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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

X

(DESTRUCTION OF RECORD RULES, 1990)

CP 6/97 order page 1 to 3 CP
closed 27/97

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SECTION OFFICER (Judl.)

balit
5.2.18

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLN. NO. 142 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.)

..... Amil Ch. Sanyal APPLICANT(S)

-VS-

..... U. O. I. Pan RESPONDENT(S)

FOR THE APPLICANT(S)

...MR. B. K. Sharma
MR. B. Mehta
MR.
MR.

FOR THE RESPONDENTS

...MR. G. Sarma, add. C.A.H.

OFFICE NOTE

DATE

ORDER

This application is in
form and within time.

C. F. of Rs. 50/-

deposited vide

IPO/BD No. 326399

Dated 24.7.95

28.7.95

Learned counsel Mr. B.K.Sharma for the
applicant.

Mr. G. Sarma, learned Addl. C.G.S.C. seeks
to appear for the respondents.

The applicant is working as Havildar under
the Shillong Customs Headquarters(Preven-
tive) in the office of the Commissioner of
Customs (Preventive) N.E. Region, Shillong.
On the basis of his representations he was
transferred to Dawki by establishment order
No. 223/95 dated 18.7.1995(Annexure-4). The
order was directed to be cancelled vide
order dated 18.7.1995 issued by the Commi-
ssioner of Central Excise, Shillong as
conveyed by his memo No. II(3)1/ET.III/92/
14279-83 dated 18.7.1995 (Annexure-5). He
has made a representation to the Commis-
sioner, Central Excise, Shillong, respondent
No. 1, for implementation of his transfer
order to Dawki. In the meantime vide order
dated 21.7.95 he had been directed to attend
duty in another office in Shillong under
Office of the Additional Commissioner,
Central Excise(Audit). In this application
the applicant has prayed for direction to
implement the order No. 223/95 dated 18.7.
95 (Annexure-4) and has impugned order

(2)

O.A. No. 142/95

28.7.95

dated 18.7.95 conveyed vide Memo No. II(3)1/ET.III/92/14279-83 dated 18.7.95 (Annexure-5) and Office Order No. 1(21)/5/93 14608-12 dated 21.7.95 (Annexure-7). Issue notice on the respondents to show cause as to why the application should not be admitted. Returnable on 11.8.1995.

Steps within three days from today.

Heard learned counsel for the parties on the interim relief prayer. Learned counsel Mr. B.K. Sharma submits that the operation of the order in the note dated 18.7.95 (Annexure-5) and the office order dated 21.7.95 (Annexure-7) be stayed. Learned Additional C.G.S.C. opposes the prayer. It is ordered that the operation of the order contained in the note dated 18.7.95 (Annexure-5) relating to cancellation of order of transfer of the applicant to Dawki and the direction not to allow him to join in Dawki office is stayed till consideration of admission of this application. It is also ordered that the operation of order dated 21.7.95 (Annexure-7), which is understood not to have not been implemented, is stayed till consideration of admission of this application.

Pendency of this application will not be a bar for the respondents to dispose of the representation dated 17.7.95 submitted by the applicant (Annexure-6).

List on 11-8-95 for Show Cause and consideration of Admission.

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

Member

nkm

31/7

Copy of order issued to
counsel v.no. 3436-3/2, 28.8.95

Requirements are met
2. issued v.no. 3414-17
on 28.8.95

1) Service Reports are still
awaited.

2) Show Cause has not been
filed.

29/8

OFFICE NOTE

DATE

COURT'S ORDER

11.8.95

Learned counsel for the parties are present. Learned Addl. C.G.S.C. Mr G. Sarma prays for two weeks time for filing the show cause.

List on 1.9.95 for show cause and consideration of admission.

Interim order dated 28.7.95 shall continue.

[Signature]
Member

nkm

[Signature]
14/8/95

8/10
PL. communicate the order
[Signature]
14/8/95

8.9.95

Learned Addl.C.G.S.C Mr G.Sarma submits for adjournment to 15.9.95 as the show cause is under preparation Mr B.K.Sharma has no objection.

List for show cause and consideration of admission on 15.9.95.

[Signature]
Member

pg

*Notice duly send
to all respsds.*

[Signature]
22/8

15.9.95

Mr G.Sarma, learned Addl.C.G.S.C requests for further adjournment to submit his show cause. He is allowed final opportunity to submit his show cause before 22.9.95 with copy to Mr M.Chanda.

List on 22.9.95 for consideration of show cause and admission.

[Signature]
Member

[Signature]
18/9
pg

OFFICE NOTE

DATE

COURT'S ORDER

22.9.95

Learned counsel Mr M. Chanda for the applicant is present.

Learned Addl. C.G.S.C., Mr G. Sarma for the respondents.

No show cause has been submitted till today despite a final opportunity that was given on 15.9.1995 and the opportunity that has been given since 28.7.95.

Perused the application. The applicant has challenged in this application the cancellation of his No.223/1995 dated 18.7.95 conveyed vide transfer order No.C.II(3)1/ET.III/92 14218-27A dated 11.8.1995 (Annexure-4) which was ordered to be cancelled by note

dated 18.7.1995 (Annexure-5, No.C.II(3)1/ET.III/ dated 18.7.95 92/14279-83) The allegation of the

applicant is that the transfer order dated 18.7.95 was ^{Cancelled} issued after the illegal threat of Group D Officers Association. The applicant has also challenged in this

application the transfer order dated 21.7.95 Annexure-7 which according to him was issued with an ulterior motive to frustrate his claim for posting at Dawki.

Transfer matters are not ordinarily interfered with by this Tribunal. But, in view of the above allegations, show cause was issued for consideration of admission. Interim relief was granted on 28.7.95 pending consideration of show cause and admission which was listed on 11.8.95. However, after several opportunities given to the respondents there has been no response from them. On perusal of the application it is considered to be a fit case for scrutiny and decision. The application is and therefore, admitted. Issue notice on

20.11.95

x/s on behalf of the Respondents submitted

[Signature]

OFFICE NOTE	DATE	COURT'S ORDER
	22.9.95	<p>the respondents by registered post. Written statement on 17.11.95.</p> <p>List on 17.11.95 for written statement and orders.</p> <p>Heard learned counsel for the applicant on the interim xxxx relief prayer. Mr G. Sarma opposed the grant of interim relief. However, in the absence of any details or information, it is ordered that operation of the order contained in the note dated 18.7.95 (Annexure-5) relating to the cancellation of the order of transfer of the px applicant from Shillong to Dawki and the direction not ^{to} allow him to join in the Dawki office is stayed till disposal of this application. Secondly, it is also ordered that the operation of order dated 21.7.95 (Annexure-7), No.C.1(21)/5/93 14608-12, is stayed till disposal of this application. Pendency of this application will not be a bar for the respondents to dispose of the xxxxxx representation dated 17.7.95 xxxxxx submitted by the applicant (Annexure-6).</p> <p>Liberty is granted to the respondents to apply for vacation of the stay order if so advised.</p>

Application sent.

Notice issued on.

4374-77 d. 12.10.85

10/9

nk

Notice sent on

R. no. 1, 2 & 3-

10/9

W/ statement has not been filed.

16/11

22.9.95
Member

OFFICE NOTE	DATE	COURT'S ORDER
	17.11.95	<p>Learned counsel for the parties are present. Written Statement has been submitted. List for hearing on 24.11.95.</p> <p>Liberty to file rejoinder with copy in advance to the counsel for the respondents.</p> <p><i>ba</i> Member</p>
	nkm	
	24.11.95	<p>Counsel of the parties present. Part heard. Adjourned to 1.12.1995.</p> <p><i>ba</i> Member</p>
	pg	
	1.12.95	<p>Mr M.Chanda for the applicant. Mr G.Sarma, Addl.C.G.S.C for the respondents.</p> <p>Arguments of both the counsel heard and concluded. Judgment reserved</p> <p><i>ba</i> Member</p>
	pg	
	12.1.96	<p>Learned counsel Mr M.Chanda is present for the applicant. Learned Addl.C.G.S.C Mr G.Sarma for the respondents. Judgment pronounced. Application is disposed of in terms of the order. No order as to costs. Interim orders dated 22.9.95 stand vacated.</p> <p><i>ba</i> Member</p>

10.6.96

Copy final order
issued to the parties
with L/Advocates note
D.No. 1358 to 1362
dtd 12/6/96

ph
10/6

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

8

C.A. NO. 142 of 1995
P.A. NO.

DATE OF DECISION 12-1-98

Sri Anil Chandra Dey

(PETITIONER(S))

Mr M.Chanda.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

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

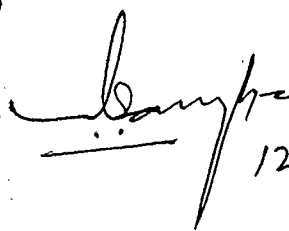
ADVOCATE FOR THE
RESPONDENT (S)

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

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
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 ?

Judgment delivered by Hon'ble Member (A)


12

9

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.142 of 1995.

Date of Order : This the 12th Day of January, 1996.

Shri G.L.Sanglyine, Member (Administrative).

Shri Anil Chandra Dey
Havildar under the Shillong Customs
Headquarter(Prev.)
Office of the Commissioner of Customs,
Preventive, North Eastern Region,
Shillong.

. . . Applicant.

By Advocate Shri M. Chanda.

- Versus -

1. The Commissioner,
Central Excise,
Moralo Compound,
Shillong-793001.
2. The Commissioner,
Customs (Preventive)
North Eastern Region,
Shillong-793001.
3. The Deputy Commissioner (P&V)
Customs and Central Excise,
Moralo Compound,
Shillong-793001.
4. Union of India through Secretary,
Govt. of India, Ministry of Finance,
Department of Revenue, New Delhi.

. . . Respondents

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, MEMBER (A)

The applicant was working as Havildar in the Preventive Unit, Customs and Central Excise, Shillong. He submitted a representation dated 4.5.1993 addressed to the Additional Collector (P&V) Customs and Central Excise, Shillong seeking a transfer to Dawki Customs Station. Since there was no response from the authority concerned, he submitted another representation dated 17.7.95 addressed to the Commissioner, Customs Preventive Collectorate, NER Shillong reiterating his request for a transfer to Dawki.

12.1.96

This representation was forwarded by the Superintendent CC Cell, Shillong on the same date to the Deputy Commissioner (P&V) with an intimation that the Commissioner of Customs (Preventive) is pleased to consider his representation and directed to request you to kindly issue an order for ~~Transfer~~ of Sri Anil Chandra Dey, Havildar from Hqrs., Customs Preventive to Dawki L.C. Station . . . " Consequently, Establishment Order No.223/1995 dated 18.7.1995 was issued by the Deputy Commissioner (P&V), Respondent No.3, transferring the applicant from Hqrs. office, Shillong to Dawki L.C.S.Shillong Customs Division. The Commissioner of Central Excise, Shillong, Respondent No.1, after a meeting with a contingent of Group D officers, directed vide Note dated 18.7.1995 that the aforesaid Establishment order be cancelled. The applicant submitted a representation dated 19.7.95 to the Respondent No.1 urging for immediate implementation of the transfer order dated 18.7.1995. On 21.7.1995 the applicant was relieved from his duty in CCP's office and was directed to attend duty in the office of the Additional Commissioner, Central Excise, (Audit), Shillong vide order dated 21.7.95 issued by the Superintendent (Hqrs), Customs and Central Excise, Shillong. This order was objected to by the office of the Commissioner of Customs (Preventive), NER, Shillong. The applicant had submitted this Original Application on 27.7.1995 praying to set aside and quash the aforesaid Note dated 18.7.1995 and order dated 21.7.1995 and to direct the respondents to implement his transfer order dated 18.7.95 and to transfer and post him at Dawki.

2. The applicant has contended that the Establishment Order No.223/1995 dated 18.7.95 was ordered to be cancelled after the illegal threat of Group 'D' Officers Association to the Commissioner of Central Excise, Shillong and secondly,

12-1-96

that the aforesaid transfer and posting order dated 21.7.95 was issued with an ulterior motive to frustrate his claim for posting at Dawki. In respect of the Note dated 18.7.95 the learned counsel, Mr M.Chanda, appearing for the applicant had submitted that it was issued without application of mind and with malafide intention. Respondent No.1 had yielded to the objection of the Group D Officers Association without giving any opportunity to the applicant to explain his case. The applicant is not a member of the Group D Officers Association and that Association could not therefore have objected to his transfer to Dawki. Moreover, the objection was raised only in respect of the applicant because he was not a member of the Association but not in the case of Shri Jagadish Chandra Deb who was posted to a border Station by the same order of transfer alongwith the applicant. The applicant had made a request for his posting at Dawki on ground of his health. The other ground given by him in his representation for posting at Dawki is that he was in the verge of retirement. According to the learned counsel since the applicant was about to retire he has a right to be considered for posting at a place of his choice. The representation of the applicant was considered and accepted by the authorities concerned. But his order of transfer to Dawki was ordered to be cancelled on the same day of its issue by the authority without application of mind. Simply on account of the objection raised by the Group D Officers Association. According to the learned counsel the pleas given by the respondents in their written statement have no force in the facts and circumstances relevant to the applicant. He pointed out that one of the reasons given by the respondents in their written statement seems to be that the applicant would gain by Rs.20/-p.m. by

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12.1.96

by means of a special pay if he is posted at Dawki but they had not taken into consideration that the applicant would be receiving lesser amount of House Rent Allowance. He also pointed out that the transfer guidelines annexed by the respondents to the written statement do not stipulate any option to be made for postings of staff in border areas. As regards the order dated 21.7.95, the learned counsel submitted that it was issued simply to placate the Group D Officers Association.

3. The respondents have contested this application submitted by the applicant. They have contended that the administration always have the rights to correct any order issued inadvertently without taking all relevant factors into consideration and that the case of the applicant is no exception. Thus, in other words, it is their contention that the order of transfer dated 18.7.1995 was issued without taking into consideration all relevant factors and that the order had to be ordered to be cancelled by the impugned Note dated 18.7.95. According to them this order of transfer of the applicant to Dawki had been issued as per direction of the Commissioner of Customs (Preventive), Shillong and had to be ordered to be cancelled by the Commissioner of Central Excise, Shillong, the cadre controlling authority, after finding enough ground in the objections raised by the Group D Officers Association to the transfer of the applicant to Dawki and after taking into consideration all genuine claims of all concerned. It is also their contention that posting of the applicant at Dawki would give him much advantage in terms of special pay applicable to border postings as he had earlier been posted in border areas and, in fact, he had completed two tenures in Dawki itself. They

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12-1-96

have also disputed the claim of the applicant that he intended to settle down in Dawki after retirement and as such, he should be posted in Dawki. As regards the transfer order dated 21.7.1995 they have stated that it was issued by the Superintendent (Hqrs) who is the competent authority to issue rotation transfer orders. The learned Addl. C.J.G.S.C Mr G. Sarma, supported the contentions made by the respondents in their written statement. He further submitted that transfers are administrative matters and are not to be interfered with as it may create dislocation in administration. He also submitted that the Employees Association had not issued any threat to the administration but, on the other hand in this particular case of the applicant it had cooperated with the administration in running the administration smoothly. He contended that it was only after taking the view of the Group D Officers' Association into consideration that the order to cancel the order of transfer of the applicant to Dawki was issued by the competent authority. He said that there is no malafide or ulterior motive in ordering that transfer order was to be cancelled but only administrative policy was observed.

4. The plea that the order of transfer of the applicant to Dawki was issued as per the direction of Respondent No.2, Commissioner of Customs (Preventive), Shillong and that the order of transfer dated 18.7.95 was ordered to be cancelled by the Commissioner of Central Excise, Shillong, Respondent No.1, after consultation with Respondent No.2 are not convincing. The office of Respondent No.2 had written to the office of Respondent No.1 with a request to issue transfer order of the applicant to Dawki and the order dated 18.7.95 was issued by the office of Respondent No.1. The order issued must necessarily have been issued only with the approval of

12.1.96

that the Respondent No.1. The Note dated 18.7.95 does not disclose/
order directing
/that the order of transfer dated 18.7.95 should be cancelled
was issued by Respondent No.1 in consultation with Respondent
No.2. In his representation requesting for his transfer to
Dawki the applicant had given his personal reasons, namely,
(1) he was suffering from Sciatica for the last few years,
(2) the suffering aggravates in a cold place like Shillong,
(3) on these grounds he would prefer ~~an~~ a posting in a warmer
place nearby his home town that is Shillong where his family
resides, (4) in particular he preferred Dawki being the nearest
place from his home and (5) he had only two years of service
left. These therefore are the grounds for compassionate
consideration. It is true that the transfer guidelines dated
30.6.1994 enclosed as Annexure R-3 to the written statement
do not contain any instruction regarding transfer on compassi-
onate grounds. This does not however necessarily mean that
the administration is bereft of compassionate consideration
of the cases of the employees. In fact, such compassionate
consideration was taken by the Respondent No.2 under whom
the applicant was working and the case was placed before
Respondent No.1 consequent to which the order of transfer
dated 18.7.95 was issued by the Respondent No.3 whose office
it is understood is part and parcel of the office of
Respondent No.1, transferring the applicant from Shillong to
Dawki. The Respondents were aware of the norms of transfer
at the time they decided that the grounds put forward by the
applicant for his transfer to Dawki were valid and that they
merited sympathetic consideration. The Note dated 18.7.95
however discloses that respondent No.1 was concerned only
with the objections of the Group D officers Association and
the norms of transfer. There is no indication in the Note

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to the effect that the above grounds given by the applicant were considered by the Respondent No.1 while issuing the

/ Note or that the earlier decision based on the above grounds^{was} after their reevaluation.
/ considered to be wrong. It may be mentioned that if the earlier decision to transfer the applicant was on compassionate ground based on the above request of the applicant, the norms of transfer perhaps were not applicable to that decision. In the circumstances, the claim of the Respondents that all genuine claims of all concerned were considered in this particular case is not acceptable in the absence of anything expressed in the impugned Note that the grounds given by the applicant in his representations were considered by Respondent No.1 while issuing the Note dated 18.7.1995. The applicant has therefore justifying reasons to feel aggrieved with the Note issued by Respondent No.1.

5. The applicant served a copy of this Original application on the learned Addl.C.G.S.C Mr G.Sarma, on 27.7.95 and the application was placed for consideration of admission on 28.7.95. On that day interim order staying the operation of the Note dated 18.7.1995 and the transfer order dated 21.7.95 till consideration of admission of the application was passed after hearing the counsel of both sides in their presence. Show cause for admission was listed on 11.8.95. During the course of final hearing of this application the learned counsel, Mr M.Chanda submitted a copy of Establishment Order No.238/95 dated 31.7.1995 cancelling the Establishment order No.223/95 dated 18.7.95, that is the transfer order of the applicant to Dawki, issued by the Respondent No.3. According to him this action on the part of the Respondents clearly establishes their malafide even to the extent of violating the order of this Tribunal in order to deny the applicant his transfer to Dawki. His contention is not

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12.1.96

acceptable as no malafide in issuing the impugned order contained in the Note dated 18.7.1995 can be inferred from the action of the respondents on 31.7.1995. Another aspect by which the learned counsel had wanted to attribute malafide to the Respondent No.1 is that the Note dated 18.7.95 was issued at the dictates of the Group D Officers Association. No finding of malafide can however be recorded in this regard as the Association is not made a respondent in this Original Application submitted by the applicant. Further, the learned counsel had wanted to attribute malafide because of the order of transfer dated 21.7.1995, which was issued immediately after the transfer order dated 18.7.1995. On the face of this circumstance his contention seems to have some force but as will be discussed further hereinbelow, this order also does not establish malafide in the issuance of the Note dated 18.7.95 in the absence of any evidence that the competent authority, the Superintendent(Hqrs), Customs and Central Excise, Shillong had issued the order dated 21.7.1995 under the influence of Respondent No.1.

6. It is the contention of the applicant that he was shifted from the Customs Preventive Wing to the Audit Branch of Customs and Central Excise vide transfer order dated 21.7.95 in order to frustrate his transfer to Dawki. This order came out soon after the meeting Respondent No.1 had with the members of Group D Officers' Association on 18.7.95 and before the cancellation order dated 31.7.95. The applicant cannot therefore be blamed for entertaining such apprehension. The respondents have stated in their written statement dated 16.11.1995 submitted in this O.A that the Superintendent(Hqrs) was the competent authority to issue Rotation transfer orders as empowered by the office council meeting held on 6.6.1993. They have not spelled out but it can be inferred that, according to them, this Rotation transfer order dated 21.7.1995 transferring the applicant

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1 in the Headquarters itself has no connection with the matter of his transfer to Dawki and, even perhaps, that it is outside the consideration in this application as the Superintendent (Hqrs) in the office of Respondent No.1 is not a party to this application. Whatever may be, this order does not necessarily prevent the applicant from being transferred and posted to Dawki for he is still an employee of the Customs and Central Excise Department in Shillong and, as such, if his facts and circumstances justify his transfer and posting to Dawki it is open to Respondent No.1 to order applicant's transfer to that place even after the applicant had been shifted to Audit Branch.

7. The Respondents have acted inexplicably in this O.A. A copy of the application was served by the counsel of the applicant on their counsel on 27.7.1995. The application came up for consideration of admission on 28.7.1995. Show cause was ordered to be issued as to why the application should not be admitted and interim order restraining them from implementing the order contained in the impugned Note dated 18.7.95 was passed in the presence of their counsel on 28.7.1995. It however transpires that they had issued the Establishment order No.238/95 dated 31.7.95 implementing the order contained in the Note dated 18.7.95. They did not submit the show cause and the application had to be admitted on 22.9.95 without their show cause having been submitted in the presence of their counsel. In the absence of any details or information from the respondents, interim order was issued staying the operation of the Note dated 18.7.95 and transfer order dated 21.7.95 till disposal of this O.A. Having implemented the order contained in the Note dated 18.7.95 by ~~xx~~ issuing the cancellation Establishment Order No.238/95 dated 31.7.1995 yet in para 24 of the affidavit

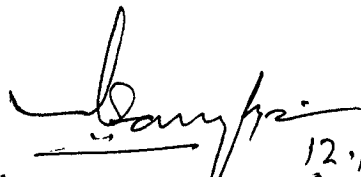
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12.1.96

dated 16.11.95 (written statement) they speak of great difficulties caused by the interim order to their day to day administrative official work and contended therein that the interim order is liable to be vacated. This affidavit was affirmed and declared by one Sri P.R.Ghosh, Superintendent(Law), Central Excise, Guwahati who also stated therein that he was authorised by the respondents to file the written statement on their behalf. Not only that but one Sri P.K.Das, Superintendent(Law), Central Excise, Guwahati Division, who is not one of the respondents in this O.A., had affirmed and declared an affidavit on 13.9.1995 seeking vacation of the earlier interim order dated 28.7.1995 on the ground that the respondents were in great difficulty in the day to day administration in their official work due to stay granted by the interim order. But they had already implemented the Note dated 18.7.95 on 31.7.95 as mentioned above. Moreover, nowhere in this affidavit Sri P.K.Das had stated that he was authorised by the respondents to affirm and declare the affidavit or that he had submitted the prayer on behalf of the respondents. Further with regard to the Rotation Transfer order dated 21.7.95, the applicant had not complied with the order and after 28.7.95 he was justified in doing so in view of the interim order dated 28.7.95 restraining the respondents from implementing the transfer order. This interim was extended by interim order dated 22.9.95. But the respondents in para 7 of the affidavit dated 16.11.1995 not only indirectly expressed ~~thaxx~~ their desire to violate the interim order but also wanted the applicant to do so when they stated that till date (16.11.95) the applicant had not obeyed the transfer order dated 21.7.1995.

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12.1.96

8. In the light of the discussion in para 4 above, it is hereby held that the Respondent No.1 had issued the order contained in the impugned Note dated 18.7.95 (Annexure-5) directing that the order of transfer of the applicant to Dawki should be cancelled without taking into consideration the grounds furnished by the applicant in his representations dated 4.5.1993 and 17.7.1995 in support of his request for his transfer to Dawki. The Note dated 18.7.95 insofar as it relates to the order directing cancellation of the order of transfer of the applicant to Dawki is accordingly set aside. The respondent No.1 is directed to issue a fresh order on merit after taking into consideration not only the alleged objections of the Group D Officers Association but the grounds put forward by the applicant in his aforesaid representations. The order is to be issued within 1(one) month from the date of receipt of this order by Respondent No.1. The applicant shall be continued in the Customs Preventive Wing till such order is issued. Thereafter, if the order is not in his favour, he shall be allowed to proceed to Audit Branch in compliance with the order dated 21.7.1995 (Annexure-7).

9. The application is disposed of as above. No order as to costs.


(G.L.SANGLAYINE)
MEMBER (A)
12.1.96

27 JUL 1995

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
গুৱাহাটী কেন্দ্রীয় প্রশাসনিক ন্যায়ালয় GUWAHATI BENCH

Filed by the applicant
through
B Mukherjee
Advocate
27.7.95

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

O.A. No. 142/95

Shri Anil Chandra Dey Applicant

-versus-

Union of India & Ors. Respondents

I N D E X

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Copy handed over
to Mr. G. Samra, Add. Secy
Bd. S.
Advocate
27.7.95

Filed by :-

B Mukherjee
27.7.95
Advocate

1. Particulars of the applicant.

Shri Anil Chandra Dey
resident of Umpling, Shillong
Serving as Havildar
Under the Shillong Customs Headquarter (Prev.)
In the Office of the Commissioner of Customs,
Preventive,
North Eastern Region
Shillong.

2. Particulars of the Respondents.

1. The Commissioner,
Central Excise,
Moralo Compound
Shillong-793001

2. The Commissioner
Customs (Preventive)
North Eastern Region,
Shillong-793001

3. The Deputy Commissioner (P&V)
Customs and Central Excise,
Moralo Compound,
Shillong-793001

4. *Union of India, through Secretary govt of India, Ministry of Finance, Dept of Revenue, New Delhi.*

3. Particulars for which this application is made.

This application is made praying for a
direction to implement the transfer and posting order

of the applicant issued under Establishment order No. 223/1995 dtd. 18.7.95 and for setting aside and quashing the note under Memo No. 11(3)1/ET.III/92 /14279-83 dtd. 18.7.95 and also for setting aside Office Order No. 1(23)8/93/14208-12(A) dtd. 21.7.95.

4. Limitation

That the applicant declare that the application is find within limitation as prescribed under the Administrative Tribunals Act, 1985.

5. Jurisdiction

That the applicant declares that the subject matter of the case is within the jurisdiction of the Hon'ble Tribunal.

6. Facts of the Case

6.1 That the applicant is a citizen of India as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant is presently serving as Havildar in the Shillong Customs Headquarter (Preventive) in the office of the Commissioner of Customs (Preventive) North Eastern Region, Shillong.

6.2 That the applicant was initially appointed as Sepoy in the year 1956 under the Collector, Customs and Central Excise, Shillong. The applicant had

served as Sepoy in different places in the North Eastern Region, namely Mongaldoi, Shillong, Guwahati, Shellabasti, Isamati, Jowai, Dawki, Pynursula from time to time as a very sincere and disciplined employee of the department.

6.3 That the applicant was promoted as Havildar on 7th April, 1993 considering his satisfactory service as Sepoy. Be it stated that the applicant also received reward from the department in recognition of his service towards the department.

6.4 That the applicant submitted representation dated 4.5.93 addressed to Additional Collector (P&V) Customs and Central Excise, Shillong praying for his transfer and posting at Dawki Customs Station on the ground that he is suffering from Sciatica and such suffering gets aggravated especially in cold place like Shillong and further requested to post him to a warmer place nearby his hometown and further prayed that he may be posted at Dawki Customs Station on the ground that climate is suitable for his recovery the ailment mentioned above. The applicant also submitted similar representation on 17.7.95 addressed to the Commissioner Customs (Preventive) Collectorate, N.E.R., Shillong praying for his posting at Dawki on the ground of his ailment.

Copy of the representations dt. 4.5.93 and 17.7.95 are enclosed as Annexure 1 & 2 respectively.

6.5 That the representation of the applicant was considered by the Commissioner of Customs (Preventive) for applicant's posting at Dawki which would be evident from the letter under Memo No. II (3) 3/ET/CCP/CELL/SH/95/424-25 dtd. 17.7.95. It is further stated in the said letter dated 17.7.95 that the applicant is transferred and posted to Dawki from Headquarter Customs (Preventive) Shillong and by the same order Shri Jagadish Chandra Dey presently Havildar also transferred from Dawki and posted to his hometown at Karimganj Customs Preventive Division. The letter dated 17.7.95 was addressed to the Deputy Commissioner (P & V), Customs and Central Excise, Shillong for issuing necessary transfer and posting order in respect of applicant and Shri Jagadish Ch. Dey Havildar following the direction of Commissioner of Customs (Preventive).

A copy of the letter dated 17.7.95 is annexed as ~~xxx~~ Annexure-3.

6.6. That the Deputy Commissioner of Customs and Central Excise, Shillong was pleased to issue the transfer and posting order of the applicant and Shri Jagadish Ch. Dey vide establishment order No. 223/95 dated 18.7.95 whereby the applicant transferred and posted from Headquarters office, Shillong to Dawki L.C.S. and in the same order Shri Jagadish Chandra Deb

who is working at Dawki also transferred and posted to his hometown at Karimganj.

A copy of this letter dated 18.7.95 is annexed as Annexure-4.

6.7 Most surprisingly Commissioner of Central Excise, Shillong issued an office note on the same day i.e. on 18.7.95 whereby it is directed to cancel the transfer and posting order of the applicant and it is further directed the Superintendent of Dawki not to allow the applicant as Havildar to join there at Dawki. It is stated in the aforesaid note that at about 2-30 P.M. on 18.7.95 a contingent of about 30 (thirty) Group D Officers alongwith their President and General Secretary met ~~the~~ regarding the Estt. Order No. 223/95 dtd. 18.7.95 with particular reference to Sl. No. 1. i.e. the applicant ^{who} ~~which~~ has been posted back to Dawki L.C.S. and also raised the points by the Group D Officers Association. The relevant portion of the letter dtd. 18.7.95 is quoted below :

"At 2-30 PM today, a contingent of about 30 (thrity) Gr. 'D' Officers alongwith their President and General Secy. met me regarding Estt. Order No. 223/95 dtd. 18th July, 95 with particular reference to Sl. No. 1, Shri Anil Ch. Dey, Havildar who has been posted back to

Dawki L.C.S. The points raised by the Association are :-

1. All posting to border areas are by options and these are considered by the Administration as and when vacancy arises i.e. after a Gr. 'D' Officer is due for posting outside a particular border area.
2. Shri Anil Ch. Dey, Havildar, from the time he joined, has literally been posted to only border areas such as Dawki, Pynursla, Borsora, Shellabazar etc. It is not known why only he has been selected for these border postings again and again even though there are other representees.
3. Postings and transfers are to be considered by the Cadre Controlling Authority and the proposals should be put up to CCP for his concurrence.

According to the Gr. D Staff, the orders were issued against all the above norms. In future, the norms agreed to in the OCM and General instructions issued from time to time should be adhered to strictly. Meanwhile, orders should be cancelled and the Supdt. (Dawki) may be directed not to allow Shri Anil Chandra Dey, Havildar to join".

From the above it appears that the Group D Association raised objection regarding posting only in respect of the applicant on the ground that the posting ought to have been considered on the basis of options and it is further alleged that the applicant was all along posted to border areas such as Dawki, Pynursla, Borsora, Shellabazar etc. and it is further alleged that postings and transfer are to be considered by the cadre controlling authority and the proposal should be put up to CCP for his concurrence. All these backgrounds mentioned above only raised in respect of the applicant with an ulterior motive. The present applicant is not a Member of the Group D Officers Association and therefore the Members of the association illegally raised objection as regard the transfer and posting of the applicant at Dawki. It is further observed ^{no objection raised} as regard posting of Shri Jagadish Ch. Dey in the border area at his home town at Karimganj therefore reasons for interference of the Group D Association only in respect of the applicant appears to be arbitrary, illegal, and unfair. Be it stated that all earlier transfer and postings in respect of the applicant was issued by the Administration of the Collectorate and the applicant never requested for any particular transfer and postings except the present posting at Dawki and it is also not

①
adw.

correct that the applicant was all along serving in the border areas. The applicant submits the following details of his transfers and postings during his service career.

Name of the places where the applicant was posted	Year/Period
MANGOLDI	1956
SHILLONG	1957-1960
GUWAHATI	1960-61
SHILLONG	1961-65
SHELLABAZAR	1965-68
ISAMATI	1969-77
JOWAI	1977 for about six months
DAWKI	1978-81
PYNSURLA	1981-84
DAWKI	1985-92
shillong	1992 to till date

Therefore from the above it is quite clear that all these transfers and postings order were issued at the interest of public interest and the applicant was serving for about last three years in Shillong and he sought transfer and posting at Dawki only on health ground. Therefore interference of the Office Association in respect of the employee who is not a Member of the said Association is arbitrary, illegal and unfair.

Overall, it appears that the note issued by the Commissioner, Central Excise seems to be dictated by the Secretary/President of the Group 'D' Association regarding the transfer and posting of the applicant. It is a matter of regret that the Administration should not have given this much of indulgence to the illegal demand to a particular Member/Secretary/President of a particular Association.

A copy of the note dated 18.7.95 is enclosed as Annexure-5.

6.8 That the applicant has submitted a representation dated 19.7.95 addressed to the Commissioner, Central Excise, Shillong for implementation of the Transfer and Posting Order issued under Establishment Order No. 223/1995 dated 18.7.95 which was proposed to be cancelled after the illegal threat of Group 'D' Officers Association to the Commissioner of Central Excise, Shillong. In the representation dated 19.7.95, the applicant stated in details regarding oblique motive of the Association for illegal interference in the choice station posting of the applicant, it is also mentioned in the representation that Shri Jagadish Chandra Deb had stayed there at Dawki for 7 years but the said Association never raised any objection as regard continuous stay of Shri Jagadish Chandra Dey for about 7 years at Dawki. Moreover the Commissioner should not have ~~Proposed~~ to cancel the order of transfer and posting of the applicant on the basis of the illegal threat given by the Group D Officers Association and without considering the legitimate demand of the applicant for his posting at Dawki. In the said representation the applicant has prayed for implementation of Establishment Order No. 223/95 dated 18.7.95.

A copy of the representation dated 19.7.95 is enclosed as Annexure-6.

6.9. Most surprisingly immediately after submission of his representation dated 19.7.95 the Superintendent of Customs and Central Excise, Shillong issued another transfer and posting order whereby the applicant is transferred and posted from the office of the Commissioner of Customs (Preventive) N.E.R., Shillong to the office of the Additional Commissioner, Central Excise (Audit) at Laitumkhrach Customs and Central Excise (Audit) Branch and it is also mentioned in the said transfer order that the same has been issued in supersession of the earlier transfer order dated 1.5.95. Be it stated that by the order dtd. 1.5.95 the applicant was transferred and posted from Hqr. (Prev.), Shillong to Laitumkhrach M.S. Building subsequently the transfer and posting order dtd 1.5.95 was proposed to be cancelled vide order No. C No. 11/2/HOR.PREV/ET/CUS/SH/94 PT.I dtd. 2.5.95. However these are not relevant for the purpose of the present application. The transfer and posting order dtd. 21.7.95 was issued with an ulterior motive to frustrate his claim for posting at Dawki.

A copy of the order dtd. 21.7.95 is annexed as Annexure-7.

6.10 That the respondents thereafter made an attempt to relieve him from the office of the

Commissioner of Customs (Preventive) Shillong, but due to the grounds mentioned in the letter No. C. No. II/1/HQR.PREV/ET/CUB/SH/94/PT.I/430 dated 21.7.95 wherein it was stated that for any transfer and posting approval of Commissioner of Customs (Preventive) is required to be obtained and on this ground applicant was not relieved and still he is working in the office of the Commissioner, Customs (Preventive), Shillong.

A copy of the letter dtd. 21.7.95 is enclosed as Annexure-8.

6.21. That the applicant begs to state that he has only 2 years of service and going to be retired on superannuation in the month of May, 1997. Therefore immediately before his retirement he is entitled to a choice posting. Moreover, he is intending to settle there at Dawki, as the climate of Dawki is suitable to his health as Dawki is warmer place, as because the applicant is suffering from Sciatica, the climate of Shillong is not suitable for the health of the applicant. Therefore posting order of the applicant is deserves to be implemented which considered and issued by the Commissioner, Customs (Preventive) vide his Establishment Order No. 223/95 dated 18.7.95.

6.12. That this application is made bonafide *and* for the cause of justice.

7. Reliefs Prayed for :

Under the facts and circumstances stated above the applicant prays for the following reliefs :

1. That the respondents be directed to implement the transfer and posting order issued under Establishment Order No. 223/95 dated 18.7.95.
2. That the respondents be directed to transfer and post the applicant at Dawki L.C.S. with immediate effect.
3. That the note issued under Memo No. C No. II (3)/1/ET.III/92/14279-83 dated 18.7.95 (Annexure-5) and subsequent transfer order issued under order dated 21.7.95 (Annexure-~~7~~) be set aside and quashed.
4. To pass any other order/orders as deemed fit and proper under the facts and circumstances as stated above.
5. Cost of the Case

The above reliefs are prayed on the following amongst other grounds :

- G R O U N D S -

1. For that the transfer and posting order issued under Establishment Order No. 223/95 dated 18.7.95 after duly considering the representation of the applicant by the appropriate and competent authority of the Customs and Central Excise Department.
2. For that the Group 'D' Officers' Association has no locus standi to interfere with the transfer order of the applicant.
3. For that the Respondents should not have proposed to cancel the valid order of transfer and posting order issued under Establishment Order No. 223/95 dt. 18.7.95 on the illegal threat of the Group 'D' Officers' Association.
4. For that all earlier transfer and posting order issued by the respondents and had carried out by the applicant on public interest and only the present transfer and posting order issued on 18.7.95 in respect of the applicant on the basis of his representation and on medical ground.

5. For that the transfer and posting sought by the applicant at Dawki only on the medical ground.
 6. For that the applicant is not a Member of the Group 'D' Officers' Association.
 7. For that the applicant is left with only two years of service and on the verge of retirement in the month of May 1997.
Therefore he is entitled to choice station posting in the fag end of his service career.
 8. For that the applicant is suffering from Sciatica, therefore his request for posting at Dawki is bonafide.
 9. For that there is no specific guidelines or policy for transfer and posting of Group 'D' Officers in the customs and Central Excise Department.
8. Interim Reliefs Prayed for :
7. That during the pendency of the case the applicant prayed for the following interim reliefs :
1. That the transfer and posting order issued under Establishment order No. 223/95 be implemented.

2. That the transfer order dated 21.7.95 be stayed till final disposal of this application. Further, Annexure - 5, Order dated 18.7.95 may also be stayed.

The above reliefs are prayed on the grounds explained in paragraph 7.

9. That the applicants further declares that he has not filed any other application on the subject matter before any other Court/Tribunal.

9.A. That the applicant has exhausted all the remedies available to him.

10. Details of M.P.O.

Postal Order No.	: 326399
Date	: 24-7-95
Issued from	: G.P.O., Guwahati
Payable at	: G.P.O., Guwahati

11. Details of Index

Index containing the details of documents are enclosed.

12. List of enclosures

As per Index.

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

I, Sri Anil Chandra Dey, resident of Umpling, Shillong and working as Havildar under the Shillong Customs Headquarter (Prevention) in the office of the Commissioner of Customs, (Prev.) N.E.R., Shillong do hereby solemnly affirm and declare that the statements made in this application are true to my knowledge and belief, and I have not suppressed any material facts.

I sign this verification on this the day of July, 1995 at Guwahati.

Anil Chandra Dey
SIGNATURE

To

The Additional Collector (P & V)
Customs & Central Excise
Shillong

(Through Proper Channel)

Madam,

Sub :- Representation for posting at Dawki Customs Station.

Most humbly, I beg to state the following facts for your kind and sympathetic consideration :-

That, Madam, I was posted to Anti-Evasion Branch on 1.8.92 and on promotion to the rank of Havaldar I have been posted at Hqrs. Prev. (Customs) on 7.4.93 where I have joined my duties.

That, Madam, I am suffering from Sciatica and which aggravates especially in cold place like Shillong. I fervently request you to post me to warmer place nearby my hometown Shillong where my family resides.

I will remain grateful if I am posted to Dawki Customs Station climate of which suits to recover from my ailments.

Yours faithfully,

Dated Shillong
The 4th May, 1993

Sd/- Anil Ch. Dey
Havildar, Hqrs. Preventive
Unit, Customs & Central
Excise, Shillong

AH shillong
@hille
Adv.

To

The Commissioner,
Customs Preventive Collectorate
N.E.R., Shillong

Sir,

Sub : Representation for posting at Dawki Customs
Station.

With due respect and humble submission, I would like to state the following facts for your sympathetic consideration.

That Sir, I am suffering from Sciatica for the last few years and that it aggravates in a cold place like Shillong.

That Sir, I submitted one representation for transfer to Dawki in 1993 on the grounds mentioned above and also on the ground that Dawki is the nearest place from my home but I did not receive any response from the Authority concern.

That Sir, few days back, I enquired the matter from Administrative Officer, Estt. Branch and he informed me that Sri Jagadish Das, Havildar had been posted to Dawki temporarily and it was decided that I would be posted at Dawki on his posting to another place.

That Sir, two years have already passed since submission of my representation and my sufferings from Sciatica has aggravated during the past years. Moreover, I have got only two years of service left.

So, I request you kindly to consider my case sympathetically, and for this act, I will remain ever grateful to you.

Yours faithfully,

Sd/- Anil Chandra Dey, Havildar
Hqrs. Customs Preventive 17.7.95
Shillong.

Attached
@hula
Adv.

OFFICE OF THE COMMISSIONER OF CUSTOMS PREVENTIVE
NORTH EASTERN REGION
SHILLONG

C.No. II(3)3/ET/CCP/CELL/SH/95

Dt.

To

The Deputy Commissioner (P&V)
Customs and Central Excise
Shillong

Subject : Posting of Shri Anil Chandra Dey, Havildar
to Dawki L.C. Station - Corres. regarding.

Madam,

Please find herewith a Zerox copy of the
representation submitted by Sri Anil Chandra Dey,
Havildar.

Commissioner of Customs (Preventive) is pleased
to consider his representation and directed to request
you to kindly issue an order for the transfer of Sri
Anil Chandra Dey, Havildar from Hqrs. Customs Preven-
tive to Dawki L.C. Station and Sri Jagadish Dey,
Havildar at present posted at Dawki L.C. Station may
be given his home posting at Karimganj Customs
Preventive Division.

Yours faithfully,

Enclo : As stated.

Sd/ P. SIKDAR, Superintendent
C.C.P. CELL, SHILLONG

C. No. II(3)3/ET/CCP/CELL/95/424-25 Dated 17.7.95

Copy to

Shri Anil Chandra Dey, Havildar for information in
connection with his representation dated 17.7.95.

Sd/- P. Sikdar 17.7.95
Superintendent
C.C.P. Cell, Shillong

Attested
Guler
Adv.

CUSTOMS AND CENTRAL EXCISE : SHILLONG

ESTABLISHMENT ORDER NO. 223/1995 ✓

DATED SHILLONG THE 18TH JULY '95

Subject : Estt. Transfer and Posting in the grade of Havildar.

The following Havildars of Customs & Central Excise are hereby transferred and posted to the places mentioned against their names with immediate effect and until further orders.

Sl.No.	Name	From ✓	To
1 ✓	Shri Anil Chandra Dey	Hqrs.Office Shillong	Dawki L.C.S. Shillong Cust. Division
2	Shri Jagadish Ch.Deb	Dawki L.C.S. Shillong Cus. Division	Badarpur CPF Karimganj Cus. Division

Sd/- E.V.A.M.R. HYNNIEWTA
Deputy Commissioner (P & V)
Customs & Central Excise : Shillong

C.No.II (3)1/ET.III/92 14218-27A/ Dated 11.8.1995 ?
Copy forwarded for information & necessary action to :

1. The Commissioner of Customs (Prev.), NER, Shillong.
2. The Assistant Commissioner of the Customs (Prev.) Divn.
3. Shri A.C.Dey for compliance.
4. A.C.A.O (Accts.) / P.A.O., Customs & Central Excise, Shillong.
5. The Superintendent, Dawki L.C.S.
6. The Superintendent (Hqrs.), Customs & Central Excise, Shillong.
7. The General Secretary, Group 'D' Officers' Association Customs & Central Excise, Shillong.
8. Guard file

Sd/- M.L.CHAKRABORTY
ADMINISTRATIVE OFFICER (ESTT)
CUSTOMS & CENTRAL EXCISE : SHILLONG

A.H. 2322
@Hla
Adv.

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE: SHILLONG

N O T E

Dated Shillong 18th July, 1995 ✓

At 2-30 P.M. today a contingent of about 30 (thirty) Gr. D Officers alongwith their President and General Secy. met me regarding Estt. Order No. 223/1995 dtd. 18th July 95 with particular reference to Sl. No. 1., Shri Anil Ch. Dey, Havildar who has been posted back to Dawki LCS. The points raised by the Association are :-

- 1.. All postings to border areas are by options and these are considered by the Administration as and when vacancy arises i.e. after a Gr. D Officer is due for posting outside a particular border area.
2. Shri Anil Ch. Dey, Havildar, from the time he joined, has literally been posted to only border areas such as Dawki, Pynursla, Borsora, Shella-bazar etc.. It is not known why only he has been selected for these border postings again and again even though there are other representees.
3. Postings and transfers are to be considered by the Cadre Controlling Authority and the proposals should be put up to CCP for his concurrence.

According to the Gr. D Staff, the orders were issued against all the above norms. In future, the norms agreed to in the OCM and General instructions issued from time to time should be adhered to strictly. Meanwhile, orders should be cancelled and the Supdt. (Dawki) may be directed not to allow Shri Anil Ch. Dey, Havildar to join.

Sd/- L.R. MITHRAN
COMMISSIONER OF CENTRAL EXCISE : SHILLONG

Attested
@
Adv.

C. No. II(3)1/ET.III/92/14279-83 Dated 18.7.1995
Copy forwarded for information and necessary action to:

1. The Dy. Commissioner (P&V), Customs and Central Excise, Shillong.
2. The Sr. P.A. to CCP, Shillong.
3. The P.A.O/A.C.A.O.(Accts.) Customs and Central Excise, Shillong.
4. The General Secretary, Gr. 'D' Officers' Association, Customs and Central Excise, Shillong.

Sd/- L.R.Mithran
Commissioner of Central Excise, Shillong

Attested
@ Shillong
Adv.

To

The Commissioner,
Central Excise,
Shillong

Respected Madam,

Sub : Implementation of Establishment Order No.
223/1995 dated, 18.7.95 - Prayer Regarding-

I, Anil Chandra Dey, Havildar, Customs and Central Excise, Shillong seek your kind permission to lodge my strongest protest against the objections raised against my transfer to Dawki by the President and the General Secretary of Gr. 'D' Officers' Association and urge for immediate implementation of my transfer order issued by the Administration.

2. That Madam, I am in the service of a Social Welfare State and by choice, I am no a Member of the Gr. 'D' Officers' Association. Therefore, Gr. 'D' Officers' Association has no right whatsoever to interfere or object to anything that concerns me. Added to that, their actions are most unprincipled with an oblique motive as could be judged from the following facts :

3.- That Mada,. I have already completed 40 years of service and there are only 2 years left before my superannuation. That being a patient of sciatica and other personal problems, I have been representing since 1993 praying for posting at Dawki in consideration of the fact that it has warm climate as well as Departments' quarter.

Contd...P/2

Attested
Chhila
Adv.

4. That Madam, in 1993 my representation for transfer to Dawki was considered by the Administration and then your goodself as Additional Collector (P&V) sympathised with my cause, ordered for my transfer to Dawki, but to my utter disappointment Shri Jagadish Deb was given his second posting to Dawki LCS at the behest of Gr. 'D' Officers' Association in cancellation of his transfer order from Karimganj to Dhubri, and I was assured that he was given posting for 6 months and after that I will be given the posting. This fact may kindly be verified from the Estt. records and also your honour may kindly remember, Sri M.Chakravarty, A.O., Establishment who was as D.O.S. of the E.T. processed my representation at that time.
5. That Madam, Sri Jagadish Chandra Deb, Havildar was posted back to Dawki L.C.S. second time, though in earlier occasion, he along with his wife, who is also a Sepoy in our Department completed a tenure of 7 years at Dawki L.C.S. and this did not become a bar to the said Association to plead his case for second term posting, though he was under order of transfer to Dhubri from Karimganj that time.
6. That Madam, he has been continuing for more than 2 years there in his second term also under the patronage of the President and the General Secretary of Gr. 'D' Officers' Association and now when Sri Jagadish Deb has been transferred after two years, they raised objections uttering principles to retain the person and to prevent me to have my choice of posting, ostensibly I am not in their Association.

Contd...P/3

Attested
Chh
Adv

7. That Madam, transfer and posting is guided by the principle of administrative convenience and Staff Welfare, and not by the ulterior principle of some vested interested. If your honour make a through scrutiny of the whole episode, it can be fathomed, the extent of vengeance unleashed by the men at the helm of affairs in the name of Association, who have least consciousness to show respect to the welfare of a poor staff like me, forgetting the personal enmity in the matter.

8. That Madam, only a strong and principle action from Administration to honour its own Establishment Order can put a brake to the unhealthy parallel administration run by the Association.

That Madam, I am in the service of Union of India and not in the service of Association and out of disgust, I left the Association 5 years back when I found that the principle is relegated to the background amidst the turmoil of personal interest, and my snapping relationship with the Association should not be perceived to victimise me at the fag end of my service.

That Madam, I may be allowed to submit that Government of India's Instruction for posting to choice place of posting before 2 years of retirement is very clear. And in consideration ~~to Dawki. Therefore~~ of my representation, I have been posted by Administration to Dawki. Therefore, my order should not be stayed to make way for unholy gains by the Association Leader.

Attested
@
Adv.

I may be served with necessary instructions regarding my transfer order to Dawki which I duly received, and the stand of the Administration in this regard.

That Madam, I once again request to fervently consider my case in the light of my representation, and for this act of kindness I shall remain grateful to you.

Yours faithfully,

Sd/- Anil Chandra Dey
Havildar
N.E.R., Customs Preventive, Shillong

Enclo : Copy of Estt.
Order No. 223/95
dated 18.7.95.

Copy forwarded to :

1. Commissioner of Customs (Prev.), North Eastern Region, Preventive Collectorate, Shillong for causing justice.
2. Deputy Commissioner (P&V), Customs & Central Excise, Shillong for favour of necessary action and early disposal of my representation.

Sd/- Anil Chandra Dey,
Havildar, N.E.R.
Customs Preventive
Collectorate, Shillong.

Attested
Chuli
Adv

ANNEXURE - 7

O R D E R

Dated Shillong
21st July '95.

It is hereby ordered that Sri Anil Ch. Dey, Havildar at present posted in the office of the Commissioner of Customs Preventive, N.E.R., Shillong is hereby directed to attend duty with the attached to Additional Commissioner, Central Excise, (Audit) i.e. at Laitumkhrah Customs & Central Excise, Audit Branch. This order is issued in supersession of this Office Order dated 1st May '95. He is hereby releived from duty from at CCP's Office afternoon of 21st July '95 with a direction to report to P.R.O. Laitumkhrah, C & CE office.

Sd/- Plk. Sinha Choudhury

C. No.1(21)/5/93 14608-12

Dt.

Copy forwarded to the :

1. Sr. P.A. to the Commissioner of Customs Preventive N.E.R, Shillong.
2. Deputy Commissioner of C & CE Shillong.
3. P.A. to the Additional Commissioner of Central Excise (Addit).
4. P.R.O., Customs & Central Excise, Laitumkhrah, M.S. Building, Shillong.
5. Sri Anil Ch. Dey, Havildar for compliance.

Sd/- Illegible

21.7.95
Superintendent (Hqrs.)
Customs & Central Excise
Shillong

Attended
@ Shillong
Adm.

ANNEXURE -8

HQRS. PREVENTIVE UNIT : SHILLONG - 793001

C. No. II/2/HQR.PREV/ET/CUS/SH/94/PT.I Dated

To
The Superintendent (Hqrs.)
Customs and Central Excise,
Shillong

Sub : Transfer of Srhi Anil Ch. Dev, Havildar.

Please refer to your order dated 21st July, 1995
A issued under C. No. 1(23)8/93/14608-12(A) regarding
transfer of Sri Anil Ch. Dey, Havildar.

In this connection, I am to draw your attention of
the order of the Commissioner of Customs (Prev.) that no
Sepoy from the Customs should be withdrawn without consent
of him and this was duly communicated to you.

Secondly, service records of Sri Anil Ch. Deh such as
attendance, leave etc. are maintained in this Unit, as
such he cannot be withdrawn in the manner you asked to.

I however, request you to take C.C.P's order into
confidence and wait till he comes back. Further he is at
the moment required for some preventive operations.

Enclo : As above

Sd/- P SIKDAR
SUPERINTENDENT (HQRS.PREV)
O/O THE COMMISSIONER OF CUSTOMS (PREV)
N.E.R. : SHILLONG

C. No. II/1/HQR.PREV/ET/CUS/SH/94/PT.I/430 Dated 21.7.95

Copy to

1. Sri Anil Ch. Dey, Havildar. He will attend Hqrs.
Preventive Unit till he is relieved.
2. The Deputy Commissioner (P&V), Customs & Central Excise,
shillong for favour of information

Sd/- P SIKDAR
SUPERINTENDENT (HQRS.PREV)
O/O THE COMMISSIONER OF CUSTOMS (PREV.)
N.E.R. : SHILLONG

Attended
@ Shillong
P.V.

Filed in Court
on 17.11.95
Boro
Court Master

Central Administrative Tribunal
Guwahati Bench
17 NOV 1995
Guwahati Bench
Guwahati Bench

File by Gopal Sarmah
17.11.95
221/45C

17/11/95
Barh
Superintendent (Law)
Central Excise
Guwahati Division

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

In the matter of :

O.A.No. 142/95

Shri A.C. Dey ... Applicant.

+ Vs. -

Union of India & Ors

... Respondents.

- AND -

In the matter of :

Written Statement on behalf of
the Respondents.

I, Shri P.R. Ghosh, Superintendent (Law), Central Excise, Guwahati
do hereby solemnly affirm and declare as follows :-

1. That a copy of application alongwith an
order passed by this Hon'ble Tribunal has been
served upon the respondents and myself being au-
thorised to file written statement on behalf of
all the respondents, I do file it and say catego-
rically that save and except what is admitted in

Received
G.M.
for B.K. Sarmah
R. Adm
17.11.95

- 31 -
R.R. 16/11/95
(P.R. SHASHI)
Superintendent (Law)
Central Excise
Guwahati Division

this written statement, rest may be treated as total denial by all the respondents. Before I go for para-wise comments of the case, a brief history of the case is incorporated in this written statement and it will constitute part and parcel of this Written Statement.

Brief History

That on 18-7-95 transfer order No. 223/95 was issued whereby the applicant Shri A.C. Dey and Shri Jagadish Ch. Deb were transferred amongst others to Dawki L.C.S. and Karimganj Divisional Office respectively. This order was issued as per the direction of Commissioner of Customs (Preventive) Shillong. Soon after the issue of the above order the Gr. 'D' Officers Association met the Commissioner of Central Excise, Shillong in her capacity as Cadre controlling authority and chair person of the OCM and requested for review of the above order which they considered as unfair and biased. On thorough scrutiny it was found that the applicant during the last 31 years of his service had been posted at border areas considered as postings for around 28 years and had enjoyed special allowances for about 6 years. It was also found that Shri J.C. Deb who was transferred to Karimganj vide the ~~order~~ above order had not completed his full tenure at Dawki as per policy decisions. As such the transfer order No. 223/95

Rh 24/11/95
(P.R. Singh)
Superintendent (Law)
— Central Excise
Gawhati Division

dated 18-7-95 was ordered to be cancelled by Commissioner of Central Excise vide her note ~~xxxxxxx~~ dated 18-7-95 ~~xxxxxxx~~ in consultation with Commissioner of Customs (Preventive) purely on equity and existing transfer policy. The applicant who had represented for Dawki was therefore unable to go to Dawki as such he filed this present application before this Hon'ble Tribunal demanding implementation of order No. 223/95 dated 18-7-95.

2. That with regards to the contents made in paragraphs 1 to 5 of the application, I beg to state that I have nothing to comment.

3. That with regards to the contents made in paragraphs 6.1 to 6.6, I beg to state that I have nothing to comment being matter of facts.

4. That with regards to the contents made in paragraph 6.7, I beg to state that the transfer order No. 223/95 dated 18-7-95 transferring the applicant and Jagadish Ch. Deb to Dawki and Karimganj respectively was issued as per the direction of the Commissioner of Customs (Preventive), Shillong. A copy of the order is annexed herewith and marked as Annexure R.1.

Now, in the Office Council Meeting, it was agreed to by both the staff side and administrative side that as in border postings carry a special pay of

Ph 8h
16/11/95
(P.R. GHOSE)
(100)

Rs. 20/- p.m. (for Gr. 'D' Officers), all border postings will be done by calling options from Gr. 'D' staff and it is also an agreed norm in this department that all Gr. 'D' Officers should have equal opportunity to enjoy border postings which implies that while awarding a Gr. 'D' Officer with a border posting his history of posting will also be consulted. Copy of the same is annexed herewith and marked as Annexure R.2.

Now, it would appear from the history of postings of the applicant, the applicant during last 31 years has been posted in border area for more than 28 years. More importantly, during the last $8\frac{1}{2}$ years i.e. after the scheme of granting special pay to border postings came into effect he was in border area for six years. From the above, it would appear that the objection of Gr. 'D' Officers Association on the ground of inappropriateness, with regard to posting of the applicant again to border area had substance, and it is only after finding enough ground on their objection that the note was issued by the Commissioner of Central Excise, Shillong. There should not be any denying in the fact that the administration always have the right to correct any order passed inadvertently without taking all relevant factors into consideration and this case too is no exception. Further, there is no instruction anywhere that everytime an Officer's request for posting at a particular place merely on the plea that the place is nearer to his home town, such request should be considered foregoing genuine claims of other Officers. And it is not a fact that Dawki is

34-
R.R. 16/11/75
(P.R. GHOSH)

nearer to his home town which is Shillong as per his declaration.

5. That with regards to the contents made in paragraph 6.8, I beg to state that as has already been discussed, the Group 'D' Officers Association had only raised some questions on the ground of inappropriateness and there was no threat. The work of the administration is to function after considering all genuine claims of all concerned. Therefore, the accusation of the applicant that the administration issued the note on the threat without any genuine evidence is deplorable and unbecoming of a Govt. servant.

Further, Shri J.C. Deb, Havildar at present posted at Dawki has completed only two years, whereas, the minimum term that a Gr. 'D' Officer should ~~complete~~ complete in any border posting at a time is 3 years as per agreed norm. Hence, from this point of view too the order of transfer of Shri J.C. Deb from Dawki was not good and appropriate and hence had to be reviewed. It may not be out of place to mention that the applicant had in fact completed 2 tenures in Dawki from 78 - 80 and 84 - 92 and was transferred to Shillong in May '92.

.....6/-

Rh
16/11/95
(P. & S. Hqrs.)
Superintendent (Law)
Central Excise
Guwahati Division

6.. That with regards to the contents made in paragraph 6.9 of the application, I beg to state that the Gr. 'D' Officers of the Hqrs. Office of both the Commissionerates (Central Excise and Customs Prev.) are under the direct control of Superintendent (Hqrs.). He has been given powers to rotate the Gr. 'D' Officers within the Hqrs. Office and allot their duties according to administrative convenience.

In the Office Council Meeting this has been agreed upon by the Chairperson of OCM and the Gr. 'D' Officers Association. It would appear that postings which do not suit the applicant are termed as motivated. Almost 100% of his service has been in sensitive posts.

7. / That with regards to the contents made in paragraph 6.10, I beg to state that in his order the Commissioner of Customs Prev. xx had directed the Superintendent (Hqrs.) to transfer sepoys of his unit with consent of Commissioner of Customs (Prev.).

However, in the subsequent Office council meeting dated 6-6-95 when both Commissioners were present as also the Chief Commissioner, Calcutta, Superintendent (Hqrs.) was given absolute powers to allot duties of Gr. 'D' staff and make rotations. The decision of the Chairperson of OCM regarding the point raised by Gr. 'D' Officers Association with respect to the controlling of Gr. 'D' Officers at Hqrs., reads as follows.

.....7/-

22/11/95
(P.R. SHARMA)
Superintendent (Tow)
Central Excise
Guwahati Division

"The Chairperson said that the post of PRO is filled up by a Supdt. who will be assisted by three Inspectors. Regarding duty distribution of Drivers, Gr. 'D' cadre and contingent paid staff, the Superintendent will be solely responsible for the same".

As such Superintendent ("qrs.") issued rotation orders as he is empowered to do so, which till date has not been obeyed by the applicant who appears to be a
uniformed Officer.

8. That with regards to the contents made in paragraph 6.11, I beg to state that in the Office Council Meeting dated 6-6-95, It has been decided by the Chairperson that home town posting in the Customs side will be a consideration and the representatives of Gr. 'D' Officers have also consented to the decision of the Chairperson. Moreover, persons posted at border areas are eligible for border allowance as such one person cannot be allowed to enjoy the benefit again and again depriving others. The applicant has informed that he is intending repeat intending to settle at Dawki and posting him to Dawki merely on this plea is not binding on the department while depriving genuine claims of other. This plea is contradictory to paras 6.7 and 7 which he has stated that Dawki is nearer to his home town. Besides, under the Meghalaya land laws he may not be permitted to settle in Dawki. Moreover, there are many other warm places nearer to his home town which do not carry border allowance where he may opt for posting or may in future be posted.

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Ph. S. W.
16/11/95
C.P.R. (Hd. H)

9. That with regards to the contents made in paragraph 6.12 of the application, I beg to state that I have nothing to comment.

10. That with regards to the contents made in paragraph 7 of the application, I beg to state that the transfer order No. 223/95 dated 18-7-95 transferring the applicant and Jagadish Ch. Deb to Dawki and Karimganj respectively was issued as per the direction of the Commissioner of Customs (Preventive), Shillong who is not the Cadre Controlling authority. Now, in the office council meeting, it was agreed to by both the staff side and administration side that, as the border posting carry a special pay of Rs. 20/- p.m. (for Gr. 'D' Officers) all border posting will be done by calling option from Gr. 'D' staff and it is also an agreed norm in this department that all Gr. 'D' Officers should have equal opportunity to enjoy border posting which implies that while awarding a Gr. 'D' Officer with a border posting his history of posting will also be consulted. It would appear from the history of posting provided by the applicant that the applicant during last 31 years has been posted in border for more than 28 years. More importantly, during the last $8\frac{1}{2}$ years i.e. after the scheme of granting special pay to border postings came into effect he was in border postings came into effect he was in border areas for six years and the remaining in other sensitive posts. From the above, it would appear that the objection of Gr. 'D' Officers Association

....9/-

Handwritten notes and signature:
R. S. S.
16/11/95
(14.8.95)
16/11/95

on the ground of inappropriateness, with regard to posting of the applicant had a point and it is only after finding enough ground on their objection that the note was issued by the Commissioner of Central Excise, Shillong. There should not be any denying in the fact that the administration always have the right to correct any order passed inadvertently without taking all relevant factors into consideration and this case too is no exception. Further there is no instruction anywhere that everytime an Officer's requests for posting at a particular place merely on the plea that the place is nearer to his home town, such request should be considered foregoing genuine claims of other Officers. Moreover, Dawki is not nearer to his home town which is Shillong as per his declaration.

G R O U N D S

11. That with regards to the contents made in para 1 of grounds, I beg to state that I have nothing to comment.

12. That with regards to the contents made in para 2, I beg to state that it is primarily the responsibility of the Gr. 'D' Officers Association to look after the welfare of its members and on this occasion too they did not override their position. Moreover, the points raised by them too had sufficient valid grounds as discussed in foregoing paras and facts mentioned.

.....10/-

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Rh 8/16/11/195
(P.R. SHOH)

13. That with regards to the contents made in para 3, I beg to state the transfer order was cancelled on valid grounds as discussed above and not on the illegal threat of Gr. 'D' Officers Association as stated by the applicant. Facts as given above will show this.

14. That with regards to the contents made in para 4, I beg to state that prior to 1992, there was no fixed policy for transfer and posting of Gr. 'D' Officers, ~~XXXXXXXXXXXX~~ after from general visits received from time to time.

15. That with regards to the contents made in para 5, I beg to state that this is a fact that there are other places under the jurisdiction of this Commissionerate which may be conducive to his health but the applicant has represented for Dawki only where he had already complete 2 tenures i.e. 78-80, 84-92.

16. That with regards to the contents made in para 6, I beg to state that the Administration does not differentiate its employees on the basis of their being or not being a member of any Association. Different transfer policies cannot be framed for those who are members of Gr. 'D' Association and for those who are not members of Gr. 'D' Officers Association.

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R. Singh
16/11/95
(P. Singh)

17. That with regards to the contents made in para 7, I beg to state that according to Board's instruction, copy of which is annexed herewith as Annexure R.3, persons who are posted away from the proximity of the station where they propose to settle down after retirement should be brought to the proximity of that station within last one year or so of their service. This is, however, subject to administrative requirements and it is not feasible to transfer the applicant to Dawki on administrative reasons. Hence, the plea of the applicant that he is entitled to get a choice posting now is not supported by any logic or instruction.

18. That with regards to the contents made in paragraph 8, I beg to state that the applicant, as stated him, is suffering from sciatica, as such he can be transferred to places other than Dawki also, which may be suitable to his health, under Central Excise/Customs (P) Commissionerate.

19. That with regards to the contents made in para 9, I beg to state that according to Ministry's instructions frequent transfers of Gr. 'D' staff should be avoided. Therefore, Group 'D' staff are usually transferred on the basis of representations only. However, due to sanction of special pay for border areas options are called for filling up those posts for a tenure of three years. Hence the contentions of the applicant is not correct.

.....12/-

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R. 88/16/11/95
16/11/95
(P. R. GHOSH)
JAWAHAR LAL NEHRU

20. That the present application is ill-conceived of law and mis-conceived of fact.
21. That the present application is without any merit and as such liable to be dismissed.
22. That this present application is barred by limitation and as such liable to be rejected outright.
23. That the respondents crave leave of filing additional written statement if this Hon'ble Tribunal so desires.
24. That the stay order granted by this Hon'ble Tribunal staying the cancellation of transfer order of the applicant (from Shillong to Dawki) putting the respondents in great difficulties of day to day administration of official work and as such the same is liable to be vacated and more so when the applicant has failed to make out a prime-facie case.
25. That this Written Statement is filed bonafide and in the interest of justice.

VERIFICATION

I, Shri P.R. Ghosh, Superintendent (Law), Central Prison, Guwahati do hereby solemnly affirm and declare that the contents made in paragraph 1 of this Written Statement are true to my knowledge and those made from paragraph 2 to 19 are derived from records which I believe to be true and rest are humble submissions before this Hon'ble Tribunal.

I sign this Verification on this 16th day of November, 1995 at Guwahati.

✓ *P.R. Ghosh* 16/11/95
(P.R. GHOSH)
Superintendent (Law)
Central Prison
Guwahati Division

CUSTOMS AND CENTRAL EXCISE: SHILLONGESTABLISHMENT ORDER NO. 223/1995
DATED SHILLONG THIS 18 TH JULY 1995Subject : Estt. Transfer and Posting in the
grade of Havaldar.
.....

The following Havaldar, of Customs & Central
Excise are hereby transferred and posted to the places mentioned
against their names with immediate effect and until further orders.

Sl.No.	Name	From	To
1.	Shri Anil Chandra Dey	Hqrs. Office Shillong	Dawki L.C.S. Shillong Cus. Division.
2.	Shri Jagadish Ch. Deb	Dawki L.C.S. Shillong Cus. Division	Badarpur CPF Karimganj Cus. Division.

sd/-
(EVA M.R. HYNIEWTA)
DEPUTY COMMISSIONER (REV)
CUSTOMS & CENTRAL EXCISE: SHILLONG

C.NO. II(3)1/ET.III/92/

Dated : 18 JUL 1995

Copy forwarded for information & necessary action to :

1. The Commissioner of Customs (Prev.), NER, Shillong.
2. The Assistant Commissioner of the Customs (Prev.) Division.
Shillong/Karimganj.
3. Shri _____ for compliance.
4. A.C.A.O. (accts.)/P.A.O., Customs & Central Excise, Shillong.
5. The Superintendent, Dawki L.C.S.
6. The Superintendent (Hqrs.), Customs & Central Excise, Shillong.
7. The General Secretary, Group 'D' Officers' Association,
Customs & Central Excise, Shillong.
8. Guard file.

sd/-
(M.L. CHAKRABORTY)
ADMINISTRATIVE OFFICER (ESTT)
CUSTOMS & CENTRAL EXCISE: SHILLONG

OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL
EXCISE SHILLONGMINUTES OF THE OFFICE COUNCIL MEETING
Held ON 06-06-95 AT 3.00 P.M.

The following were present in the meeting

OFFICIAL SIDE

1. Shri D. Chakraborty, I.C.G. (EZ) : Spl. invitee
2. Ms. L. R. Mithran, C.C.E. : Chairperson
3. Shri Lallunghnema, C.C.P. : Member
4. Ms. Eva M. R. Hynniewta, D.C. (P&V) : Convenor
5. Ms. D. Choudhury, A.C.A.O. (Accts.) : Member
6. Ms. D. Langstieh, A.O. (Hqrs.) : Member

STAFF SIDEGr. 'C' Executive Officers' Association

1. Shri B. Bhattacharjee : Vice President
2. Shri K. Sharma : Jt. Secretary

Gr. 'C' Ministerial Officers' Association

1. Shri K. Limbu : Asstt. Gen. Secy.
2. Shri S. Banerjee : Zonal Secretary

Gr. 'D' Executive Officers' Association

1. Shri A. Paul Choudhury : President
2. Shri R. K. Singh : General Secretary

The O.C.M. under J.C.M. was held on 6.6.95 at 3.00 P.M.
in the Conference Room of New Bldg. Laitumkhrah, Shillong.

At the very outset, the Chairperson Ms. L. R. Mithran welcomed Principal Commissioner (EZ) and all the office bearers of the Association and hoped for useful discussion.

Points relating to Gr. 'D' officers was taken up for discussion at first.

GROUP 'D' OFFICERS' ASSOCIATIONPoint -1 WITHDRAWAL OF SEAMAN FROM THE POST OF SEPOYS

Seaman, at present, deployed against the sanctioned post of sepoys to be withdrawn immediately and deployed for actual job entrusted to the cadre. It has been time and again brought before the administration but without any result which should be implemented immediately.

44-

COMMENTS: This point was not discussed as necessary action has already been taken. The orders are to be implemented. (Action E.T.)

Point-2 HAVILDAR AND SEPOYS POSTED IN PREVENTIVE NATURE POSTING SHOULD BE TAKEN ALONGWITH OFFICERS FOR PREVENTIVE WORK

In all Divisional Preventive Posts/ Hrs. Preventive units, sepoy should be taken alongwith officers for preventive works. Rather number of sepoy should be taken more than officers generally taken for preventive works. In all Hrs. sepoy are not ~~xxxx~~ being accompanied, in other words if they are not required they may be withdrawn and utilised in other places e.g. Guwahati Customs Division.

COMMENTS: It was pointed out that this depend on the nature of the preventive work. However all the Assistant Collectors will be advised to utilise the services of sepoy for preventive duty etc. but this cannot be taken as a matter of Rule as all Inspectors/Superintendents are also not taken. (Action DC(P&V)).

Point-3 PERMISSION TO DO PREVENTIVE WORKS BY SEPOYS

Sepoy may be allowed to do preventive works separately as they have detention power particularly for Customs work.

COMMENTS: The Chairperson told the meeting that the matter will be taken up with Board and the decision will be communicated on receipt of clarification from the Board.

Point-4 POSTING OF INSPECTOR(HRS.)/P.R.O.

It has been observed that a lot of Inspectors are being posted as Inspector(Hrs.) P.R.O. It may be brought to the notice of this Association, how many sanctioned posts are there in this regard and who is the controlling officer of the Gr.'D' officers. It has been observed that a lot of Inspectors are ordering contradictory orders. This matter be solved once for all.

COMMENTS: The Chairperson said that the post of P.R.O. is filled up by a Superintendent, who will be assisted by three Inspectors. Regarding duty distribution of Drivers, Gr.'D' Cadre and contingent paid staff the Superintendent will be solely responsible for the same and none other than he will interfere in the same.

Point-5 DEPLOYMENT OF VEHICLES

It has been observed that departmental vehicles are being used for personal work depriving availment of vehicles for Preventive works for which these vehicles are exclusively meant for. This may be immediately stopped and the vehicles should be used properly. Moreover Gr.'D' staff should not lift in office vehicles during disturbance especially. A permanent driver may be engaged at Hrs. complex at Morelow compound who after office hours may drop all the staff (Driver, Gr.'D') staff in one vehicle meant for the purpose. This will reduce Govt. expenditure as well increase efficiency in the staff.

COMMENTS: Chairman agreed that vehicles should be parked in the Hrs. premises and keys should be in the Key-board of Hrs. office at the end of duty and one vehicle with driver should be deployed for dropping the staff members performing late hour duties.

45-226
72

Point-6 CONTRACT WORKERS EMPLOYMENT

Since the entire N.E. region is disturbed area, no contract workers to be taken without proper police verification and without sponsoring by the Employment Exchange.

If any accident/unpleasant thing happens involving these people who have easy access to entire office premises, the administration will be held responsible for the consequence.

COMMENTS: The Chairperson informed that Ministry's instructions regarding engagement of Casual Workers will be followed. Their deployment is directly under Superintendent(Hqrs.).

Point-7 CLEARANCE OF VIG. CASES IN SPECIFIED TIME

It has been seen that vigilance/non-vigilance cases remain pending for years together and the incumbent, irrespective of all cadre, suffer financially and careerwise for years together. All these cases are to be completed within the stipulated time specified for such cases. If not, the aggrieved person should be given all benefits e.g. Sudhakar Sharma, Inspector.

COMMENTS: The Chairman agreed that all the vig/non-vigilance cases should be cleared as early as possible and henceforth the cases will be taken up on seniority basis.

Point-8 ACQUIRING OF NEW OFFICE BUILDING

It has been learnt that a new office building is being acquired by the administration on rental basis in an area inconvenient for staff. The staff members find it difficult to attend office at some of the present buildings for the present prevailing situation and unabated vandalism in some part of the town. This problem is more acute for Gr.'D' staff who have to attend round the clock duties. Hence the acquisition of the proposed new building should be stopped immediately. If any new building is required to be rented, this may be done in consultation with the representatives of the Associations. Moreover, the present Hqrs. complex at Morellow Compound should in no case be vacated.

COMMENTS: The representatives of Gr.'D' Association demanded that the present office building and the land at Morellow Compound should be acquired. The Chairperson explained that action has already been taken in this regard. However, enquiries would be made with the state to find out the possibilities of acquiring the land based on the length of occupation. (Action, DC (P&V))

Point-9 AWARDING OF HONORARIUM

It has been noticed that many staff members were granted honorarium of late. The Chairman O.C.M. may please enlighten the criteria for granting honorarium to staff members. How the names of the persons are selected, processed and ultimately granted the same.

COMMENTS: The Chairperson said that honorarium would be awarded to all staff members who are deserving and proposals would be closely studied before awarding honorarium.

Point-10 ROTATION OF STAFF FROM CUSTOMS TO CENTRAL EXCISE

It has been noticed that many staff are being kept in customs sensitive posts for a long time in contravention of the standing instruction from Ministry/Chief Commissioner in the matter.

The Chairperson of the O.C.M. is impressed upon that the staff from the grade of Group 'D' to 'D' posts at the Customs side should be rotated from Customs to Central Excise without delay. This should be strictly enforced in case of staff posted in sensitive Customs Posts in the whole Collectorate.

This rotation/transfer should be done strictly under the standing instruction and no one should be posted repeatedly to sensitive post just after a minute gestation period of non-sensitive posting given for eye wash.

COMMENTS: The Chairperson said that the rotation of Group 'D' between Central Excise and Customs will be done according to the existing instructions of Ministry and Chief Commissioner. ~~However~~ Home town posting in Customs Commissionerate will not be a consideration. Due consideration will be given to option exercised by any staff basing on their service seniority.

The order number 3/95 vide which staff from Imphal to Moreh were transferred would immediately be reviewed by CCP and if there is excess staff in Moreh, action will be taken accordingly.

Point-11 TENURE OF POSTING OF OFFICERS

The attention of the Chairperson OCM is invited to Establishment order No. 217/94 dated 12.8.94 wherein the tenure of posting of officers of different grade are enumerated. But it has been observed that the administration itself transferring staff members in breach of its own orders. The Association impresses upon the Chairman to stick to the order and staff should be allowed to complete their tenure in a table.

COMMENTS: The Chairperson agreed to do the rotation transfers in accordance with order No. 217/94.

MISC POINTS

Point-1 SUPPLY OF UNIFORM

COMMENTS: The Chairman and the Chief Commissioner agreed that the decision of the Chairman of one OCM is binding upon the Chairman of the subsequent OCMs. (for example, the purchase and supply of Uniform materials will be done as per decision of OCM dated 9.12.88 (Point No.12) the best quality Uniform materials will be locally purchased and distributed from Hqrs.

Point-2 IDENTITY CARD

The General Secretary Gr'D' pointed out that the power vested on the Gr'D' staff by notification dated 1.2.63 should be focussed in the Identify Card issued to them.

COMMENTS: The Chairperson said that in both Central Excise and Customs side powers under various sections/Rules will be given to them with proper entry in the Identify Card after the matter is enquired and clarified.

COMMENTS: It was decided that a fresh reward committee would be appointed with regards to their plea for reward to those Group 'D' staff involved in the 112 bars of primary gold case, the matter will be reviewed by CCP on facts.

GROUP 'C' MINISTERIAL OFFICERS ASSOCIATION

Point-1: SANCTIONED POST OF MINISTERIAL OFFICERS AT GUWAHATI CUSTOMS DIVISION

It is observed that at present there is no sanctioned post of Ministerial officers at Guwahati Customs Divisional Office. Therefore sanction may be obtained for posting of Ministerial officers at Guwahati Customs Divisional Office.

COMMENTS: Although Ministry had not sanctioned any post for Guwahati Customs Divn 2 (two) Tax Assistants have been posted. However a review of Ministry's sanction will be made and those vacancies, not filled up will be placed at CCP's disposal. (Action: DC(P))

Point-2: PROPORTION OF PROMOTION QUOTA OF UDC/TA TO INSPECTOR

The present proportion of promotion Quota of Inspectors from UDC/TA is not sufficient for promotion to the grade of Inspectors as such another 25% of direct quota of Inspectors should be diverted to promotion quota, so that UDC/TA of this department may get promotion to the grade of Inspectors.

COMMENTS: It was informed that a proposal in this regard has already been forwarded to Ministry.

Point-3: Abolition of 23 posts of Inspectors

COMMENTS: It was decided that the matter will be taken up with Ministry. (Action: DC(P&V))

GROUP 'C' EXECUTIVE OFFICERS ASSOCIATION

Point-1: Copy of the Minutes of the Meeting dated 17.2.95 with Chief Commissioner.

COMMENTS: Minutes will be issued as soon as the same are received from Chief Commissioner's office at Calcutta.

Point-2: Points of Last O.C.

i) Withdrawal of inspectors of non-sanctioned posts.

COMMENTS: The Chairperson agreed to withdraw Inspectors from non-sanctioned posts in a phased manner.

ii) Canteen should be provided for staff.

COMMENTS: As there is a ban on creation of posts, Ministry have disallowed setting up of Canteen. However it was decided that correspondence will be made with Ministry for waiver of Ban. (Action: DC(P&V)).

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(ii) quarters at remote places.

COMMENTS: It was informed by the members of the Gr'C' Executive officers Assn. that some of the LCs and PPs do not have office building and quarters.

The Chairperson informed that this has already been taken up with Ministry strongly. Ministry are also inclined to agree with the views of CCE.

No piecemeal transfer orders should be issued.

COMMENTS: The Chairperson agreed to the demand of the Association.

Point-3 Police interference in the activities of Customs & Central Excise Officers in Dhubri/Karimganj, special reference to the illegal detention of Anti-Evasion officers of Shillong at Dibrugarh.

COMMENTS: It was informed that action had already been taken but the Chairperson agreed to make further enquiry into the action of Dibrugarh Police in which some of the Inspectors of Central Excise were detained at the Police Station for unnecessary harassment. The Chairperson also agreed to review the action of Asstt. Commissioner, Dibrugarh Divn. (Action: PA to CCE)

Point-4 DPC for Internal Audit. Option has been obtained in December 1994 but no action has been taken.

COMMENTS: The Chairperson agreed to hold the DPC by the end of June '95 (Action: DC(P&V))

Point-5 Abolition of Inspectors post.

COMMENTS: As at Pt. No. 3 of Gr.'C' Ministerial Officers Assn.

Point-6 Compassionate appointment with special reference to Peter Lyngdoh's wife's case.

COMMENTS: Smt. L. Syiemong's case was discussed and it was decided that action will be taken as per Ministry's order F.No.A 12012/45/90-Ad.III B dated 19.4.90. (Action: PA to CCE)

Point-7 Special Taxi facility for the officers having basic pay of Rs. 1900 and above.

COMMENTS: The Chairperson agreed to take a decision after discussing the issue with the AChO. (Action: AChO)

The meeting came to a close at 7.30 P.M.

sd/-
(L. R. MITHRAN)
COMMISSIONER OF CENTRAL EXCISE:
SHILLONG

F.No. A-35017/28/92-AD-III-B
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs.

New Delhi, the 30th June, 1994..

All Principal Collectors of
Central Excise and Customs,
All Director Generals/Narcotics Commissioner.
All Heads of Departments under
Central Board of Excise & Customs.

Subject: Transfer Guidelines regarding posting and transfers of Group 'B', 'C' and 'D' officers in the Attached & Subordinate offices under Central Board of Excise and Customs.

Sir,

1. F.No. A-22015/20578-
Ad-III-B dt. 1.11.78.

2. F.No. A-22015/21/89-
Ad-III-B dt. 13.7.89.

3. F.No. A-35017/17/91-
Ad-III-B dt. 24.1.92.

4. F.No. B-12014/4/92-
Ad-III-B dt. 2.9.92.

In supersession of all previous instructions, as indicated in the margin, the following instructions/guidelines are issued in consolidated form for regulating the transfer and deputation of Group 'B', 'C' and 'D' officers in the various attached and subordinate offices under the Central Board of Excise & Customs :-

I. Group 'B' and Group 'C' Officers:

(1) Period of stay at one station :

(a) Executive Officers :- The period of stay of an officer at one station should normally be 4 years. Transfers may be made earlier if administrative requirements or compassionate grounds, so necessitate.

(b) Ministerial Officers :- While Ministerial officers are also liable to transfer, like Executive officers, routine transfer of Ministerial officers from one station to another should be avoided. However, Ministerial officers are liable to be transferred from one charge to another at periodic intervals.

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II. Group 'D' staff :- Group 'D' staff are also liable to be transferred any where within the Collectorate even though its jurisdiction extends to more than one State. However, frequent transfers of Group 'D' staff should be avoided.

III. Postings of husband-wife teams at the same Station :-

Guidlines contained in Department of Personnel & Training's Office Memorandum No. 28034/7/86-Estt(A) dated 03.4.86 may be followed subject to administrative requirements/exigencies.

IV. The tenure at sensitive charges and requirements of "Cooling Off" period :-

(1) Officers posted in any of the following charges as mentioned below, on completion of his/her normal tenure, be posted to a formation/organisation/assignment other than those mentioned here below :-

(a) Airports,

(b) D.G.R.I.

(c) D.G.A.E.

(d) NCB/ED(FERA)/EIB ETC.

The officers so posted in any of the aforesaid charges/organisation/assignments will be required to complete the "Cooling Off" period of not less than two years before being considered for re-posting to any of the aforesaid charges.

V.(a) The power to relax the cooling off period etc :-

The power to relax the "cooling off" period for an officer with reference to the charges mentioned in para IV shall be exercised by the Pr. Secy./Director General concerned, in consultation with the Head of the Department of the Officer in question.

(b) The decision to extend the normal tenure :-

The decision to extend the normal tenure etc. will be governed by the provisions of Recruitment Rules and the DOP&T's guidelines on the tenure/deputation/executive instructions of the Board as the case may be.

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VI. Transfer of office bearers of the recognised Unions/Associations of Central Government Employees :-

In regard to the transfers of Office bearers of the recognised Unions/Associations the instructions contained in the Department of Personnel & Training's O.M. No. 27/3/69-Estt.(B) dated 8.4.1969 should be observed strictly read with future amendments, if any.

VII. Notwithstanding the instructions contained in paragraphs (I), (II), (III), the Heads of the Department will have full authority/power to transfer an officer on administrative/compassionate grounds.

The Heads of the Department will also be the deciding authority as to what would constitute difficult postings depending on the local conditions and will be fully authorised to fix --- tenure of posting of officers at those places, as deemed necessary for administrative requirements and exigencies of service.

VIII. General :- ✓

- (i) General transfers should be effected at the end of the academic year and orders therefor should be issued sufficiently in advance. Orders issued otherwise should contain reasons on record.
- (ii) ✓ Officers who are due to retire within two years or so, may not be transferred from their state/district or from the proximity of the station where they propose to settle down after retirement. Those who are posted away from such a station may, if they so request be brought to the proximity of that station within last one year or so of their service. All this will, however, be subject to administrative requirements.
- (iii) For the purpose of transfer, the stay of an officer at a particular station should be computed with reference to the total period of his continuous stay at that station regard less of the different posts held by him there.

2. Above instructions may please be followed scrupulously.

Please acknowledge the receipt of this letter.

Yours faithfully,

(R.K. MDTRA)
UNDER SECRETARY

Central Board of Excise & Customs.

Copy to recognised Association/Unions of Group 'B', 'G' and 'D' staff.

Coulq