

5/100

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 298/96.....

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

E.P/M.A No.....

1. Orders Sheet.. O.A-298/96.....Pg. 1.....to 2.....
2. Judgment/Order dtd. 31/12/96.....Pg. No. Separate order Disposed.....
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 298/96.....Pg. 1.....to 19.....
5. E.P/M.P..... NIL.....Pg.....to.....
6. R.A/C.P..... NIL.....Pg.....to.....
7. W.S..... NIL.....Pg.....to.....
8. Rejoinder..... NIL.....Pg.....to.....
9. Reply..... NIL.....Pg.....to.....
10. Any other Papers..... NIL.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Learned counsel Mr P.C. Mazumdar for the appallicant. Learned Sr. C.G.S.C. Mr S. Ali for the respondents.

Perused the application and heard the counsel of the parties. The applicant made a choice

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

....

ON No. 298/96

P. K. Gogoi Applicant(s)
-Versus-

Cervier. N. Indira. Sen. Respondent(s)

Mr. P.C. Mazumdar, K. L. Gogoi, A. K. Das. Advocates for Applicant(s)

Mr. S. Ali, K. S. S. Advocates for Respondent(s)

----- Office Notes ----- 8 Date ----- Courts' Orders -----

This application is in form and within time C. F. of Rs. 50/- deposited vide

IPORD No 369905

Dated 30.12.96

P. S. Registrar.

24/12

31.12.96

Learned counsel Mr P.C. Mazumdar for the applicant. Learned Sr. C.G.S.C. Mr S. Ali for the respondents.

Perused the application and heard the counsel for the parties. The

applicant made a choice of a place of posting on compassionate ground on

20.6.1992. His prayer was granted on

15.5.1996 according to letter dated

5.7.1996, Annexure-3. The applicant

feels that he cannot accept the transfer

now after a lapse of four years since

his situation has changed. He had made a

representation to the Director, EME

(Pers.), Directorate General of EME, Army

Headquarters, New Delhi, through proper

channel, vide his representation dated

17.6.1996. Apparently respondent No.3

did not forward the representation of

the applicant as seen from his letter

dated 5.7.1996 (Annexure-3). After

hearing both sides I am of the view that

this application needs not be admitted,

but it is disposed of with a direction to

the applicant to submit a representation

to the Director General, Electrical and

Mechanical Engineering, Army

31.12.96

Headquarters, New Delhi, respondent No.2, stating his grievance against the transfer order transferring him from Shillong to Jorhat within one month from today. The representation, if any, submitted by the applicant as above shall be disposed of by the Director General, Electrical and Mechanical Engineering, Army Headquarters, New Delhi, within one month from the date of receipt of the representation.

Till disposal of such representation the operation of the impugned transfer order shall be kept in abeyance by the respondents. In the event of failure of the applicant to submit the representation within one month from today however the interim order will stand vacated.

The application is accordingly disposed of.

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

31.12.96
Member

1.1.97

Copy of the order has been issued to the parties along with the L/Advocate of the parties vide

D.O. 43 to 49 dtd.

2-1-97,

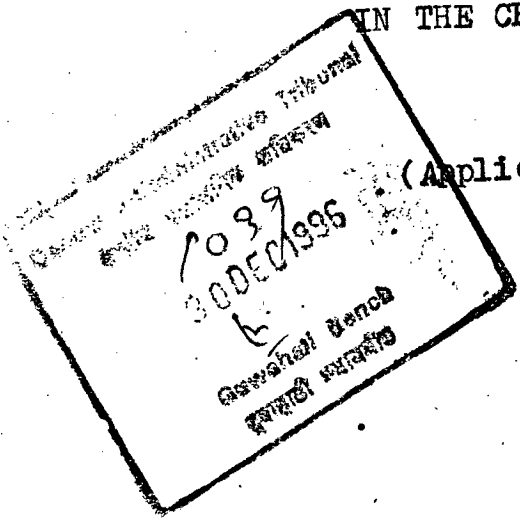
nkm
M
11/1/97

sh
11

3/1/97

✓

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GAUHATI BENCH



(Application under section 19 of the Administrative Tribunal Act 1985)

Title of the Case O.A No 298/96

Shri Pradip Kumar Das ... Applicant

- VS -

Union of India & Others ... Respondents

INDEX

| Sl.No | Description of Documents Relied upon | Page No |
|-------|--------------------------------------|----------|
| 1. | Application | 1 to 11 |
| | | 12 |
| 2. | Annexure - I | 13 to 15 |
| 3. | Annexure - II | 16 |
| 4. | Annexure - III | 17 |
| 5. | Annexure - IV | 18 |
| 6. | Annexure - V | 19 |
| 7. | Annexure - VI | |

For use in Tribunal Office Signature of the applicant
S. P. K. Das

Date of filing 30/12/96

Regn. No.:-

Signature for Registrar.

I undertake to serve the copy to the Sr. C.A.S.C. Aditi 30/12/96 Advocate

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH

CA 298/96

BETWEEN

Shri Pradip Kumar Das,

S/O Late Hari Kumar Das

T/No 170. Civ/Veh/Mech

Electrical & Mechanical Engineering (Shillong)

C/O 99 A.P.O. ... Applicant

- VS-

1. Union of India Represented by
the Secretary to the Govt. of India ,
Ministry of Defence, New Delhi .

2. The Director General Electrical &
Mechanical Engineering.

Army Headquarter, New Delhi - 11

3. The Deputy Director, EME
Mukhyalaya 101 Area,

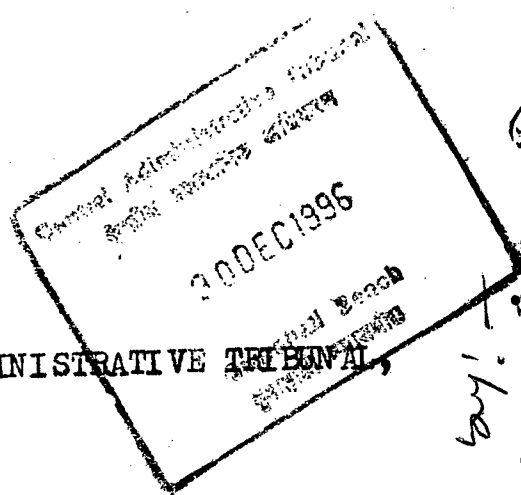
H.Q. 101 (Area) EME. C/O 99 A.P.O.

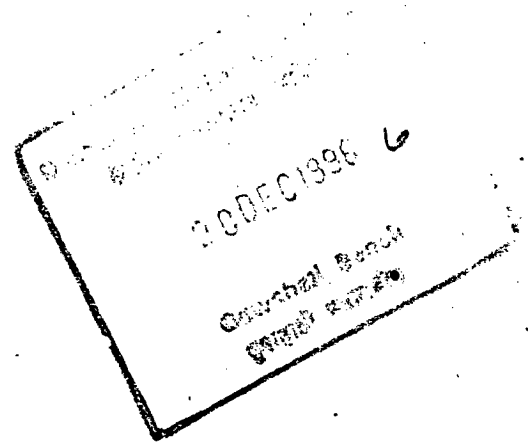
4. Officer Commanding
306 Station Workshop,

Electrical & Mechanical Engineering

C/O 99 A.P.O. ... Respondents.

contd .. 2





DETAILS OF APPLICATION

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

(i) No. 10402/CIV dated 12 Dec. '96 issued by the officiating officer commanding, 306 Station Workshop EME directing to go on Transfer to 311 station workshop. EME Jorhat C/O 99 A.P.O. by 31 st December 1996.

(ii) No. 10402/CIV/PK dated 6 th Aug. '96 issued by the Respondent No 3 intimating rejection of request to cancel the transfer of posting.

(iii) Letter No. 20301/CIV dt 23 rd July '96 issued by respondent No 3 rejecting the request of the applicant for cancellation of transfer.

(iv) Letter No. 20905 /C.T.V./EME dt 5 th July '96 issued by the Respondent No 2 to the Respondent No 3 to carry out posting of the applicant.

(v) No. 20905/CIV dt 12 july 96 rejecting prayer of posting

(vi) That the applicant ^{passed} for a direction to the Respondent for cancelling the transfer and posting of the applicant.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the orders against which he has approach the Hon'ble Tribunal is within the Jurisdiction of Hon'ble Court.

3. LIMITATION :

The applicant declares that the application is in limitation prescribed in section 21 of the Central Administrative Tribunal Act.

4. Facts of the Case :-

(i) That the applicant is a citizen of India as such he is entitled to all the rights and provisions as granted by the Constitutions of India.

(ii) The applicant is the vehicle Mechanical of Defence Service and is working ^{under} Respondent No 3 since January '84 by rendering services with full devotion and sincerity and satisfaction of all concerned.

(iii) That the applicant was initially posted at Guwahati and thereafter posted at Shillong under Respondent No 3 where he was promoted to Grade - II

(iv) That the applicant was suffering from asthma during 1992 as the climate of Shillong was not conducive to his health due to which he applied for transfer to other unit of Respondent No 2 on 20 th June '92.

(v) That the Respondents have not considered the prayer for transfer during the suffering period and by this time the applicant had fully recovered from his suffering and adjusted to the climatic condition of Shillong.

(vi) That the applicant states that he has fully settled and established at Shillong and his daughters are prosecuting their studies at Shillong.

(viii) That while the applicant is serving with the deligence at his present place of posting the Respondent No. 3 (Annexure- I) dt 12 th June '96 has intimated the posting order to new unit 311 station workshop E.M.E. C/O 99 A.P.O. in consideration of the request of transfer made on 20 th June '92 and instruct to takup the matter from New Unit. The applicant states that even if the Respondents consider for cancellation of posting to New Unit after joined in new place it would be a futile exercise.

A photocopy of the said order No.20903 dt 12 th June 1996 issued by the respondent No 3 and Marked as Annexure-I

(viii) That there after the applicant made an appeal to the respondent No 2 through properchannel on 17.6.96 who is transferring authority which has not yet been disposed off .

A copy of said appeal is annexed hereto and Marked as Annexure - II .

(ix) That there after the Head Quarter of Army has addressed a letter to respondent No 3 directing the carryout the posting order to 311 station workshop E.M.E. with copy endorsed the applicant.

A photostate copy of said letter dt 5 th July 1996 is Annexed hereto and Marked as ~~Annexure - III~~
Annexure - III

(x) Thereafter again the Respondent No 3 has issued a letter vide No 10402/C.I.V. dt 9th July '96 by which the applicant has been advised to take the movement order on permanent posting to new unit .

A photostate copy of said order Annexure with the petition and Marked as Annexure - IV.

(xi) That the applicant represented the matter to the Respondents requesting not to relieve from the present place. vide his letter dt 11 th July '96.

A photostate copy of the said representation is Annexed hereto and Marked as Annexure - IV.

(xii) That there after series of letters issued by the Respondent advising to take movement order for posting to new unit i.e. 311 station workshop E.M.E. C/O 99 A.P.O. at Jorhat without authority as they are not transferring authority.

(xiii) That new the applicant has been again issued a letter vide No. 10402/C I V dt 12 december '96 (Anne-VI) by which the applicant has been forced to take movement order by 31 st December '96 on permanent posting to 311 station. of E.M.E. during pending of these appeal.

A photostate copy of the said order is annexed hereto as marked aa Annexure - VI)

(xiv) That the applicant states that prima facie the aforesaid letter dated 12 th December 1996 directing to move on permanent posting to new unit without considering the prayer for cancellation is illegal, arbitrary and without jurisdiction issued in colourable exercise of power.

(xv) That the applicant begs to submit that the transfer on compassionate ground of the applicant after lapse of 1 year is lapsed and implementation after 4 years is highly irregult in view of EME Record Office instruction and forcing No 37 dated 15th June 1983 to relieve by the controlling officer is clear intention of malafide one and violation of article 14 of the constitution of India , principles of natural justice , administrative fair ply as such liable to be set aside and quashed.

contd .. 7

(xvi) That the applicant states that policy decision of the Defence Ministry as regard transfer and posting in such a cadre is by way of assistance to the individual has been flouted by the Respondents and thereby a genuine case has been sought to be ignored warranting interference by the Hon'ble Tribunal.

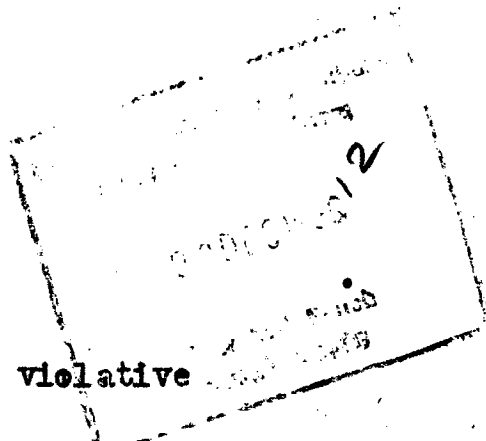
5. GROUND FOR RELIEF WITH LEGAL PROVISION

1. For that Prima facie, directing to make on permanent posting to new unit by letter dated 12 th December '96 is legally not sustainable during the pendency of appeal before the competent authority.

II. For that rejection of prayer for cancellation / withdrawal of request made on 20 th June '92 by the respondent No 2 & 3 is beyond power and jurisdiction and is clear exercise of colourable power with mala fide intention.

III. For that there being no impediment for his transfer and posting the Respondents could not have rejected his prayer without assigning any reason therefor.

(IV) For that the impugned orders being non speaking are legally not sustainable and liable to be set aside and quashed with direction to Sri Biren Kalita cancel the posting made on request on certain exigencies in 1992 as the situation has undergone radically changed during the period of last 4 years.



(v) For that the impugned orders are violative of Article 14, 16 and 21 of the constitution of India and as such liable to be set aside and quashed.

(vi) For that the impugned posting in consideration of request on compassionate grounds is palpably illegal in view of circular No. 37 dated 15 th June 1993 as such the same is not tenable.

(vii) For that provision of various Govt. circular on the issue are in aid the members of the family on distress and as such provide for posting on choiced place and the Respondents by denying the same to the applicant have violated the said provision and have issued the impugned orders mechanically.

(viii) For that the order of transfer and posting has threatened to cause serious difficulties and dislocation in the family setup of the applicant more particularly education of his growing daughters.

(ix) For that the impugned order of permanent posting is against the normal practices of transfer of posting of a defence civilian not warranted by any exigencies of services.

9.

(x) For that in any other view of the matter the transfer order is duly motivated arbitrary , illegal and as such liable to be set aside.

(xi) For that in any view of the matter the impugned orders are not sustainable and liable to be set aside and quashed with a direction to the Respondents to consider posting of the applicant at present place in compliance with circulars issued from time to time.

6. DETAILS OF REMEDIES EXHUSTED

The applicant preferred an appeal on 17.6.96 before the Respondent No 2 which stands unheaded by the respondent till filing of this application (vide Annexure -II)

7. Matters not previously filed or pending in any other Court

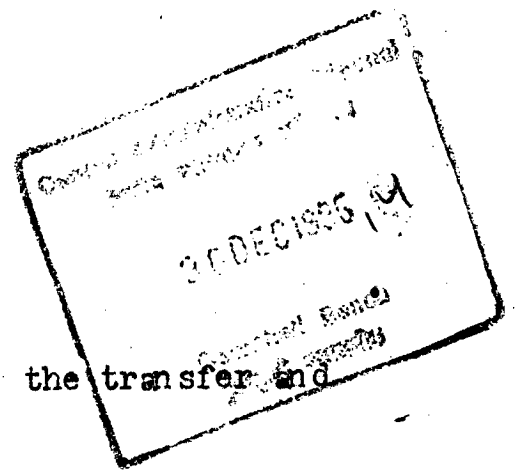
The applicant declares that no application is being preferred for any other Court of competent jurisdiction.

8. Reliefs sought :

In view of the facts and circumstances above, the applicants prays for the following relief-(s)

(a) to set aside and quashed the impugned orders dated 12 th December 1996 (Annexure - VI and dated 12 th June '96 Annexure -I)

contd .. 10



(b) to direct the Respondents to cancel the transfer and posting of the applicant.

(c) Cost of the application.

(d) Any other relief or reliefs to which the applicant is entitled to under the facts and circumstances of the case and as this Hon'ble Tribunal may deem fit and proper.

9. Interim order, if any prayed for :

The applicant prays that pending final decision of this application, the transfer and posting to new unit of the applicant be stayed.

10. Particulars of postan order :-

(a) Number of the IPO & Date :- 09 349905 dt 30.12.96

(b) Name of the Issuing Post Office:- Meghdoot Bhavan .

(Head Post Office)

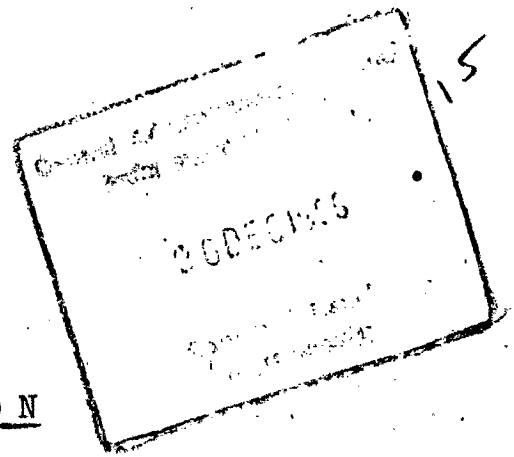
(c) Post office at which payable :- Head Post Office,
Guwahati.

11. Details of Index:-

An Index in duplicate containing details of documents to be relied upon are enclosed.

12. List of Enclosure :-

As indicated in the Index.



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

I Shri Pradip Kumar Das, Son of Late Hari
Kumar Das, aged about 38 years , working as vehicle
Mechanic - 306 station workshop EME C/O 99 A.P.O. ,
resident of Lambu Bah, Shillong do hereby verify
that contents of paras 2,3,5 to 12 are true to my perso-
nal knowledge and paras 1 to 4. believed to be true on
legal advice and that I have not suppressed any
materials fact.

Date :- 30.12.96

Place :- Guwahati.

Shri P. K. Das

Signature of the Applicant.

306 Station Eksp 349
C/C 99 100

12 July 95

POSTING ON COMPASSIONATE GROUNDS : CIVILIAN

1. Refer to your application dated nil.
2. It is inform you that the posting order has been issued to 311 Station Wksp E&L, C/O 99 APO as per your choice station given in your application dated 20 Jun 92. Since your request is being complied with your contradiction at this stage does not hold water.
3. Therefore, your request in the application can not be agreed to. However, you will be able to take up a fresh case for your posting from your new unit.

~~Ref: (N. 11-1)~~
Lt Col
Officer Commanding

Allen
Dus
(R. M. M. M.)
Admstr

Annexure - II

13 - A

From :-

Civ. VM P.K Das
C/O 306 Station W/shop EME
C/O 99 APO

To

The O.C
306 Station Workshop EME
C/O 99 APO

Subject:- POSTING ON COMPASSIONATE GROUNDS: CIVILIANS

Reference:- Your letter no. 20903/Civ dated 12.6.96

Sir,

With reference to above, I am submitting an appeal dated 17.6.96 addressed to Director, EME (Pers), D.G of EME, Army Headquarters, New Delhi-11 for cancellation of my transfer. As such, I may not be relieved of my duties till the reply is received from Director.

Thanking you in anticipation.

Encls:- Two applns

Yours faithfully,

(P.K Das)
VM, Mech. Civ.

Received appln.
in duplicate

P. Sharma
17/6/96

*entw
entw*

-14-

9

The Director, EME (Pers)
Directorate General of EME
Army Headquarters, New Delhi-11

(Through proper Channel)

Sir,

With profound respect, I beg to submit the following for your sympathetic consideration and favourable Orders:-

1. That sir, I have been intimated by the O.C 306 Workshop EME that I have been transferred to 311 Station Workshop EME C/O 99 APO on COMPASSIONATE GROUNDS.
2. That sir, I was posted to 306 Workshop EME in January 1986. Due to change of Climate, ever since to my posting to Shillong i.e 306 Station W/Shop EME, I frequently fell ill and had to spend a huge amount for treatment as the climate of Shillong was not conducive to my health at that time.
3. That sir, due to weary of sickness, I had applied for posting on COMPASSIONATE GROUNDS to the stations of my choice i.e Gauhati, Jorhat and Calcutta in June 1992.
4. That sir, thereafter, due to attach to the Climate and regular medical treatment, I got acclimatised to the climate and day by day came round and recouped my health.
5. That sir, in the meantime, after a lapse of 4 years my prayer for transfer has been materialised and my transfer has been ordered by your Goodself to 311 Station Workshop, EME on COMPASSIONATE GROUNDS, AS APPLIED FOR.
6. That sir, there is no doubt that my request has been acceded to by your Goodself at a very belated stage i.e after expiry of 4 years on COMPASSIONATE GROUNDS when I have already compromised with the climatic conditions. So this transfer on compassionate grounds at the present stage in fact, seems to be favourable, indeed. Because my present posting to other stations will put me to averse situation as before which I had faced on posting to Shillong due to change of climate.
7. That sir, this posting of Compassionate grounds was my immediate need when I was sick before 4 years. Now I could ~~XXXX~~ adjust with the climatic condition of this place and my COMPASSIONATE posting at this belated stage may tell upon my health in this advancing stage of my age and at the same time will increase my mental ~~XXXX~~ agony resulting a taboo in my Service Efficiency.

cont....2

15-
contd..2

8. That sir, had my transfer~~EE~~ been materialised within 6 months or so, I would have been accepted this posting on COMPASSIONATE GROUNDS.

In view of the circumstance stated above, I request your Benignself to be kind enough to cancel my transfer to 311 Station Workshop EME which was ordered at belated stage i.e after expiry of COMPASSIONATE GROUNDS.

Hoping to receive Natural Justice at your end.

Shillong, .
dated 17-6-1996

Yours faithfully,

P.R. Das
(P.R Das)
Civilian Veh. Mech nic
C/O 306 Stan. W/S EME

Copy to:-

1. An advance copy to Director, EME (Pers), Directorate of EME Army Headquarters New Delhi -11 for information.
2. The DDEME HQ 101 Area C/O 99 APO for information.
- ✓ 3. The President, Station Workshop Workers' Union Shillong with a copy of an application with the request to take up the case with the Authority for cancellation of my posting.

Yours faithfully,

P.R. Das
(P.R Das)
Civ. VM. Station W/Shop EME

Tele : 3257

Mukhyalaya 101 Area
HQ 101 Area (EME)
C/O 99 APO

20905/Civ/EME

05 Jul 96

306 Stn Wksp EME


POSTING ON COMPASSIONATE GROUNDS : TICKET
NO 170 CIV VEH MECH PK DAS

1. Refer to :-

(a) Your letter No 20903/Civ at 27 Jun 96

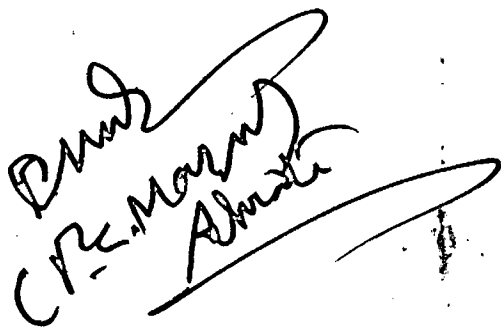
(b) Application dated 17 Jun 96.

2. Please advise the indl that he has been posted to 311 Stn Wksp EME vide Army HQ letter No 39232/TG/EME Civ-3 at 15 May 96 as per one of his choice given by him in his application at 20 Jun 92. It is recommended to carry out posting of the individual accordingly.


(DK Mishra)
Lt Col
ADEME
for DDEME

Copy to:-

T/No 170 Civ/Veh Mech PK Das
306 Stn Wksp EME


C. R. Manna
Admstr

-17-
A-4

Annexure-V

306 Stn Wksp EME
C/O 99 APO

10402/Civ

09 Jul 96

T/No 170 Civ/Veh Mech
PK Das
306 Stn Wksp EME

POSTING ON COMPASSIONATE GROUNDS : TICKET
NO 170 CIV VEH MECH PK DAS

1. Refer HQ 101 Area (EME Branch) letter No 20905/Civ/EME dated 05 Jul 96 added to this unit and copy to you.
2. You are advised to make clearance and take the movement order on permit posting from this office, since unit is pressing hard for carrying out the posting by 11 Jul 96 without fail.

~~Signature~~
(NK Tiwari)
Lt Col
Officer Commanding

Copy to :-

HQ 101 Area (EME) - for info please.
C/O 99 APO

allert
C/S

To

The O.C
306 Station Workshop EME
C/O 99 APO

Subject:- TRANSFER ON COMPASSIONATE GROUNDS : TICKET NO.170
VEH/MECH : P.K DAS

Reference: Your letter no. 10402/Civ dated 9.7.96 addressed
to me and copy endorsed to HQ 101 Area EME

Sir,

In reply to your above quoted letter, I beg to submit that I have appealed to the Director, EME (Pers) D.G Army HQ, New Delhi vide my application dated 17.6.96 for cancellation of my transfer on compassionate grounds and the reply to which is awaited.

I, therefore, request to your Gracious-self not to relieve me of my duties till the reply is received from the Director, EME(pers) Directorate General, Army HQ, New Delhi-11.

Hope my request will meet with your favourable Consideration.

Shillong

Yours faithfully,

Dated 11.7.96

(P.K Das, V/M)

Copy to:-

1. HQ 101 Area EME C/O 99 APO for information and similar action with the request to intimate the no and date of his letter under which he has forwarded my application to the Directorate, New Delhi so as to enable me to approach for redressal.

2. Director, EME(Pers) Directorate General of EME, Army HQ New Delhi-11 for information. *my appln. dated 17.6.96*

Yours faithfully,

(P.K Das)
Vehicle/ Mechanic

*Recd
Shillong
11/7/96*

*Remind
Ticket no. 170 V/M (nu) PK Das.
11/7/96*

File : 6177

10402/Civ

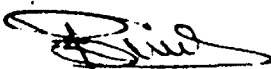
T/No 170 Civ/Veh Mech
Shri PK Das

506 Sta Wksp EME
C/O 99 APO

12 Dec 96

POSTING ON COMPASSIONATE GROUNDS : CIV IN RESPECT OF T/NO 170 CIV/VM
SHRI PK DAS

1. Refer to HQ 101 Erec (EME Branch) letter No 20905/Civ/EME dated 17 Aug 96.
2. T/No 170 Civ/VM Shri PK Das will proceed on permanent posting to 311 Station Workshop EME, C/O 99 APO. As the move on posting is already over delayed as per posting order and the unit is pressing hard for the posting. You are once again advised to take movement order from this office immediately after getting ~~unanimous~~ clearance from all concerned by 31 Dec 96.



(Ravi Singh)

Sd/-
Offg CC

Amended
Dr
(K. M. Singh)
Adm