

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 232/96

R.A/C.P No.....

E.P/M.A No. 156/97

1. Orders Sheet..... *01A* Pg..... to.....
MP 156/97 andr Pg..... *bx 21 D 30/5/97*

2. Judgment/Order dtd. *11/4/97* Pg..... to.....

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... *232/96* Pg..... to.....

5. E.P/M.P. *156/97* Pg..... to.....

6. R.A/C.P..... Pg..... to.....

7. W.S..... Pg..... to.....

8. Rejoinder..... Pg..... to.....

9. Reply..... Pg..... to.....

10. Any other Papers..... Pg..... to.....

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judi.)

Sahil
31/1/98

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 2321/96

Sri A. Chakrabarty

Applicant(s)

Union of India & ors

Respondent(s)

Mr. J.L. Sarkar, M.Chanda, Advocates for the applicant(s)

Mr. A.K. Choudhury, Advocate Advocates for the Respondent(s)

| Office Notes | Date | Courts' Orders |
|---|-----------------|--|
| This application is in form and with a sum C. P. of Rs. 50/- deposited with IPO/BD No 4445/95 Dated 7/10/96 | 9.10.96 | Leave note of Mr & M.Chanda and Mr A.K.Choudhury. List for consideration of admission on 14.10.1996. |
| <i>6/10/96 By Registrar 8/10/96</i> | | |
| <i>8/10</i> | pg W a/10 | |
| | 14.10.96 | Learned counsel Mr J.L. Sarkar for the applicant. Learned Addl. C.G.S.C. Mr A.K. Chodhuri for the respondents. Heard Mr Sarkar for admission. Perused the contents of the application and relief sought. The application is admitted. Issue notice on the respondents by Registrar Post. |
| | | List for written statement and further orders on 26.11.96. |

6
Member

16.10.96

Notice issued to the concerned parties vide d.no. 36/21/96
29.10.96

Par
1) Service reports are still awaited.
2) W/Statement has not been filed.

22/11

Heard Mr Sarkar on the interim relief prayer. The respondents are directed not to fill up by another person the post against which the applicant has been transferred vide order No.A.22012/43/95-CH dated 19.1.1996, Annexure-2 and order No.I.14015/13-77/5 AR-AC/ME(A) dated 9.2.1996, Annexure-3, during the pendency of this application. The respondents are at liberty to implement the aforesaid

14.10.96

24-10-96

Notice issued vide
No. 3621-24 dated
29.10.96.

✓

2 impugned orders during the pendency
of this application.

Notice may be sent to the
respondents by Speed Post at the cost
of the applicant as requested by his counsel.

62
Member

nkm

M
19/10

26.11.96

Mr. M.Chanda for the applicant.

Mr. A.K. Choudhury, Addl. C.G.S.C. for
the respondents.

Written statement has ~~not~~ been
submitted.

List for written statement and further
orders on 17.12.1996.

62
Member

trd

M
at/11

17.12.96

Learned counsel Mr. M.Chanda for the
applicant. Learned Add. C.G.S.C. Mr.
A.K.Choudhury for the respondents.

No written statement has been
submitted though notice had been issued on
29.10.96. Mr. Chanda submits that the
transfer order dated 19.1.1996, but till
today the applicant has not been released.
In view of the urgency of the matter as far
he is concerned and the delay in
implementation of the order, Mr. Chanda
prays for early hearing.

List for hearing on 6.1.1997. In the
meantime the respondents may submit written
statement with copy to the counsel of the
applicant.

Copy of the order may be supplied to
both the counsels of the parties.

62
Member

*Copy of order dated
17.12.96 issued to the counsel
of the parties.*

3/12

Re. (amendment)

M/12

*1) written statement
has not been submitted.*

3/1

QA/TA/CP/RA/MP No. of 19 O.A.No.232/96

OFFICE NOTE

DATE

ORDER

6.1.97

Learned counsel Mr J.L. Sarkar for the applicant. Learned Addl. C.G.S.C. Mr A.K. Choudhuri for the respondents. No written statement has been submitted. Mr Choudhuri seeks adjournment for written statement and instruction. Mr Sarkar submits that the order dated 9.2.1996 of the Deputy Director(A), Office of the Directorate General, Assam Rifles, shows that the applicant can be released after obtaining clearance from the competent authority ~~of~~ in the Directorate. But till now the applicant has not been released and the actual decision of the authorities is not known. Mr Sarkar presses for early hearing.

Adjourned for hearing on 24.1.97. In the meantime Mr Choudhuri may submit written statement if considered necessary with copy to Mr Sarkar.

27-1-97

Mr. A.K. Choudhury, Addl. C.G.S.C. appearing on behalf of the respondents.

nkm

W
71128.1.97

10.2.97

Let this case be listed on 14.2.1997.

W/S filed on behalf

of R. No 1, 2, 3 & 4.

6
Member

List on 7.2.97 nkm

W/S

14.2.97

Vice Chairman

6-2-97

1) Service Report are still awaited.

2) W/S filed on behalf of R. No - 1, 2, 3 & 4.

trd

Mr. A.K. Choudhury, Addl. C.G.S.C. appearing on behalf of the respondents is indisposed. Written statement has been filed.

List this case for hearing on 14.3.1997.

JL
Vice-ChairmanB/P
1) Service reports are still awaited.

2) W/S statuted - Mr. Choudhury

19-2-97

3) Rejoinder filed by the applicant. No -

OFFICE NOTE

DATE

ORDER

13.2.97

14-3-97

Let this case be listed for hearing

on 21-3-97.


Vice-Chairman

1) Service report are still awaited,
2) w/statement has been filed.

trd.
13/313-3-97

21-3-97

Mr. S. Ali, Sr.C.G.S.C. is not present.

Let this case be listed for hearing on
4-4-97.
Vice-Chairman

1) written statement has been filed at page - 22 to 28
2) Rejoinder has been filed at page - 29 to 33.


13/3

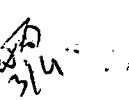
4.4.97

Heard Mr J.L.Sarkar, learned counsel for the applicant and Mr S.K.Choudhury, learned Addl.C.G.S.C for the respondents. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

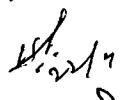
The application is allowed. No order as to costs.


Vice-Chairmanpg
for
13/4

w/statement & Rejoinder
for sum 12/-


13/4

22.4.97
copy of the final order has been sent to the D/Section for issuing the same to parties by Regd. with A/P


13/4

Issued rule D.No.
1447 to 1451 on 29.4.97
Through Regd. with A/P
M/s 715

OFFICE NOTE

DATE

ORDER

6.1.97

Learned counsel Mr J.L. Sarkar for the applicant & Learned Addl. in C.G.S.C. Mr A.K. Choudhury for the respondents. No written statement has been submitted. Mr Choudhury seeks adjournment for written statement and instruction. Mr Sarkar submits that the order dated 9.2.1996 of the Deputy Director(A), Office of the Directorate General, Assam Rifles, shows that the applicant can be released after obtaining clearance from the competent authority of in the Directorate. But till now the applicant has not been released and the actual decision of the authorities is not known. Mr Sarkar presses for early hearing.

Adjourned for hearing on 24.1.97. In the meantime Mr Choudhury may submit written statement if considered necessary with copy to Mr Sarkar.

27.1.97

Mr A.K. Choudhury, Addl.
filed memo of appearance

28.1.97

nkm

Member

Ans. filed by me

R.no. 1, 2, 3 & 4.

10.2.97

Let this case be listed on 14.2.1997.

List on 7.2.97

on 2/2/97

Member

Vice Chairman

nkm

14.2.97

Mr. A.K. Choudhury, Addl. C.G.S.C. appearing on behalf of the respondents is indisposed. Written statement has been filed.

List this case for hearing on 14.3.1997.

19.2.97

Rejoinder filed by
the applicant

trd

Vice-Chairman

14-3-97

Let this case be listed for hearing

on 21-3-97.

1) Service Reparts are
82/1 awaited.

Vice-Chairman

2) W/Satnd-ns b/w
trd.

LW

3) Repairs b/w
b/w

21-3-97

Mr. S. Ali, Sr.C.G.S.C. is not present.

Let this case be listed for hearing on
4-4-97.

20/3

W/Satnd & Repairs
b/w LW

1m

Vice-Chairman

3/4

4.4.97

Heard Mr J.L.Sarkar, learned counsel
for the applicant and Mr A.K.Choudhury,
learned Addl.C.G.S.C for the respondents.
Hearing concluded. Judgment delivered in
Open Court, kept in separate sheets.

The application is allowed. No order
as to costs.

Vice-Chairman

pg

8

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 232 of 1996.

Date of Order : This the 4th Day of April, 1997.

Justice Shri D.N.Baruah, Vice-Chairman.

Dr Ardhendu Chakraborty,
Chief Medical Officer,
Sanshak, 25 Assam Rifles,
C/O 99 A.P.C, Manipur Applicant

By Advocate Shri J.L.Sarkar, M.Chanda

- Versus -

1. Union of India
(through the Secretary to the Government
of India, Ministry of Health and Family Welfare),
New Delhi.
2. The Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.
3. The Director General of Assam Rifles,
Ministry of Home Affairs,
Assam Rifles,
Shillong.
4. The Deputy Director (Admn.)
Assam Rifles,
Shillong. Respondents

By Advocate Shri A.K.Choudhury, Addl.C.G.S.C.

O R D E R

BARUAH J(V.C)

In this application, the applicant has prayed for an appropriate direction to the respondents to issue release order pursuant to the order of transfer made by the respondents.

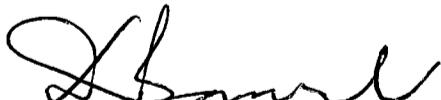
2. The facts for the purpose of disposal of this application are :

The applicant was serving as Chief Medical Officer and presently posted at Sanshak in the State of Nagaland. By Annexure-2 order dated 19.1.96 he was transferred from Assam Rifles to New Delhi alongwith other Doctors. Though the order of transfer was passed as far back in January,

1996, till now he has not been released. Hence the present application.

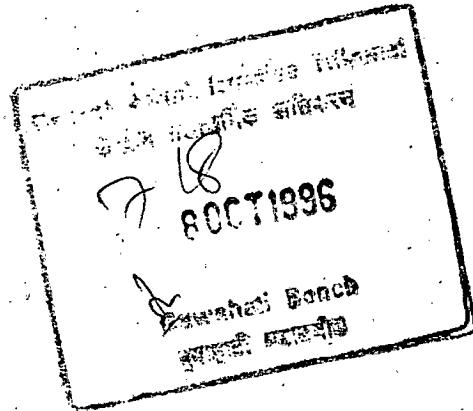
3. In usual course the respondents have entered appearance and filed written statement. The grievance of the applicant is that though he was transferred as per Annexure-2 order, the authorities without any reason failed to release him as a result the Annexure-2 order remains inoperative. Mr A.K.Choudhury, learned Addl.C.G.S.C submits that as per the written statement submitted by the respondents release order could not be issued because of the non availability of the reliver. As soon as the reliver is available he will be released. When a transfer order was passed as far back in January, 1996 it is to be presumed that the transfer was necessary in the interest of public service. If that is so, the authorities should not have kept the matter pending without taking proper step. Therefore, I dispose of the application, directing the respondents, specifically respondent No.3-Director General of Assam Rifles to take appropriate step for release of the applicant as early as possible, at any rate within a period of one month from the date of receipt of this order.

Considering the entire facts and circumstances of the case however, I make no order as to costs.


(D.N. BARUAH)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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



O.A. No. 232/96

Dr. Ardhendu Chakraborty

-versus-

Union of India & Ors.

I N D E X

| Sl.No. | Annexure | Particulars | Page No. |
|--------|----------|----------------------------------|----------|
| 1 | - | Application | 1-12 |
| 2 | - | Verification | 13 |
| 3 | 1 | O.M. dated 14.12.1976 | 14-16 |
| 4 | 2 | Order dated 19.1.1996 | 17 |
| 5 | 3 | Order dated 9.2.1996 | 18 |
| 6 | 4 | Representation dated 12.7.96 | 19-20 |
| 7 | 5 | Extract of O.M. dated 14.12.1983 | 21 |

WJS-R-1-4. 22-28

9. Rejinder. - - - - 29 -

Reed copy
Ardhendu Chakraborty
Addl. Commr. of Income Tax
7/10/96

Filed By :

Date : 7-10-96.

Aradhendu

Advocate

Ardhendu Chakraborty

10
Filed by the applic
Date 7-10-96
7-10-96
7-10-96

1. Particulars of the Applicant.

Dr. Ardhendu Chakraborty

Son of late Aswini Kumar Chakraborty

Chief Medical Officer,

Sanskak, 25 Assam Rifles,

C/0 99 A.P.O., Manipur

..... Applicant

2. Particulars of the Respondents.

1. The Union of India

(Through the Secretary to the Government of India, Ministry of Health and Family Welfare), New Delhi.

2. The Secretary to the Government

of India, Ministry of Home Affairs, Government of India,

New Delhi.

3. The Director General of Assam Rifles

Ministry of Home Affairs

Assam Rifles,

Shillong

4. The Deputy Director (Admn.)

Assam Rifles

Shillong

..... Respondents

3. Particulars for which this Application is made.

This application is made praying for a direction to release the applicant to enable to join the applicant at GNCT, New Delhi as transferred under Government of India, Ministry of Health and Family Welfare letter No. A.22012/43/95-CMS-II New Delhi dated

Ardhendu Chakraborty

Contd.....

19.1.1996 and not to fill up the vacancy in GNCT, New Delhi till his release and join there at GNCT, New Delhi.

4. Limitation

That the applicant declares that this application is filed within the prescribed time limit under Section 21 of the Administrative Tribunals Act, 1985.

5. Jurisdiction

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

6. Facts of the case

6.1 That the present applicant is a citizen of India as such he is entitled to all the rights and privileges guaranteed under the Constitution of India. The applicant is presently serving as Chief Medical Officer in 25 Assam Rifles at SANSKAR, Manipur.

6.2 That the applicant was initially appointed as Medical Officer in the Central Health Service on the recommendation of Union Public Service Commission and posted under the Directorate General, Assam Rifles vide Govt. of India, Ministry of Health and Family Planning (Department of Health) Office Memorandum No. A.12025/94/76/ CHS-II, New Delhi dated 14.12.1976 and joined the Assam Rifles on 30.3.1977 and since then he has been serving as Medical Officer in this Paramilitary Force. In the said Memorandum dated 14.12.1976 in paragraph III wherein it is

Contd....

Abdulhendu Chakraborty

stated that the applicant is liable to serve in any part of India or outside and in paragraph ix of the Memorandum it is stated that, the applicant be liable to serve in Defence Services or post connected with the Defence of India for a period of not less than 4 years including the period spent on training, if any provided (a) the applicant shall not be required to serve as aforesaid after the ~~xx~~ expiry of 10 years from the date of appointment (b) the applicant shall not ordinarily be required to serve as aforesaid after attaining the age of 45 years.

Copy of the Office Memorandum dated 14.12.76 is annexed hereto and the same is marked as Annexure-1.

6.3 That the Director General of Assam Rifles is an organisation under the Ministry of Home Affairs, but the Organisation of the Directorate General is connected with the Defence of India. The applicant was initailly posted at Kimin, 9 Assam Rifles in Arunachal Pradesh and continued there from 30.3.1977 to June 1982. Thereafter he was posted and served in 13 Assam Rifles at Naginimara in Nagaland from June, 1982, to December, 1985, and again in 2 Assam Rifles at Lohitpur in Arunachal Pradesh from ~~Jan~~, 1986, to December, 1992, and in 5 Assam Rifles Lokra in Assam from December 1992 to January 1996 and in the month of ~~January~~ July 1996 he was transferred and posted in 25 Assam Rifles at Sanshak in Manipur 65 km away from Imphal and till date he is continuing there at SANSHAK.

Contd.....

Ardhendu Chakraborty

6.4 That the applicant has got two school going daughters - one is reading in Class VIII and the second one is reading in Class V, ^{at Guwahati, but} ~~Sanshak~~, where the applicant is now posted, is located at a remote place and a hard station in the State of Manipur and there is no Central School within 65 kilometre radius and so under the compelling circumstances the applicant is to keep his family at Guwahati for education of his daughters.

6.5 That although according to paragraph ix of the Memorandum dated 14.12.1976 (Annexure-1) the applicant shall not be required to serve in the Defence Services or posts connected with Defence of India after expiry of 10 years from the date of appointment or after attaining the age of 45 years, but the applicant by now has completed more than 19 years of service in the Para-Military Force and he has crossed 45 years long back and he ~~is~~ ^{now} running 46 years 8 months of age being his date of birth is on 1st January, 1950. Moreover he is not as physically fit as he was before 19 years back to serve any more in this Force located at hilly rugged ~~terrain~~ of the North east.

6.6. That after 19 years of ~~fixed~~ tenure of 10 years service in North Eastern Range and at the age of more than 46 years, the applicant has been repatriated and transferred to GNC, New Delhi from the present place of posting (Assam Rifles) by Order No. A.22012/43/CHS-11 dated 19.1.1976 issued by the Govt. of India, Ministry of Health and Family Welfare, New Delhi.

Copy of the order dated 19.1.1976 is annexed hereto and the same is marked as Annexure-2.

Contd.....

Aradhendu Chakravarty
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6.7 That after receipt of the Order dated 19.1.96
(Annexure-II) ~~MS Branch~~, Directorate General Assam Rifles
Shillong intimated vide letter No. 1.14015/13-77/5 AR-AC/
ME (A) dated 9.2.96 that the applicant will be released only
after obtaining clearance from MS Branch of the Directorate
General of Assam Assam Rifles, Shillong.

Copy of the letter dated 9.2.96 is annexed
hereto and the same is marked as Annexure-3.

6.8 That the applicant awaited 6 months, every morning
expecting release order and after 6 months on 12.7.96
a representation ^{expiry of about}
he submitted ~~representation~~ to the Director General, Assam
Rifles, Shillong through Proper Channel to release him from
Assam Rifles in order to enable him to join his new place
of posting at GNCT, New Delhi. In the said representation
the applicant has also mentioned that he has been serving
in Assam Rifles for more than 19 years in different
Battalions, which are located in different hilly rugged
terrain of the North Eastern Region.

Copy of the representation dated 12.7.96 is
annexed hereto and the same is marked as
Annexure-4.

6.9 That the applicant states that there is no indication
that whether the representation of the applicant dated 12.7.
1996, submitted by the applicant is considered by the
Director General, Assam Rifles, Shillong but it appears
that same has not been considered although the Govt. of
India, Ministry of Health and Family Planning (Department

Arshendu Chakravorty
✓

of Health) under Memorandum No.A.12025/94/76-CHS-II dated 14.12.1976 in para IX (Annexure-1) clearly mentioned about the fixed tenure of service in connection with any defence post. The relevant portion of the Memorandum No. A-12025/94/76-CHS-II dated 14.12.1976 is quoted below :

" He/She shall, if so required be liable to serve in any Defence Services or post connected with the Defence of India for a period of not less than 4 years including the period spent on training, if any provided (a) he/she shall not be required to serve aforesaid, after the expiry of ten years from the date of appointment (b) she/he shall not ordinarily be required to serve as aforesaid after attaining the age of 45 years."

From above it is quite clear that the applicant has acquired a legal and valuable right for repatriation to his parent department and also entitled to for a choice station posting. Further the applicant begs to state that, the Govt. of India, Ministry of Finance, under Memorandum No. 200414/3/83-E.IV dated 14.12.1983 issued certain improvement/facilities for the officers serving in North Eastern Region having all India Transfer Liability whereby the officers who have completed 10 years of service are entitled to choice station posting on completion of 2 years of service/tenure in the North Eastern Region and the officers who have completed less than

Aradhendu Chakravarty

10 years of service are also entitled for choice station posting on completion of 3 years of tenure posting in the North Eastern Region. The relevant portion of the Office Memorandum No. 20014/3/83 E.N.. dated 14.12.1983 is quoted below :

" (i) Tenure of posting/deputation.

There will a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and 2 years at a time for officers with morethan 10 years of service. Periods of leave, training, etc. in excess of 15 days per year will be excluded

~~be excluded~~ in counting the tenure period of 2/3 years.

Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible. The period of deputation of the Central Govt. employees to the States/Union Territories of the North Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employees concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended."

From the above Office Memorandum it is quite clear that the applicant who is serving North Eastern Region prior to 1985 and is saddled with All India Transfer Liability

Contd.....

Aradhendu Chakravorty

is entitled to be posted at his choice station. Accordingly the applicant in terms of the above Office Memorandum has acquired a valuable and legal right to be released from Assam Rifles to join to his new place of posting in New Delhi.

Copy of an extract of O.M. Dated 14.12.1983 issued by the Ministry of Finance is annexed hereto and the same is marked as Annexure-5.

6.10 That the applicant begs to state that in view of more than 46 years of age and his prolonged service (more than 19 years) in the North Eastern Region and in view of the Office Memorandum dated 14.12.1986 and O.M. dated 14.12.1983 the applicant be released from the Assam Rifles immediately to enable the applicant to join in GNCT, New Delhi.

6.11 That the applicant apprehends that if he is not released immediately the post in GNCT, New Delhi may be filled up by some other officers.

6.12 That the applicant has got no other alternative remedy except approaching before this Hon'ble Tribunal.

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

7. Reliefs sought for

Under the facts and circumstances stated in this application the applicant prays for the following reliefs :

1. That the respondent No. 3 be directed to release the applicant in pursuance of

Contd...P/10

Aradhendu Chakravarty

Transfer and Posting Order issued under Letter No. A.22012/43/95-CHS-II dated 19.1.1996 (Annexure-II) immediately.

2. That the respondents be directed not to fill up the vacancy of GNCT, New Delhi till the release of the applicant from the office of the Assam Rifle Director General.

The above reliefs are prayed for on the following amongst other-

-G R O U N D S-

1. For that the applicant completed more than 19 years of service in Assam Rifles, post connected with Defence of India in the North Eastern Region and crossed more than 46 years of age.
2. For that as per appointment clause ix of the letter dt. 14.12.1976 the applicant is liable to serve only for a period of 4 years to the post connected with Defence of India.
3. For that the applicant is due for repatriation to Central Health Services Organisation under the Ministry of Health and Family Welfare, Govt. of India.
4. For that the applicant has completed long back 3 years of tenure service in terms of Govt. of India's O.M. dated 14.12.1983 and also

Contd....

Asdhenda Chakraborty
✓

completed 4 years tenure posting in terms of clause ix of the appointment letter and therefore he is entitled to be posted to his choice station posting at GNCT, New Delhi.

5. For that the authorities discriminated and violated the transfer and posting policy by not releasing the applicant to join in GNCT, New Delhi.
6. For that the authorities have acted malafide by issuing the impugned letter No. a.14015/ 13-77/5 AR-AC/ME (A) dated 9.2.96.
7. For that the applicant already served the hard areas in Arunachal Pradesh, Nagaland, Assam, Nagaland, Manipur for more than 19 years and therefore he is entitled to be released on transfer from Assam Rifles.
8. For that the applicant's representation dated 12.7.96 has not been considered by the authorities.
9. For that the applicant has acquired valuable and legal rights for immediate release after completion of 19 years of service.

8. Interim Reliefs prayed for :

Under the facts and circumstances the applicant ~~prays~~ for the following reliefs during the pendency of the application.

Asdhendu Chakraborty

1. That the respondents be directed not to fill up the vacancy in GNCT, New Delhi where the applicant is now under order of transfer under letter dated 19.1.1996 till the applicant joins there being released from Assam Rifles.
9. That the applicant declares that there is no other remedy under any rule and the Hon'ble Tribunal is the only remedy.
10. That the applicant declares that there is no ~~any~~ other forum save and except filing this application before this Hon'ble Tribunal.

11. Details of Postal Order

No. of I.P.O : 444595
Date of Issue : 7-10-96.
Issued From : G.P.O., Guwahati.
Payable at : G.P.O., Guwahati

12. Details of Index

An Index containing the details of documents is enclosed.

13. List of enclosures

As per Index.

Arshendu Chakravarty
✓

VERIFICATION

I, Dr. Ardhendu Chakravorty, son of late Aswini Kumar Chakravorty, aged about 47 years working as Chief Medical Officer, Sanshak, 25 Assam Rifles, C/o 99 APO, Manipur, applicant in this application do hereby solemnly affirm and declare after going through this application that the statements made in this application are true to my knowledge and belief and I have not suppressed any material facts.

And I sign this verification on this the 27th of ^{october} ₁₉₉₆ day of September, 1996. ^{Shy}

Aradhendu Chakravorty
Chief Medical Officer
Signature
25 Assam Rifles
C/o 99 APO

Annexure-1

COPY

No.A-12025/94/76-CHS.II
Government of India

Ministry of Health and Family Planning
(Department of Health)

New Delhi, Dated 14-12-76

MEMORANDUM

Subject : Recruitment to the post of Medical Officer of the Central Health Service.

On the recommendation of the Union Public Service Commission, the President is pleased to offer Dr. Ardhendu Chakravarty an appointment as Medical Officer in CHS and post him under Assam Rifles on the following terms and conditions :-

X

1) The post is temporary and he/she appointed on an efficiating basis only. He/she will be on probation for a period of two years from the date of appointment which may be extended or curtailed at the discretion of the competent authority. The confirmation will depend on the officer's relative position in the overall seniority list and on the availability of clear vacancy. (During the period of probation he/she may be required to undergo such training as Govt. may prescribe). Failure to complete the period of probation to the satisfaction of the competent authority will render him/her liable to be discharged from service at any time without any notice and assigning any reason or be reverted to his/her substantive post on which he/she may be retaining a lien. After the satisfactory completion of the period of his/her probation the termination will be by giving one month notice on either side. The appointing authority however, reserves the right of terminating his/her service forthwith or before the expiration of the stipulated period of notice by making payment to him/her of a sum equivalent to the pay and allowances for the period of notice of the unexpired portion.

ii) The scale of pay of the post is Rs. 700-40-900-EB-40-1100-50-1300. The initial pay of such candidates as are in Govt. service will be fixed according to rules and of those who are not in Govt. service will be fixed at the minimum of the pay scale.

XXXXXX

Ardhendu Chakravarty

iii) Non practising allowance is admissible at the following rates :-

a) 1st to 5 stages Rs. 150/- per month
b) 6 to 10 stages Rs. 200/- per month
c) 11th stages onwards Rs. 250/- per month.

iv) Dearness and other allowances as admissible to Central Govt. servants of corresponding status stationed at the place of duty.

v) Private practice of any kind whatsoever including laboratory and consultant practice is prohibited.

vi) He/She is required to contribute compulsorily to the Fund in accordance with the rules in force from time to time.

vii) The appointment carries with it the liability to serve in any part of India or outside.

viii) He/She is required to produce a certificate of physical fitness from a duty constituted Medical Board.

ix) He/she shall, if so required be liable to serve in any Defence services or post connected with the Defence of India for a period of not less than 4 years including the period spent on training, if any provided (a) he/she shall not be required to serve aforesaid, after the ~~exp~~ expiry of ten years from the date of a appointment (b) she/he shall not ordinarily be required to serve as aforesaid after attaining the age of 45 years.

x) On appointment, she/she will be required to take an oath of allegiance to the Constitution of India or make a solemn affirmation to that effect in the prescribed form.

xi) He/she is required to submit a declaration in the enclosed form to the effect that he/she :-

does not have more than one wife living or that he having a spouse living is not married in any case in which such marriage is void by reasons of its taking place during the life time of such spouse is not married to a person who is already having a wife living or that she is not married in any case in which marriage is void by reasons of the husband having a wife living at the time of such marriage.

*Attested
Oral
A.W.*

Ardhendu Chakravorty

xiii) He/she is not entitled to any travelling allowance for joining the appointment.

xiii) Other conditions will be governed by the relevant rules and orders that may be in force from time to time.

2. If any declaration given or information furnished by him/her of receipt of this Memo. whether or not/he/she accepted the offer on the above terms and condition, and return the necessary declaration. In case the offer is acceptable to him/her, she/he contact for duty to the Inspector General, Assam Rifles, Shillong. It may be noted that the request for change in posting indicated in this Memo will be entertained. If no reply is received by the stipulated date, it will be presumed that he/she is not interested in the offer which will be treated as cancelled. On hearing from him/her necessary action will be taken for his/her medical examination. He is requested to complete enclosed attestation form in his own hand writing. Two copies of passport photograph duly affixed may also be attached.

4. xxxxxx xxxxxx xxxxxx xxxxx xxxxxx

5. It is clarified that he would rank junior to all officers appointed to Central Health Service as a result of earlier recruitment/appointment.

Sd/-

(R.N.Tewari)

Under Secretary to the Govt. of India

To.

Dr. Ardhendu Chakravorty,
Health Officer, Dakhinpat State Dispensary
PO Dakhinpat Satra
Dist-Sibsagar (Assam)
PIN-785102

*Attached
Original
Adr.*

Ardhendu Chakravorty

No. A.22012/43/95-CHS-II

GOVERNMENT OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE

NEW DELHI, DATED THE 19th Jan 96.

O R D E R

The President is pleased to order the transfer of the following officers of Central Health Service in public interest with immediate effect :-

| S/No. | Name of the officer | Present place of posting | Transferred to |
|-------|---------------------------|--------------------------|-----------------|
| 1 | ✓ Dr. A.Chakraborty, CMO | Assam Rifles | GNCT, New Delhi |
| 2 | Dr. Digbijoy Durra, MO, | -do- | -do- |
| 3 | Dr. L.Ashananda Singh, MO | -do- | -do- |
| 4 | Dr B.N.Singh, MO | -do- | Dept of Posts |
| 5 | Dr Subramanyam Vallem, MO | -do- | CGHS, Madras |
| 6 | Dr. Chaman Prakash, MO | -do- | CGHS, Kanpur |

Sd/-

(R.C.Sharma)
Under Secretary to the Govt. of India

To

1. Director General Assam Rifles, Shillong.
2. Secretary (H) Govt. of NCT of Delhi, 5 Shamnath Marg, New Delhi-54.
3. Additional Director, General Govt. Health Scheme, 20, Ist. Cross Street, CIT colony, Mylapore, Madras-600 004.
4. Additional Director, Central Govt., Health Scheme, 117/617, Pandu Nagar, Kanpur-2008 01.
5. Deputy Director General (N), Department of Posts, Dak Bhawan, New Delhi, D . B.N.Singh, may please be treated as substitute of Dr. Paban Kumar Das and may be posted in P & T Secretary, Gaya.

Asokendu Chakraborty

Asokendu
Chakraborty

I.14015/13-77/5 AR-AC/ME (A) Dated, Shillong 09 Feb 96

'A' BRANCH (SECTION-II)

POSTING/TRANSFER (MEDICAL OFFICERS (CHS))

1. The under mentioned Medical Officer of Assam Rifles have been posted to CGHS vide Govt. of India, Ministry of Health and Family Welfare, New Delhi letter No. A 22012/43/95-CHS-II dated 19 Jan 96.

- a) Dr. A. Chakravorty CMO - GNCT, New Delhi
- b) Dr. Digbijoy Dutta, MO - do -
- c) Dr. L. Ashananda Singh, MO - do -
- d) Dr. B.N. Singh, MO - Deptt. of Posts
- e) Dr. Subramanyam, MO - CGHS, Madras
- f) Dr. Chaman Prakash, MO - CGHS, Kanpur

2. A copy of Govt. of India, Ministry of Health, New Delhi letter under reference is sent herewith for your further necessary action please

Sd/-

(G.P.S.Bedi)

Col

Deputy Director (A)

Encls :

MS Branch

Copy to :

5 Assam Rifles
C/o 99 APO

28 Assam Rifles
C/o 56 APO

6 Assam Rifles
C/o 99 APO

9 Assam Rifles
C/o 99 APO

3 Assam Rifles
C/o 99 APO

2 Assam Rifles
C/o 99 APO

Headquarters
Assam & Arunachal Range
Assam Rifles
C/o 99 APO

for information alongwith a copy of Ministry's letter quoted above. The above MOs will be released only after obtaining clearance from MS Branch of this Dte.

*Accepted
Chakravorty*

Aradhendu Chakravorty

From

Dr. A Chakraborty
CHS Employee Code No. 000756
Chief Medical Officer
Central Health Service
25 Assam Rifles,
C/o 99 APO

To

Directorate General Assam Rifles
Shillong-793001

(Through Proper Channel).

Subject : POSTING/TRANSFER (MEDICAL OFFICER (CHS)

Sir,

1. I was appointed as Medical Officer in Central Health Service and posted to Assam Rifles vide Govt. of India, Ministry of Health and Family Planning (Department of Health) letter No. A. 12025/94/76-CHS II New Delhi dated 14 Dec 76 and I joined Assam Rifles on 30 Mar 77 and since then I have been serving this organisation which is more than 19 years now. During this period of my service in Assam Rifles I have served in different Battalions which are located in difficult hilly rugged terrain of North Eastern Region of our country.

2. In Jan 96, I was posted to GNCT Delhi vide Govt. of India, Ministry of Health & Family Welfare letter No. A. 22012/43/95-CHS II dated 19 Jan 96 but even after 6 months of issue of transfer order I have not yet been released from Assam Rifles.

3. So, considering my length of service in Assam Rifles, I request you to kindly release me from Assam Rifles earliest in order to enable me to join my new place of posting at GNCT, Delhi.

Yours faithfully,

Sd/-

Station : Field

Dated : 12 Jul 96

(Dr. A. Chakraborty)
CMO (CHS)
25 Assam Rifles
C/o 99 APO

Aradhendu Chakraborty

Annexure-4 (Contd.)

Copy to :

1. Lt. Gen TPS Rawat, VSM
Director General Assam Rifles
Shillong-793013
2. Maj Gen N.S. Katech, SM, VSM & Bar
Deputy Director General Assam Rifles
Shillong-793011
3. Mr. R.C.Sharma
Under Secretary to the Govt. of India
Ministry of Health & Family Welfare
Nirman Bhawan,
New Delhi
4. Health Secretary
Govt. of National Capital Territory of Delhi
5, Shamnath Marg
New Delhi-54
5. Brig Satish Kumar
Deputy Inspector General
HQ 'B' Range Assam Rifles
C/o 99 APO
6. Col G.P.S. Bedi
Deputy Director (A)
Directorate General Assam Rifles
Shillong-793011
7. Col S.P.S. Bedi
Deputy Director (MS)
Directorate General Assam Rifles
Shillong-793011
8. Col. S.K.Suri
Deputy Director (Medical)
Directorate General Assam Rifles
Shillong-793011

*Printed by
Chakraborty*

Ardhendu Chakraborty

AN EXTRACT OF THE OM DATED 14.12.1983 ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF FINANCE.

Subject : Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region improvements thereof.

The need for attracting and retaining the services of competent officers for service in the North Eastern Region, comprising the States of Assam, Meghalaya, Manipur, Nagaland Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for sometime. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of civilian Central Government employees serving in this Region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is pleased to decide as follows :

i) Tenure of posting/deputation.

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible. The period of deputation of the Central Government employees to the States/Union Territories of the North Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public ~~interest~~ service as well as when the employees concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended."

*Attent
Chakraborty
pw*

Asdhendu Chakraborty

22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Filed in Court

GUWAHATI BENCH : GUWAHATI

On.....

Court Master

O. A. NO. 232 of 1996

Dr. A Chakrabarty

- Versus -

Union of India and others

- AND -

IN THE MATTER OF :

Written statement submitted by
the Respondents No.1,2,3 and 4.

(WRITTEN STATEMENT)

The humble Respondents beg to
submit their Written Statements
as follow :

1. That with regard to the statements made in paragraphs 1,2,3,4 & 5 of the application the Respondents have no comments.
2. That with regards to the statements made in paragraph 6.1 of the application the Respondents beg to state that they have no comments.
3. That with regards to the statement made in paragraph 6.2 of the application the Respondents beg to state that, the applicant was appointed on adhoc appointment on 30 Mar'77. As regards the Statement of the applicant that he qualified in the competative examination prior to his appointment, the applicant be put to strict proof thereof.

Contd..... 2/-

Received
On behalf
Adv.
27/1/97

Filed by:-
A.K. Chanchlani
M.G. Central Govt. 27/1/97

Starting Commenc.

By serving with Assam Rifles which is a Central Police Organisation under Ministry of Home Affairs the applicant cannot claim applicability of clause-IX of Government of India Memorandum dated 14 Dec '76 (Annexure-'I' of application) the clause makes provision for service in Defence services that is, as a combatant. It is also apparent by the wordings/contents of the said clause. It caters for service in Defence service for a minimum period of 4 years including the period spent on training. Obviously the word training denotes training as combatant (Soldier). The applicant is a civilian and has neither undergone any such training, nor is serving in Defence service or Defence of India. It is the obvious rigour of such training, that vide clause-X no such medical officer can be detailed to undergo such training and thereafter serve in Defence service after 10 years of service. In any case if the service with Assam Rifles was to be considered as Defence service the appointment letter of the applicant (Annexure-I) would have had a specific provision for such service. The words 'The Officer', shall if so required, be liable to serve' contained in clause-X denote that the said clause is a general clause applicable to each any every Medical Officer joining Central Health Service and ' if so required' will be liable to serve in Defence service. Assuming that the said clause-X is applicable to the applicant, it is denied that he is liable to serve only for 4 years in view of the fact that the said clause gives out liability to serve in Defence Services/ for a period of not less than 4 years including the period spent on training' denoting thereby only the minimum period of such service. In any

case, if the interpretation of clause-X of applicant is to be accepted, he ought to have sought reversion after expiry of 4 years. It is pertinent to mention here that the service conditions of the applicant are strictly governed by the conditions as contained in his appointment letter dated 14-12-76 (Annexure-I). Clause-1 (vii) of the subject letter reads ' The appointment carries with it the liability to serve with in any part of India or out side. The applicant having accepted the offer of appointment as Medical Officer in terms of appointment letter (Annexure-I) has given his concurrence to all the conditions contained in the appointment letter and now cannot back out.

4. That with regard to the statement made in para 6.3 of the application the Respondents beg to state that Organisation of Directorate General Assam Rifles is a Central Police Organisation under Ministry of Home Affairs and not connected with the Defence of India. This deponent states that even if the statement is accepted as true, being a Civilian Officer para-IX of the Memorandum dated 14-12-76 is not applicable to the applicant. It is admitted that the applicant was posted to different location in NE Region in accordance with the norms of posting of ' Medical Officers ' during their tenure in Assam Rifles.

5. That with regard to the statement made in para 6.4 of the application the Respondents denied that 'Sanshak' is located at remote place and a hard station. The non availability of Central School cannot be termed as a compelling circumstance in view of the fact that there are others School in the area.

6. That with regard to the statement made in para 6.5 of the application this deponent reiterates what have been stated in reply to para 6.2 above, since the applicant is not serving in Defence services or posts connected with Defence of India, the question of serving beyond 45 years of age is not applicable in the instant case.

7. That with regard to the statement made in para 6.6 of the application, the Respondents denied that the applicant has any fixed tenure of 10 years of service in the North Eastern Region.

8. That with regard to the statement made in para 6.7 and 6.8 of the application, the Respondents state that the release of the applicant is governed vide "standing operating procedure- Medical Officers" issued vide Directorate General Assam Rifles letter No.I.14015/SOP-MO/89-ME(A) dated 12 Oct '89. In accordance with above instructions the applicant cannot be released until his ~~successor~~ reliever joins. The representation dated 12-7-96 (Annexure-4) has already been disposed of by Director General Assam Rifles vide letter No.I.11035/1/MS-96 dated 29-8-96 where in the applicant has been assured that he

would be relieved as soon his relieve would be cattered
by
for long service in Assam Rifles, the applicant ought to have known the provisions of above ' Standing Operating procedure '. In case the applicant had any reservation on above SOP he ought to have raised objection to the authorities.

9. That with regards to para 6.9 of the application the Respondents denied that the representation of the applicant dated 12-7-96 has not been considered by the DGAR. As regard statement of the applicant regarding para-IX of Memorandum dated 14-12-76 (Annexure-I) the respondents reiterates what have been stated in reply to para-6.2 above. It is denied that the applicant has acquired any legal and valuable right for reparation. As regard the applicability of OM No.20014/3/83-EN dated 14-12-83 the applicant cannot claim reversion as a right, since it is essential to retain him in ~~xxx~~ exigency of public service till his relief is posted. It is denied that applicant has acquired valuable and legal rights to be relieved from Assam Rifles. It is submitted that Assam Rifles is a Central Police Organisation and has a strength of approximately 50,000 troops deployed in North East Region, Assam Rifles has no Cadre of Medical Officers and as such mainly dependent on Doctors of Ministry of Health and Family Welfare Services of Medical Officer are essential to provide Medical cover to Assam Rifles personnel who are at places deployed in small strength at different places lacking in Medical facilities. Non availability of services of Medical Officers will deprive the troops, the timely medical aid will avoid casualties. It is this exigency that a medical officer can only be relieved on posting of the reliever. Accordingly the officer will be released on posting of his reliever.

- 6 -

10. That with regard to the statement made in para 6.10 of the application, the Respondents denied the same in view of what have been stated in para 6.2 and 6.9 above.

11. That with regard to the statement made in para 6.11 of the application, the Respondents beg to state that the statement of the applicant is based on mere apprehension and needs to be discarded.

12. That with regard to the statement made in para 6.12 of the application, the Respondents beg to state that, it is denied that the applicant has got no other remedy, since it is upto him to first exhaust the Departmental channel.

13. That with regard to the statement made in para 6.13 of the application, the Respondents denied the contents thereof.

14. That with regard to the statements made in para 7 of the application regarding the relief sought for the Respondents begs to state that the applicant is not entitled to any one of the reliefsought for and as such, the application is liable to be dismissed that the Respondents further beg to submit that the applicant cannot be relieved due to exigency of service till his relieve is posted.

15. That with regard to the statements made in the grounds of the application the Respondents beg to state that, none of the grounds are maintainable in law as well as in fact and as such the application is liable to be dismissed.

16. That, with regard to the statements made in para 7 regarding interim relief as prayed by the applicant the Respondents beg to state that in view of the facts and circumstance narratted above the applicant is not entitled to interim relief and as such, the application is liable to be dismissed.

17 That with regard to the statements made in paragraphs 9,10,11,12 and 13 of the application the Respondents have no comments. The Respondents beg to submit that, the application is devoid of merit and as such, the application is liable to be dismissed.

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

I, Shri Anil Kumar Thapa, Lt Col, AD(D&V) in the Office of the Directorate General Assam Rifles, Shillong, do hereby solemnly declared that I am competent to verify the Written Statements and as such it is solemnly declared that the statements made above in the Written Statements are true to my knowledge belief and information and I sign this verification today on 22 the day of January at Shillong.



Declarant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 232 of 1996

Dr. A. Chakraborty

-versus-

Union of India & Ors.

In the matter of :

Rejoinder submitted by the applicant.

The applicant above named -

Most humbly and respectfully begs to state as under :

1. That with regard to the statement made in paragraphs 3,4,5 and 6 of the written statement, categorically denies the correctness of the same and further begs to state that the applicant was initially appointed on the basis of the recommendation of the Union Public Service Commission which would be evident from Annexure-1 of the Original Application, therefore statement made by the respondents in paragraph 3 of the written statement is totally false and misleading. In this connection it may be stated that if the service of the applicant in Assam Rifles does not fall within the purview of service connected with Defence Organisation in that event the applicant has no obligation at all to serve the Assam Rifles any more when the parent organisation namely Central Government Health Services, Ministry of Health

Contd...P/2

ccy is handed over to
Mr. A. K. Choudhury
Add. C.W.S.
Date 27.9.97
Arohendu Chakraborty

and Family Welfare issued the posting order of the applicant on the basis of his representation and option which was duly forwarded by the office of the Director General, Assam Rifles and therefore at this stage respondents cannot deny the issuance of release in terms of his transfer and posting order issued vide office order dated 19.1.96 by the Ministry of Health and Family Welfare. The applicant has no obligation to serve the Assam Rifles any more when the parent organisation issued the order of posting vide order dated 19.1.96. It is the responsibility of the authority of the Assam Rifles to arrange suitable substitute if any. The applicant has already served near about 20 years in interior places and remote localities of North Eastern Region and being a senior ~~most~~ doctor who was deputed in Assam Rifles has no more obligation to serve this organisation as the applicant originally belongs to the establishment of Central Government Health Services, Ministry of Health and Family Welfare. It is admitted by the respondents that the applicant was posted to different location in the North Eastern Region in accordance with the norms of posting of medical officer during his tenure in Assam Rifles in paragraph 4 of the written statement. Therefore the respondents particularly respondent Nos. 3 and 4 ought to have considered the case of release in respect of the applicant long back when the order of transfer was issued as far back in the month of ^{Jan} June, 1996, but the respondents have been arbitrarily refused to issued the order of release in favour of the applicant. The applicant further reiterates that the Sanshak is situated in a very remote locality in Manipur and there is no

Contd... P/3

Aradhendu Chakravorty

Central School in the adjacent areas. As the applicant is saddled with All India Transfer Liability, therefore top priority is to be given for education of his children in Central School.

2. That with regard to the statement made in paragraphs 7, 8, 9 and 10 of the written statement, the applicant denies the correctness of the same and further begs to state that the arrangement of reliever if any is required to release the applicant it is the duty and obligation of the respondent Nos. 3 and 4 for arranging the suitable substitutes but the release of the applicant cannot be denied merely on this ground. ^{As they} since the applicant belongs to Central Government Health Services and there are large number of doctors serving in the Central Government Health Services, under the Ministry of Health and Family Welfare and if the organisation like Assam Rifles is entirely depending for medical services to the organisation like Central Government Health Services under the Ministry of Health & Family Welfare, in that case the authorities of Assam Rifles ought to have contacted the Ministry of Health and Family Welfare for posting of other medical officers presently serving in Central Government Health Services and if the Assam Rifles fails to manage doctor from Central Government Health Services in that event the valuable and legal right of the applicant for release cannot be arbitrarily denied by the respondents especially when the parent department has issued the transfer order of the applicant after serving about 20 years in the interior places of North Eastern States in Assam Rifles Organisation.

Contd... P/4

Ardhendu Chakravorty

The applicant further reiterates that he has acquired a valuable and legal rights in terms of Office Memorandum dated 14.12.1983 issued by the Ministry of Finance, Government of India for choice station posting after serving a long period of 20 years in North Eastern Region and particularly when the parent department/organisation issued the transfer and posting order in favour of the applicant vide order dated 19.1.96 otherwise the same would be violative of Article 14 and 16 of the Constitution.

3. That the applicant categorically denies the statement made in paragraphs 11, 12, 13, 14, 15, 16 and 17 of the written statement and further begs to state that the posting order was issued by the Central Government Health Services Ministry of Family Welfare long back in the month of January, 1996 vide order dated 19.1.96 but unfortunately till date no initiative has been taken or efforts has been made by the respondents to release the applicant and the respondents have totally failed to show any effort made by them for arranging the substitute and if the substitute could not be arranged i.e. only due to the negligence of respondent Nos. 3 and 4. Therefore the release of the applicant cannot be arbitrarily denied by the respondent Nos. 3 and 4. There is no evident in the written statement that there is any initiative or action made by the authorities of the Assam Rifles for arranging of substitue since the transfer and posting order issued by the Central Government Health Services, Ministry of Family Welfare.

Under the facts and circumstances stated above, the application is deserved to be allowed with costs.

Asokhendu Chakravarty

VERIFICATION

I, Dr. Ardhendu Chakraborty, son of late Aswini Kumar Chakraborty, aged about 47 years working as Chief Medical Officer, Sanshak, 25 Assam Rifles, C/o 99 APO Manipur, applicant in the O.A. No. 232/96 do hereby solemnly affirm and declare that the statements made in para 1 to 3 in this rejoinder are true to my knowledge and belief.

And I sign this verification on this the day
11 of February, 1997.

Ardhendu Chakraborty

Signature