.  
List for hearing on 27-6-96.

*60*  
Member

lm

QA/TA/CP/RA/MP No. 19 of 19 O.A.No.126/95

OFFICE NOTE

DATE

ORDER

26.6.96

Hearing be taken up tomorrow, 27.6.96, as originally fixed.

60  
Member

nkm

27.6.96

Learned counsel Mr. R. Das for the applicant. Learned Sr. C.G.S.C., Mr S. Ali, for the respondents.

Counsel for the parties have completed their submissions. Hearing concluded. Judgment reserved.

60  
Member

nkm

2.7.96

None present. Judgment pronounced. Application is disposed of in terms of the direction in the order. No order as to costs.

60  
Member

pg

top 2/2

5.8.96  
 Copy of final  
 order issued to  
 the parties. Nucle

D. No. 2444 to 2448  
 D, 8.8.96.

kh  
5/8

QA/TA/CP/RA/MP No. 0149

OFFICE NOTE	DATE	ORDER	X

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 126/95  
T.A. NO.

DATE OF DECISION 2-7-1996.

SHRI SUBRATA KUMAR DHAR

(PETITIONER(S))

SHRI RANJIT DAS

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT (S)

SR. C.G.S.C. MR.S.ALI

ADVOCATE FOR THE  
RESPONDENT (S)

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

1. Whether Reporters of local papers may be allowed to see the Judgment ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ? *No.*

Judgment delivered by Hon'ble

ADMINISTRATIVE MEMBER

*Ganguly*  
2/7/96

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.126/1995.

Date of Order: This the 2nd Day of July 1996.

HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri Subrata Kumar Dhar,  
Son of Shri Sudhir Ranjan Dhar,  
Upper Division Assistant.  
Office of the Commandant.  
No.2 Maintenance Group, Assam Rifles,  
C/o.99 A.P.O.(Quarter No.143.Type III).  
Jail Road, Silchar.  
District: Cachar, Assam. . . . . Applicant.

By Advocate Shri Ranjit Das.

-Versus-

1. The Union of India,  
represented by the Secretary to the  
Government of India,  
Ministry of Home Affairs.  
New Delhi.
2. The Director General of Assam Rifles,  
Shillong, Meghalaya.
3. The Deputy Director(Administration),  
Office of the Director General of Assam Rifles,  
Shillong, Meghalaya.
4. The Deputy Commandant, Adjutant No.2 Maintenance  
Group, Assam Rifles, C/O 99 A.P.O.  
Jail Road, Silchar,  
District:Cachar, Assam. . . . . Respondents.

By Advocate Mr.S.Ali, Sr.C.G.S.C.

O R D E R.

SANGLYINE, MEMBER(A)

The Applicant is aggrieved with his order of transfer dated 6-6-1995 transferring him to Nagnimara, Nagaland. It had not been shown by the learned counsel of the applicant that any rule or guideline of transfer existing in the organisation had been violated by the

contd/-

2.7.96

respondents in issuing the impugned order of transfer.

Sri Das however submitted that malafide was behind the issue of the transfer order. This according to him would be evident from the frequent transfers in the case of the applicant and the rejection of the request of the applicant to remain in Silchar despite the fact that the applicant had given medical treatment of his wife, who is suffering from cancer as a ground in support of his request.

2. I have perused the records of this O.A. and heard the contentions of the learned counsels of both sides. I do not find any substance in the contention that the frequent transfers in the case of the applicant are evidence of malafide on the part of the respondents. The written statement of the respondents has disclosed that in many occasions the transfers were made on request of the applicant and in the major portion of his career he enjoyed soft station postings. These were not rebutted by the applicant.

In fact, it is seen that in January, 1991 he was transferred to Kiphire, Nagaland but perhaps on his own request, the applicant was again transferred to Silchar in March, 1991 the place where he is continuing till to-day. In 1995 he was transferred to Manipur area but on his request on the ground of illness of his wife the order of transfer was modified and posted to Nagnimara. Thus the contention that there is malafide because of frequent transfers is unacceptable.

3. It is not the case of the respondents that the applicant had not complied with the guidelines regarding compassionate postings. On the other hand the respondents admitted that the modification from 7 AR to 13AR was on humanitarian

contd/-

2-7-96

consideration for they accepted the plea of the applicant that it would be more convenient for his wife to attend Tata Memorial Hospital, Mumbai if he was posted in a place nearer to rail head. It is not understood however why their humanitarian consideration should have fallen short of expectation and given rise to agitation before this Tribunal in the facts of this case. If the respondents are keen for the well being of their employees, it was necessary in this case for them to ascertain whether the wife of the applicant was actually suffering from Cancer as stated by him. If it is found to be true, they would next consider whether transferring the applicant to Nagnimara would give more solace or relief to him and his wife than retaining him in Silchar. Perhaps no one would dispute that there are better and more medical facilities in Silchar than in Nagnimara. It will not be insurmountable for the respondents to adjust their administrative needs if they find that the personal problems of the applicant is genuine and deserving.

4. This Tribunal would not ordinarily interfere on plea of personal difficulties in matters of transfer. However, in the facts of this case, I direct the respondents to reconsider the case of the applicant afresh on merit and at their discretion. This exercise may be completed early but not later than two months from the date of receipt of this order by the respondent No.2. The applicant shall not be moved out till completion of such exercise.

The application is disposed of.

No order as to costs.

  
2/7/96  
(G.L.SANGLYINE)  
ADMINISTRATIVE MEMBER

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE  
TRIBUNAL ACT, 1985.

Filed by  
Shri Subrata Kr.Dhar  
Guru Nanak  
17  
6/7/95  
Advocate for the Applicant

Title of the case : Shri Subrata Kr.Dhar ... Applicant

- Versus -

Union of India & ors ... Respondents

OA 126/95

I N D E X

S. No.	Description of documents relied upon	Page Nos
1. Application	-	1 to 13
2. Impugned orders	-	22 to 23
3. Documents -	-	14 to 24
4. Other documents	-	nil
5. Vakalatnama	-	yes
6. Notice	-	yes

Subrata Kr Dhar  
Signature of the  
Applicant

For use in Tribunal's office :

Date of Filing or  
date of receipt by post ...

Registration No. ...

Signature  
for Registrar

P.T.O.

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWATI BENCH.

O.A.No. 126 of 1995.

Shri Subrata Kumar Dhar,  
Son of Shri Sudhir Ranjan Dhar,  
Upper Division Assistant,  
Office of the Commandant,  
No. 2 Maintenance Group, Assam Rifles,  
C/o 99 A.P.O. (Quarter No. 143, Type III),  
Jail Road, Silchar,  
District : Cachar, Assam.

... APPLICANT

- Versus -

1. The Union of India,  
represented by the Secretary to  
the Government of India,  
Ministry of Home Affairs,  
New Delhi.
2. The Director General of Assam Rifles,  
Shillong, Meghalaya.
3. The Deputy Director (Administration),  
Office of the Director General of  
Assam Rifles, Shillong, Meghalaya.
4. The Commandant, No. 2 Maintenance Group,  
Assam Rifles, C/o 99 A.P.O.,  
Jail Road, Silchar,  
District : Cachar, Assam.

... RESPONDENTS

DETAILS OF APPLICATION :

1. Particulars of the order against which the application is made :

- (a) Posting on transfer vide order No. A 2972,

dated ...

dated 6.6.95 (passed by Col.G.P.S.)

Bedi, Deputy Director (Administration)

'A' Branch, Office of the Director

General of Assam Rifles, Shillong,

Meghalaya) to 13 A.R. i.e. at Nagnimara

in Mon District of the state of Nagaland

in modification of order of earlier

transfer to 7 A.R. i.e. at Imphal

in the state of Manipur.

(b) Posting on transfer vide order No.VIII.  
13013/18/A/95/511, dated 22.6.95 (passed  
by Shri G.N.Kala, Deputy Commandant  
Adjutant, in the office of the Commandant  
No. 2 Maintenance Group, Assam Rifles,  
Silchar) to 13 A.R. i.e. at Nagnimara  
in the Mon District of Nagaland instead  
of 7 A.R. i.e. at Imphal in the state of  
Manipur directing to move by 2.7.95 to  
20.7.95 without waiting relief and  
further directing to submit clearance  
certificate completed to 'A' Branch by  
10.7.95 for issue of necessary movement  
order.

## 2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter  
of the orders against which he wants redressal is within  
the jurisdiction of the Tribunal as per provisions under  
section 14 (1) of the Administrative Tribunals Act, 1985.

## 3. Limitation :

The applicant further declares that the ~~application~~  
application is within the limitation period prescribed  
in section 21 of the Administrative Tribunals Act, 1985 and  
also due to urgency of the matter fixing 10/7/95 as  
the last date.

## 4. Facts ...

Subrahmanian Srinivasan

4. Facts of the case :

(A) That the applicant after passing P.U.- (Arts) Examination in 1965 from the Gauhati University got appointed as Lower Division Assistant/in the office of the Commandant Assam Rifles at Aizawl in the state of Mizoram and continued as such upto August, 1968. That he was transferred and posted in the same capacity in Imphal in August, 1968 and continued ~~work~~ there upto March, 1976. Subsequently the applicant was transferred as L.D. Asstt. in the 15th Assam Rifles, Zunheboto, Nagaland. The applicant joined in time and continued till June, 1981. Then the applicant was again transferred to Ghaspani in Nagaland and he ~~work~~ worked there till June, 1985. At this stage the applicant was promoted to the post of Upper Division Assistant in the office of the D.I.G., Assam Rifles, Headquarter Nagaland Range (South) Kohima. The applicant joined there in June, 1985 and worked there till December, 1989 whereafter he was transferred to 27th Assam Rifles at Teliamore at Tripura where he worked till December, 1990. Thereafter in January, 1991 the applicant was asked to move to Kiphire in Nagaland. The applicant joined at Kiphire in June, 1991 and worked upto March, 1991. When he was transferred and posted to the office of the Commandant, No. 2 Maintenance Group of Assam Rifles at Silchar and the application is still working there.

(B) That the applicant states that during the whole tenure of service i.e. from 1966 to 1991 for about 25 years, the applicant was put to frequent transfers i.e. as many as ~~15~~<sup>7 (seven)</sup> times, which the applicant always duly complied with and never made any prayer whatsoever at

any point ...

any point of time for stay/cancellation of his transfer orders. The service career of the applicant is full of appreciations inasmuch as all the concerned Authorities under whom the applicant has the occasion to serve were satisfied at the sincerity, integrity and devotion of the applicant.

(C) That the applicant states that while he was working at Silchar his wife Smti Ratna Dhar fell ill. She was then treated at the Silchar Medical College & Hospital (Hospital No. 078420) from 30.10.92 and after examination and investigation, the disease was preliminarily diagnosed as Ovary Cancer and consequently with the Referral Board of S.M.C & Hospital and approval from the Director of Health Services, Assam, she was shifted to Tata Memorial Hospital at Bombay-12 where she was examined and treated from 14.12.92 vide Case No. BE No.24518. She was then administered 3(three) courses of Camo-therapy and was released with advice to come after 3 months for check-up.

The petitioner further states that she was taken to Bombay for the second time and after admission in the Hospital was operated on 14.5.93. After operation again 3(three) courses of camo-therapy were administered and she was released on advice to come after three months. As per advice of the attending Doctors of the Hospital thereafter the applicant took her there in September, 1993, December, 1993 and March, 1994. The applicant, thereafter could not go with her in June, 1994 (which was due) but ~~latter~~ went in October, 1994 instead and after check-up came with advice to go in February, 1995. The applicant went with her

in February...

Subreeta K. Dhar

in February, 1995 and this time the Doctor advised that she should be brought up for check-up in August, 1995 next.

True photocopies of the Medical certificates and papers are annexed herewith and marked as Document No. 1, 2, 3, 4, 5 and 6 respectively.

(D) That the applicant states that again he was transferred vide Sig. No. A-2902, dated 31.1.95 passed by the Respondent No. 2 and as such, he made a representation on 4.2.1995 and prayed for cancellation of transfer order on the medical ground of his wife, who is suffering from cancer and prayed to allow him to stay at Silchar upto March, 1996.

True copy of the aforesaid representation dated 4.2.95 is annexed herewith and marked as Document No. 7.

(E) That the applicant states that vide order No. 2972, dated 6.6.95 passed by the Respondent No. 3 modifying his transfer ~~xxx~~ and posting to 7 A.R. i.e. at Imphal to 13 A.R. i.e. at Nagnimara in Mon district of Nagaland, without considering his representation dated 4.2.95.

Thereafter vide order No. VIII-13013/18/A/95/511, dated 22.6.95, passed under orders of Respondent No. 4, the applicant ~~xxx~~ was transferred and posted at Nagnimara in the Mon district of Nagaland instead of 7 A.R. i.e. at Imphal in Manipur directing to move by 2.7.95 to 20.7.95 without waiting relief and further directing to submit clearance ...

Subroto Banerjee

~~marking~~

clearance certificate to 'A' Branch by 10.7.95 for issue of necessary movement orders.

True copies of the aforesaid transfer orders dated 6.6.95 and 22.6.95 are annexed herewith and marked as Documents No. 8 and 9 respectively.

(F) That the applicant states that Dr. H. B. Bongaonlear, Asstt. Surgeon of Tata Memorial Hospital vide certificate dated 16.2.95 (Document No. 6) advised that his wife's ailment was diagnosed as a case of Caranoma of Ovary ~~which~~ for which she was treated with surgery and chemo-therapy in 1993. She requires close monitoring at short regular interval. As such, it is advised to be near a place which has a cancer centre and avoid strenuous bus-journey. She also needs evaluation of her disease status at Tata Memorial once in 4-6 months.

Keeping that in view she was kept under the Cachar Cancer Hospital Society at N.S. Avenue, Silchar-5 for regular Check-up at regular interval for considerable period. A certificate dated 30.6.95 from Mr. C. Choudhury, General Secretary of the Society which would amply clarify this point is annexed herewith.

True copy of the aforesaid certificate dated 30.6.95 is annexed herewith and marked as Document No. 10.

(G) ...

Bhaktapur Chowk

49

(G) That the applicant ~~sakar~~ submits that in the place of his transfer i.e. at Naginimara in Mon district of Nagaland, there is no such medical facility and as such she cannot be taken there neither she could be kept at Silchar in absence of the applicant at this critical stage

The applicant further submits that there will be no dislocation of official inconvenience if the operation of ~~2~~ /impugned Transfer orders ( i.e. at Document No. 8 and 9) are stayed by this Hon'ble Tribunal for the sake of proper treatment of his wife, on humanitarian ground.

(H) That the applicant begs to submit that ~~khak~~ the matter being extremely urgent owing to finality of the impugned orders which would come ~~to~~ into force on and from 10.7.1995, it is a fit case where your Lordships' would be gracious enough to interfere on humanitarian ground in the interest of justice, otherwise great loss and injury would be caused to the applicant and the same cannot be compensated by money.

(I) That the applicant's family consisting of a schoolgoing son and a school going daughter with his ailing wife and there is no other able-bodied male member in the family to look after his wife at this critical stage of her health.

(J) That this application is made bonafide and in the interest of justice.

#### 6. Grounds for relief with legal provisions.

(I) For that the applicant having an exemplary

clean ...

clean service records and having been found to be dependable, disciplined and sincere employee of the Respondents, the Respondents acted arbitrarily and discriminatorily in not considering the grave circumstances under which the applicant has been subjected to as ~~him~~ a result of ~~him~~ passing of the impugned order, the impugned orders are liable to be set aside and quashed.

(II) For that throughout the whole service career this applicant having been subjected to frequent transfers, however, on public interest, and the applicant having duly complied with all these orders, the inaction of the Respondents in considering the ~~app~~ representation for not transferring him for a limited period of 6(six) ~~or so~~ months, the same is vitiated for total non-application of mind, and as such the same is liable to set aside and quashed.

(III) For that the wife of the applicant being a patient of advanced cancer and being under constant ~~medical~~ medical check-up, and the applicant having prayed for stay of his transfer from Silchar for a limited period so that his wife could get medical attendance of Silchar Medical College & Hospital including that of Cachar Cancer Hospital Society inasmuch as the place of transfer of the applicant is a remote place of Nagaland where such

facilities ...

facilities are not available and, as such, the Respondents ought to have considered the prayer of the applicant on humanitarian ground.

(IV) For that the Respondents acted illegally, arbitrarily and discriminatorily in forcing the applicant to move to Naginimara in Mon district of Nagaland knowing fully well that the same shall result in death of the wife of the applicant for lack of medical facility more so when there is no exigency for such transfer, and in this view of the matter the impugned transfer orders at Document No. 8 and 9 are liable to be set aside and quashed.

(V) For that the impugned orders not having been passed in public interest the same is arbitrary and unfair

(VI) For that the impugned orders are violative of Article 14 and 21 of the Constitution of India.

#### 6. Details of the remedies exhausted :

The applicant declares that the applicant had filed representation before the Respondent No. 2 on 4.2.95 which received no consideration whatsoever. Rather the Respondent No. 2 and 3 have implidely rejected the same by directing immediate release of the applicant from his present place of Posting on or before 10.7.95 positively. Since the matter is very urgent the instant application is filed. Copy of the representation dated 4.2.95 is annexed herewith as Document No. 7.

7. Matters ...

**7. Matters not previously filed or pending with any other court :**

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

**8. Relief(s) sought :**

In view of the facts mentioned in paragraph 6 above, your Lordships' may be pleased to pass necessary orders directing the Respondents to withdraw, recall or otherwise ~~from~~ forebear ~~for~~ giving effect to the impugned transfer & posting orders No. A 2972 dated 6.6.95 (Document No. 8) and Order No. VIII. 13013/18/A/95/511, dated 22.6.95 ~~passed by~~ fix (Document No. 9) and after hearing the parties be further pleased to quash the said impugned orders dated 6.6.95 and 22.6.1995 (Document Nos 8 and 9) and/ or pass such other order/orders as to your Lordships' may deem fit and proper for violation of the provisions of Article 14 and 21 of the Constitution of India.

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

**9. Interim order, if any prayed for :**

Pending final decision on the application,  
the applicant...

the applicant seeks the following  
interim order :

It is further prayed that your  
Lordships may further be pleased to  
stay the operation of the impugned orders  
dated 6.6.95 and 22.6.95 (Document No. 8  
and 9) of this Application, in the interest  
of justice on humanitarian ground for the  
sake of saving the life of his ailing wife  
in particular(cancer patient) and for  
saving the family in general.

10. In the event of application being sent by registered  
post, it may be stated whether the applicant desires  
to have oral hearing at the admission stage and if so,  
he shall attach a self-addressed Post Card or Inland letter  
at which intimation regarding the date of hearing would be  
sent to him.
11. Particulars of Bank Draft/Postal Order filed in respect  
of the application fee -
- (a) Number of Indian Postal Order - B 03 885798
  - (b) Name of the issuing PostOffice - Gauhati Head Post Office
  - (c) Date of issue of Postal order(s) - 6/7/95.
  - (d) Post office at which payable - Guwahati.

Anubhav Kumar Ghor

12. List of enclosures :-

- 1) Document No. 1 - Referral letter of Board of Silchar Medical College Hospital No. SMCH/10/88/278, dated 4.11.92.
- 2) Document No. 2 - Tata Memorial Hospital, Bombay's prescription dated 14.12.92.
- 3) Document No. 3 - Tata Memorial Centre Patient Card No. BE - 24518 dated 14.12.92.
- 4) Document No. 4 - Discharge Summary of Tata Memorial Hospital, Bombay-12.
- 5) Document No. 5 - Advice Slip in Form No. 7 of Dr. H. B. Tongaonkar advising the patient to come to the Hospital on 14.8.95 at 2 P.M. next for evaluation treatment.
- 6) Document No. 6 - Certificate dated 16.2.95 of Dr. H. B. Tongaonkar advising the patient to be requiring close monitoring.
- 7) Document No. 7 - Representation addressed to Director General of Assam Rifles, Shillong-11 dated 4.2.1995.
- 8) Document No. 8 - Impugned order No. A-2972 dated 6.6.95 issued by Col. G. P. S. Bedi, DD (A) 'A' Branch, D.G.A.R. Shillong.
- 9) Document No. 9 - Impugned order No. VIII-13013/18/A/95/511, dated 22.6.95 issued by G. N. Kala By. Commdt. Adj't., Office of the Commandant, No. 2 Maintenance Group, Assam Rifles, Silchar.
- 10) Document No. 10 - Certificate No. CCHS/SIR/29, dtd. 30.6.95 issued by Dr. Chinmoy Choudhury, General Secretary of the Cancer Hospital Society, N.S. Avenue, Silchar-5.

VERIFICATION ...

VERIFICATION

I, Shri Subrata Kumar Dhar, son of Shri Sudhir Ranjan Dhar, aged about 51 years, working as Upper Division Assistant in the office of the Commandant, No.2 Maintenance Group, Assam Rifles, C/o 99 A.P.O. at Jail Road, Silchar in the district of Cachar, Assam, do hereby verify that the contents of paragraphs

4(A) to 4(F) are true to my

personal knowledge and paragraphs 6(I) to 6(VI)

believed to be true on legal advice  
and that I have not suppressed any material fact.

Date : 6.7.1995.

Place : Guwahati.

Subrata Kumar Dhar  
Signature of the Applicant

...

To

The Registrar,  
Central Administrative Tribunal,  
Gauhati Bench,  
Bhangagarh, Guwahati-781005.

...

Office of the Director, Silchar Medical College Hospital,  
Guwahati, Assam, 781001  
SILCHAR.

NO. SMCH/16/88/ 278 Dated Silchar, the 6/11/92.

This is to certify that Shri/Smti Ratna Dhar age 35 years ~~is~~ <sup>daughter</sup> of ~~husband~~ wife of Shri/Smti Subrata Dhar ~~treats as~~ <sup>outdoor/</sup> indoor patient vice Hospital No. 078420 dated 31-10-92 is suffering from polypoid mucinous epipharyngeal polyp. He/She may require further investigation and treatment at Tata Cancer Institute, Mumbai as the facilities is not available within the State of Assam. He/She may be accompanied with an escort.

This has been approved by the Referral Board, Silchar Medical College Hospital, Silchar, Assam.

(Dr. M. K. DAS)

4/11/92

1. (Dr. R. BISHNUKH) Prof. & Head of the Deptt. of Surgery, Silchar Medical College Hospital, Silchar.

(Dr. S. K. DAS)

2. (Dr. A. K. BHATTAGHARJEE) Professor of Medicine, Silchar Medical College Hospital, Silchar.

3. (Dr. S. K. SAHA)

Superintendent, Silchar Medical College Hospital, Silchar.

4. (Dr. D. DUTTA, Prof. & Head of the Department of O & G, S.M.C.H.)

Principal

&

Chairman,

Referral Board,  
Silchar Medical College Hospital,  
Silchar, Assam.





ADVICE TO : Family Physician (Including advice on chemotherapy)

Cap. spondyl 100 x 100g

Cap. Beashe 100

R/s

Friday 2/11

J. RAKHET

Follow up

Date of Exam	Status	Treatment Advised
After 6/11/05		

Document No. 4.

-17-

Tel. : 4129750

**TATA MEMORIAL HOSPITAL**  
(TATA MEMORIAL CENTRE)

DR. ERNEST BORGES MARG, PAREL, BOMBAY-400 012.

**DISCHARGE SUMMARY**

NAME Mrs Dhen.

AGE 35 SEX F CASE No. BE 24578

SERVICE G. U.

SURGEON M. R. Kanal -

**FINAL DIAGNOSIS**

SITE OF PRIMARY Ovary

HISTOLOGY

INVESTIGATIONS

Hb

WBC

BIOCHEMISTRY

X-RAY CHEST

OTHER RADIOLOGICAL INVESTIGATIONS : \_\_\_\_\_

SPECIAL INVESTIGATIONS

ENDOSCOPY :-

Biopsy : \_\_\_\_\_

NED

ECG

URINE

- 18 -

SURGERY

DATE OF OPERATION 12/5/93

PROCEDURE : Hysterectomy & (R) salpingectomy &

OPERATIVE FINDINGS : (L) salpingo oophorectomy & omentectomy

HISTOPATHOLOGY : PRIMARY \_\_\_\_\_ NODE \_\_\_\_\_

OTHER MET \_\_\_\_\_

RADIOTHERAPY CURATIVE / PALLIATIVE

SITE \_\_\_\_\_ FROM \_\_\_\_\_ TO \_\_\_\_\_

UNIT \_\_\_\_\_ TOTAL DOSE \_\_\_\_\_ CGYS \_\_\_\_\_ Fr \_\_\_\_\_ DAYS

BRACHYTHERAPY : INTRACAVITORY / INTERSTITIAL

TOTAL DOSE \_\_\_\_\_ RADSAT \_\_\_\_\_ CGYS/HOUR IN \_\_\_\_\_ HRS.

CHEMOTHERAPY-PROTOCOL

NO. OF COURSES PLANNED \_\_\_\_\_

NO. OF COURSES GIVEN IN T. M. H. \_\_\_\_\_

Document No. 5.

50.000 NP /7/92

Form No. 7

-19-

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## TATA MEMORIAL HOSPITAL

DR. ERNEST BORGES MARG.  
PAREL, BOMBAY-400 012.

Name Mrs Dhar No. BE 24518

Please come to the Hospital and bring this slip with you

on 14. 8. 95 at 2pm

for evaluation treatment.

IF UNABLE TO COME AT THIS TIME PLEASE WRITE TO THE HOSPITAL

DR. H. B. TONGAONKAR

Patient Must Present This Ticket At the Out Patients Department

*After 8  
2  
6/7/95*

TATA MEMORIAL HOSPITAL  
(TATA MEMORIAL CENTRE)

- 20 -

Phone : 414 6750 (6 Lines)  
Telex : 011-73649 TMC IN  
Fax : 022-4146937 TMC IN



DR. ERNEST BORGES ROAD,  
PAREL, BOMBAY-400 012.

16.2.95

Ms Ratna Dhar (BE 24518) was diagnosed as a case of carcinoma of ovary, for which she was treated with surgery and chemotherapy in 1993. Presently, she is free of disease but requires close monitoring of the disease status at short regular intervals. In order to accomplish this, it is advisable for her to be near a place which has a cancer centre & avoid strenuous bus journeys. She also needs evaluation of her disease status at this hospital once in 4-6 months.

Affidavit  
H.B.P.  
6/7/95

Dr. H.B. Pongaonkar  
Ass't Surgeon

-21-

From: Shri SK Dhar, UDA  
 No 2 Main Group  
 Assam Rifles  
 C/O 99 APG

To

The Director General  
 Assam Rifles  
 Shillong- 793011

Through proper channel

SUB: PRAYER FOR CANCELLATION OF TRANSFER ORDER  
ON MEDICAL GROUNDS CANCER PATIENT.

Sir,

With reference to your Dte Sig No A 2902 dated 31 Jan 95, it is submitted that I was posted to this NSAR from 27 AR on compassionate ground ( Medical treatment of my wife who was suffering from Cancer ill ) vide your Dte Sig No A 2936 dated 13 Feb 91 and physically reported on 14 Mar 91, completed 3 year and 10 months at this loc.

On Arrival at Silchar my wife is under treatment at Silchar medical college and undergone a Major Surgical operation. On Dec 92 My wife has been referred to TATA MEMORIAL CANCER HOSPITAL Bombay for necessary treatment. On May 93 again she undergone another Major Operation at Tata Hospital and confirmed that She is suffering from Cancer Since Dec 92. Since then every three months interval she used to report to TATA HOSPITAL for necessary treatment/check up. Her next date of checkup is due and proceeding to Tata Hospital on 06 Feb 95 with approval of your Dte vide Sig No A 2444 dt 16 Dec 94. At present her physical condition does not permit to undertake any bus journey. Constant medical care is required under a Cancer unit which is available at Silchar Medical College.

Her present physical condition compel me to take constant care as such it is not wise to leave her alone at my home since there is none to lookafter her except by two children who student of Central School at Silchar.

In view of fact stated above I earnestly request your honour kindly ~~permittusum~~ allow me to stay at Silchar up to Mar 1995 to enable to get the proper treatment of a CANCER PATIENT as a special case.

For the act of kindness a Cancer Patient will remain ever pray

Yours faithfully

SK Dhar  
 UDA

Date 04 Feb 95

Document No. 5

From : DMR

DTO

-22-

To : MR Range  
MP Range  
NLR (N)

UNCLAS

Info : 7 AR  
2 MGAR  
13 AR

A 2372

posting/tfr Nav/Clk/UDA (.) ref srl 32 of appx fwd vide this  
Dte A/1-A/3-95/Vol May 23 (.)

firstly (.) Shri S K Dhar comma UDA 2 MGAR stands posted to  
7 AR modified and posted to 13 AR on medical ground  
due to his wife illness for two years (.)

secondly (.) request instr 2 MGAR to carry out mov between  
02 to 20 Jul without fail (.)

thirdly (.) all ack and all info -

Col G P S Bedi, DD(A) &A' Branch Dated 06 Jun 95

Tele No : PABX 230222/ 5552

*G B S - 7*

COL

TOR

hrs

-91-

TATA MEMORIAL CENTRE

Phone : 412 9750

MORIAL CENTRE  
Document No. 3

-91-

•(TATA MEMORIAL HOSPITAL)

Name \_\_\_\_\_

MP8 · R.S. · DIFAS

**BE-24518** • D-M-B-KAMT

TUESDAY & FRIDAY 2-4 P.M.  
FOLLOW UP  
DR. H. B. TONGAONKAY  
GENITO URINARY & GYN EC

<b>BE-24518</b> <b>DR. M. P. KAMAT</b>		<b>6/3/95</b> <b>6/3/95</b> <b>Altitude</b>
<b>NAME : M.P. R.S. DIAZ</b>		
<b>NAME : M.P. R.S. DIAZ</b>		
<b>DATE : 4/10/92</b>		
<b>(TATA MEMORIAL HOSPITAL)</b>		
<b>TATA MEMORIAL CENTRE - 16 -</b>		
<b>Phone : 4129750</b>		
<b>1992</b>		
<b>Doctor No. : 3</b>		
<b>TUESDAY &amp; FRIDAY 2-4 P.M.</b>		
<b>FOLLOW UP</b>		
<b>GENITO URINARY &amp; GYN EC</b>		
<b>DR. H. B. TONGAONKAR</b>		

I O' N

'A' BRANCH

Document No.9

- 23 -

VIII. 13013/18/A/95/511

Dated 22 Jun 95

POSTING/TFR UDA/HAV(CLK)

1. Further to our ION No. VIII. 13013/18/A/95 dt 31 May 95.
2. Shri. SK Dhar, UDA has been ordered for posting to 13 AR instead of 7 AR vide DGAR sig No. A 2972 dt Jun 06. Move of indvl should be completed by 02 Jul 95 to 20 Jul 95 without waiting relief.
3. You are requested to release indvl and instr ~~to~~ him to submit clearance cert duly completed to A Branch by 10 Jul 95 for issue of necessary movement order.

325  
22/6

22/6/95

*GN Kala*  
(GN Kala)  
By Comdt  
Adjt

Fwd to :-

Ord Branch (Internal)



Document No. 10.

# THE CACHAR CANCER HOSPITAL SOCIETY

(Registered Under Society Registration Act XXI of 1860 vide No. 850 of 1992-93) -24-

Donors are exempted from Income Tax vide 80 ( G ) of Income Tax Act 1961

(Affiliated in Indian Cancer Society)

N. S. AVENUE, SILCHAR - 788005

Ref. No. CCHS / SLR /

Date 30.6.95.

TO WHOM IT MAY CONCERN

Attn: Dr. Choudhury  
6/7/95

This is to certify that Shrimati Ratna Dhar wife of Shri Subrata Dhar of Assam Rifles, Silchar has been suffering from Cancer Ovary. She received necessary treatment in the Tata Memorial Hospital, Bombay.

In accordance with the instructions and medical advice of Tata Memorial Hospital, Bombay, her case is being regularly checked up and she will require such check up at regular interval for considerable period.

*Choudhury*  
(Dr. Chinmoy Choudhury)

General Secretary

General Secretary  
The Cachar Cancer Hospital  
Society: N. S. Avenue  
Silchar - 788008

30 APR 1996

24

39

Chauhan  
Filed by:

MD. SHAUKAT ALI  
(M.D. SHAUKAT ALI)  
Central Govt. Advocate Counsel  
Central Administrative Tribunal  
Guwahati Bench, Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH AT GUWAHATI:

IN THE MATTER OF :

O.A No. 126/95

Shri S. K. Dhar

-Vs-

Union of India and others

-And-

IN THE MATTER OF :

Written Statements submitted by the  
Respondents Nos. 1,2,3 & 4.

WRITTEN STATEMENTS :

The humble Respondents submit their  
written statements as follows :-

1. That, with regard to statements made in paragraphs 1 to 3 of the application, the Respondents have no comments on them.
2. That, with regard to statements made in paragraph 4(A) of the application, the Respondents beg to state that the applicant was appointed as IDA on 13th Sept '66 and served upto 4th August, 69 at Aizawl which classified soft tenure. He was transferred to

Contd... 2/-

25

4 Assam Rifles located at Imphal and he served there from 5th August, 69 to 3rd March, 78. The 4 Assam Rifles was then classified soft tenure. He was posted to 15 Assam Rifles, Nagaland considering his past service profile which classified hard area tenure where he served from 4th March, 78 to 10th July, 81. He was again posted to 16 Assam Rifles which classified soft tenure in Nagaland from 11th July, 81 to July, 19, 1985. It is pointed out that the applicant was transferred from 15 Assam Rifles to 16 Assam Rifles before completion of normal tenure of 5 years on his own request, since he was suffering from PLEURISY. After completion of normal tenure he was posted to Nagaland Range (South) (Kohima) on promotion. Thus he availed next soft tenure where he served from 21st July '85 to 20th December '89 and was due for a hard area tenure. On 29th July, 88 he requested for posting to a unit located in Tripura, nearer to his home town and accordingly he was posted to 27 Assam Rifles. Thereafter, the unit moved from its present location to Nagaland and he requested for a posting to 2 Maint Group Assam Rifles for a period of 1 year and 5 months vide his application dated 21st May '90. Further he, gave an assurance that he would proceed on voluntary retirement on completion of 25 years

Contd... 3/

26  
= silchar  
u1

service, after getting posted to 2 Maint Group Assam Rifles, which has been suppressed by the petitioner from the Hon'ble Tribunal. The petitioner was fully aware that posting to 2 Maint Group Assam Rifles was against the existing policy. After having joined 2 Maint Group Assam Rifles Silchar on 4the March, 91 the petitioner failed to apply for voluntary retirement. The petitioner has now been posted to 7 Assam Rifles which he has failed to comply with. It is pertinent to mention here that the petitioner was required to comply with the posting order by 28th Feb '95. Later the petitioner personally approached this Directorate on 5-6-95 and owing to the illness of his wife, requested for a posting to a unit nearer to Rail head, which has been suppressed by the petitioner. Accordingly the petitioner was posted to 13 Assam Rifles at Nagnimara, Nagaland. The request of the petitioner for extension of date of move by 1 Sep '95 was considered and was neither found just nor genuine.

3. That, with regards to statements made in paragraph 4(B) of the application, the Respondents beg to state that the applicant was appointed to a transferable post, and as such the transfer is incidental to service of the applicant. Transfer from one place to another is necessary in public interest and for achieving efficiency in public administration. It is an implied condition of service. However,

27  
42

the applicant had availed the opportunity to serve during entire service in soft areas except for service rendered with 15 Assam Rifles and for a short period with 27 Assam Rifles. To be fair to every member of the force, he was posted to 7 Assam Rifles which is semihard station and which he failed to comply with and instead requested for posting to a unit located nearer to rail head which was also granted by posting him on humanitarian grounds for 2 years which he accepted personally on 5th June, 95.

4. That, with regards to the statements made in paragraph 4(C) of the application, the Respondents beg to state that the same are subject to strictest proof by the applicant.

5. That, with regard to statements made in paragraph 4(D) of the application, the Respondents beg to state that the order of transfer was issued after completion of his tenure as per administrative instructions. However, no representation by the Respondent had been received at Headquarter Directorate General Assam Rifles.

4-2-95  
See para 12

6. That, with regard to statements made in paragraph 4(E) of the application, the Respondents beg to state that the applicant personally requested to transfer him to a unit nearer to rail head. The request was duly considered by the Respondents and the order of transfer was amended to post him to 13 Assam Rifles which is nearer rail head instead of 7 Assam Rifles on humanitarian grounds, which had been accepted.

28  
43

pted by the applicant.

7. That, with regard to statements made in paragraph 4(F) of the application, the Respondents beg to state that the Silchar Medical College have no facility for treatment of Cancer patient. Further, the transfer from Silchar to Nagnimara entails train journey and not bus journey.
8. That, with regards to statements made in paragraph 4(G) of the application, the Respondents beg to state that his posting to Nagnimara was considered convenient for the applicant being near to Rail head to enable him to undertake Rail Journey to Bombay for check-up without trouble. This was accepted by the applicant. It would be pertinent to mention here that the applicant vide his application dated 23.6.95 requested the Respondent to allow him to report to 13 Assam Rifles by first week of Sept, 95.

A copy of the application dated 23.6.95 is annexed herewith as Annexure -I.

9. That, with regard to statements made in paragraph 4(H) of the application, the Respondents beg to state that the statement is baseless and motivated since there is nothing to prove that his transfer to 13 Assam Rifles would obstruct the medical check-up of his wife.

Society  
no 85  
Contd... 6/

10. That, with regard to statements made in paragraphs 4(I) and 4(J) of the application, the Respondents beg to state that these are subject to strict proof by the applicant.

11. That, with regard to statements made in paragraph 5 of the application, regarding Grounds for relief with legal provisions, the Respondents beg to state that none of the grounds is maintainable in law as well as in facts and as such the application is liable to be dismissed.

~~12.~~ That, with regard to statements made in paragraph 6 of the application, the Respondents beg to state that the representation of the applicant was considered and disposed of taking into account the pros and cons of the case.

13. That, with regard to statements made in paragraph 7 of the application, the Respondents have ~~no~~ comments on them.

14. That, with regard to statements made in paragraph 8, regarding Relief(s) sought for, the Respondents beg to state that the applicant is not entitled to any of the reliefs sought for and as such the application is liable to be dismissed.

15. That, with regard to statements made in paragraph 9 of the application, the Respondents beg to state that in view of the facts and circumstances narrated above, the Interim order is liable to be dismissed.

16. That, with regard to statements made in paragraphs 10 to 13 of the application, the Respondents have no comments on them.

17. That, the Respondents submit that the application has devoid of merit and as such the same is liable to be dismissed.

Contd....8/

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nb

Verification

I, Arun Kainthla, Major, JAD (Legal) for  
Director General Assam Rifles, Shillong -793011  
do hereby solemnly declare that the statements  
made above are true to my knowledge, belief and  
information.

And I sign the Verification on this 17th  
day of APRIL, 1996 at Shillong.

Arun Kainthla  
DECLARENT :

1101

65 32  
65 UX

From: Shri SK Dhar, UDA  
No 2 Maint Group  
Assam Rifles  
C/O 99 APO

To

The Directorate General  
Assam Rifles  
( A Branch )  
Shillong- 793011

Through PROPER CHANNEL

PRAYER FOR EXTENSION OF DATE OF MOVE  
ON MEDICAL GROUND.

Sir,

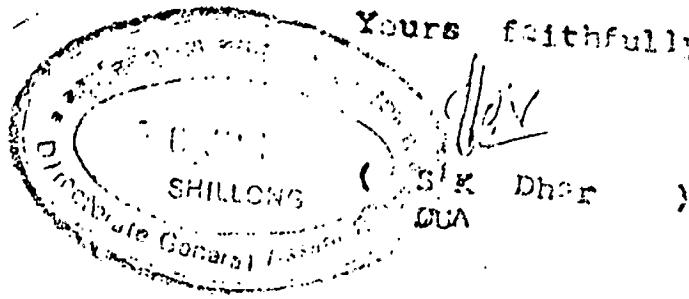
With reference to your Dte Sig No 'A' 2972 dated 06 Jun 95 communicated to me vide 2 MCAR ICH VIII.13013/1/1, evaluation treatment/checkup of my wife, who is suffering from cancer is due on 14 Aug 95 as per advise of Tata Memorial Hospital Bombay, (Copy att). To get the facilities of reservation of bearth I have to booked ticket at long one month earlier, as it is not possible to move to Bombay with a cancer patient without reservation.

In view of fact stated above I earnestly request your honour kindly to extend the date of completion of my move to 13 Assam Rifles till returning from medical checkup of my wife. Further it is submitted that I will move to Bombay ca 09 Aug 95 and approx 20 days is required for her checkup and necessary treatment. Accordingly I may able to move by First week of Sep 95.

For the act of kindness I shall remain ever grateful.  
Thanking you Sir.

Yours faithfully

Dated 23 Jun 95

Advance Copy Fwd to:-

Directorate General  
Assam Rifles  
( A Branch )  
Shillong- 793011

alongwith copy of  
Appointment slip  
of Tata Memorial  
Hospital