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**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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R.A/C.P No.  
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SECTION OFFICER (Judl.)

*Kalita*  
*25/1/18*

DA No. 92/96 )  
MP No. (DA )  
RA No. (DA )  
CP No. (DA )

Sri Kamal Kant Sharma APPLICANT(S)  
VERSUS  
Union of India & Ors. RESPONDENT(S)

Mr. B.K. Sharma, P.K. Tevani, Advocate for the applicant.  
Mr. S. Sharma,

Mr. A.K. Choudhury, Addl. Adv. Advocate for the Respondents.

Office Notes ----- 27 ----- Court's Orders -----

17-6-96 Learned counsel Mr. B.K. Sharma for the applicant. Learned Addl. C.G.S.C. Mr. A.K. Choudhury for the respondents.

Application in Form and within three F. of Rs. 50/- deposited vide PO/BD No. 346/71 dated 1-6-96.

*[Handwritten signature and date 11/6]*

Heard counsel of the parties for admission. This application has been submitted by the applicant against the transfer order dated 30-5-96 (annexure 2) transferring the applicant from Divisional Headquarters, S.S.B., Shillong to SAO office, Karimganj. I find that the representation dated 9-4-96 submitted by the applicant has not been disposed of by the respondents. In fact, in this application one of his grievances is against non-forwarding of this representation to the appropriate authority. I also find that the applicant has submitted a representation dated 31-5-1996 against the transfer order dated 30-5-96 requesting for reconsideration of his transfer from Shillong to Karimganj and to keep the transfer order dated 30-5-96 in abeyance till decision is taken on his representation dated 9-4-96. This representation is also pending disposal. In the facts and the circumstances the present O.A. is disposed of with the direction to respondent No.2 to

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17-6-96

dispose of the representation dated 9-4-96 and 31-5-96 submitted by the applicant within one month from the date of receipt of copy of this order.

The applicant is at liberty to place his grievancés which have been placed in this O.A. before the competent authority of the respondents within one week from to-day and the authority will dispose of the same together with the above mentioned representation.

The respondents are directed not to release the applicant in pursuant to transfer order dated 30-5-96 till disposal of the aforesaid representations and, if the decision is not in favour of the applicant, they are <sup>further</sup> directed not to release him before expiry of two weeks from the date of the order rejecting his representations.

The O.A. is disposed of with the directions given above.


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

19.6.96

Copy of final order issued to the parties & Advs.  
vide D.No. 1519 to 1526  
dtd - 19-6-96

sh  
19/6

lm

  
Member 17-6-96

112

IN THE GENERAL ADMINISTRATIVE TRIBUNAL  
 197  
 1 JUN 1995  
 Gauhati Bench  
 1995

IN THE GENERAL ADMINISTRATIVE TRIBUNAL . GAUHATI BENCH.

(An application under Section 19 of the Administrative Tribunal Act, 1985.)

Title of the case :- O.A.No. 92 of 1996.

Shri Kamala Kanta Sharma. .... Applicant.

- vs -

The Union of India and ors. .... Respondents.

I N D E X.

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For use in Tribunal's Office.

*Recd  
 AKC  
 Adm. Cell  
 18/6/96*

Date of filing. 11-6-96  
 Registration No. 92/96  
 .....  
 (Registrar)  
 CAT/GHY.

\* \* \*

5  
Filed by  
Subin Kumar  
RMS  
10.6.96

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A. NO. 92/96

BETWEEN

Shri Kamala Kanta Sharma,  
C/o Late Maheswar Sharma,  
Presently working as Asstt. Filed Officer  
SSB. Shillong, A.P. Secretariate Building,  
Shillong-793 001.

.....Applicant

AND

1. Union of India  
represented by Cabinet Secretary, ~~Ministry of Defence~~,  
Government of India, N.Delhi.

2. The Director, SSB.  
East Block V, R.K. Puram,  
N.Delhi.-110066

3. The Divisional Organiser,  
SSB, Shillong Division  
A.P. Secretariate Building,  
Shillong-793 001.

4. Deputy Inspector General,  
SSB. Shillong Division,  
Shillong.

5. Shri S.D. Sharma,  
presently working as Deputy Inspector General.  
SSB. Shillong Division, Shillong.

6. D.M. Paul,  
presently working as Asst. Filed Officer(M).  
SSB.SAO. Office, Karimganj.

.....Respondents

DETAILS OF APPLICATION.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE.

The application is made against an arbitrary,

....2/-

R. Sanyal

illegal and malafide order of transfer passed by the Deputy Inspector General, SSB, Shillong Division vide order dated 30.5.96 (Annexure-2) and transferring/shifting of the applicant's present post of Assistant Field Officer at Divisional HQ Shillong to Establishment of Tripura Area at Belonia vide order dated 30.5.96 (Annexure-3). Pursuant to the impugned order of transfer the applicant has been proposed to be transferred from Shillong to Karimganj and the present post of applicant in Shillong has been carried to Belonia vide Annexure-3 to accommodate the respondent No. 6 who in accordance with his wishes has been shifted to Belonia from Karimganj.

The impugned order of transfer has not been passed in any public interest and the sole purpose behind the order of transfer is to accommodate the respondent No. 6 to his choice place of posting.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India. He is presently working as Assistant Field Officer (M) in the Divisional Head Quarters, SSB in Shillong. Since his

appointment in the Department of SSB way back in 1966 as Senior Field Officer (M), the applicant had worked in various stations of North Assam Division. It was in June 1980 that from his parent North Assam Division, the applicant was transferred to Meghalaya Area wherein he worked in various stations like Dawki, Shillong, Jowai etc. which are hard stations. In 1991 the applicant was transferred to Silchar as Assistant Field Officer on promotion from where he was transferred to Shillong in November, 1992, and since then he has been working as Assistant Field Officer (M) in the Divisional Head Quarter SSB, Shillong.

4.2 That the applicant has an unblemished service career and he obediently complied with all the orders of transfer considering it an integral part of the conditions of service. However, after his transfer to Shillong in November 1992 the applicant had a certain sense of relief inasmuch as his three daughters could get suitable accommodation in Kendriya Vidyalaya. It is worthwhile to mention that the applicant has 70 years old mother and two dependent sisters who are all residing with him at Shillong.

It is pertinent to mention here that the applicant is a permanent resident of Mangaldoi in the North Assam Division. After having served since 1966 in the different hard stations of North Eastern Region a feeling of nostalgia grew in applicant and he yearned for transfer in his home area of North Assam Division.

4.3 That driven by the sense of nostalgia and well being of seventy years old mother and two dependant sisters, the applicant while he was working as Assistant Field Officer (M), SSB, Shillong Division, made an application

dated 9.4.96 to the Director, SSB, New Delhi for transfer from Meghalaya area to his parent North Assam Division.

A copy of the representation dated 9.4.96 is annexed herewith and marked as ANNEXURE-1.

4.4 That as per office procedure the application for inter Divisional Transfer are to be forwarded by the office of the Divisional Organiser. However, in the absence of Divisional Organiser at present the work is being looked after by the DIG, SSB, Shillong Division. Curiously enough the DIG, SSB, Shillong Division for certain strange reason did not forward the application dated 9.4.96 of the applicant to the Director, SSB, New Delhi, wherein the applicant had made a request for his transfer from Shillong Division to North Assam Division.

4.5 That as to why the DIG, SSB, Shillong Division did not forward the application dated 9.4.96 became clear when vide order No.E-1/1-4/SD/96 dated 30.5.96, the DIG, SSB, Shillong Division transferred the applicant from Shillong to SAO Office at Karimganj. Simultaneously, the respondent No. 6 who has been working as Asstt. Field Officer (M) at SAO Office at Karimganj was transferred to SAO Office at Belonia.

A copy of the said order dated 30.5.96 is annexed herewith and marked as ANNEXURE-2.

4.6 That what was still more astonishing was the fact that on the same date DIG, SSB, Shillong Division vide order dated 30.5.96 being No.E-1/1-3/SD/Vol-II/93/96 transferred the applicant's present post of Asstt. Field

Officer from Divisional Head Quarter Shillong to Establishment of Tripura Area at Balonia, wherein the respondent No. 6 is being accommodated.

A copy of the order transferring the post to Balonia is annexed and marked as ANNEXURE-3.

4.7 That being aggrieved by the impugned order of transfer, the applicant filed a representation dated 31.5.96 to the DIG, SSB, Shillong Division. In this representation the applicant made a request for reconsideration of his transfer to Karimganj and to keep the said order of his transfer to Karimganj pending till the decision is taken at the level of SSB Directorate on applicant's transfer application dated 9.4.96 seeking his transfer to North Assam Division.

A copy of representation dated 31.5.96 is annexed herewith and marked as ANNEXURE-4.

4.8 That till now the applicant had no knowledge that his representation dated 9.4.96 has not been forwarded to the Director, SSB, New Delhi. The reason due to which DIG, SSB, Shillong did not forward the application dated 9.4.96 is not far to seek. The reason is obvious, by not forwarding the application dated 9.4.96, the DIG got an opportunity to play his own game of manipulation, pursuant to which the impugned order of transfer was passed purportedly in public interest.

4.9 That though the Annexure-2 order of transfer ex-facie appears to be an order which has been passed in

Contd.....P/6.

*K. G. ...*

public interest but in reality it is not so and the reason behind this is clear when Annexure-3 order transferring the present post of the applicant at Shillong to Tripura area at Balonia, is examined.

4.10 That the actual reason behind the impugned order of transfer by respondent No. 4/5 is latter's liking for respondent No. 6 whose home town is Balonia at Tripura. Since at Balonia there was no such post of Asstt. Field Officer(M) therefore to accommodate respondent No. 6 the post was brought to Balonia from Shillong making this applicant a sacrificial goat. It is pertinent to mention here that one Head Assistant of the SSB office at Shillong Mr. D.G. Dhar has also played an important role by extending active co-operation to respondent No. 4/5 in this game of shifting of post resulting into impugned order of transfer, which was given the colour of transfer in public interest.

4.11 That the respondent No. 4/5 has acted without jurisdiction in passing the Annexure-3 order dated 30.5.96 transferring the present post of applicant at Shillong to Tripura area, Balonia. It is stated that the power of withdrawal/shifting/transfer of post from one Division to another is vested only in the Inspector General, SSB at the Head Quarter, New Delhi. Therefore, the respondent No. 4/5 by passing the Annexure-3 order acted without jurisdiction and exceeded the limit of his competence.

4.12 That in the instant case the impugned order of transfer (Annexure-2) and (Annexure-3) order of transfer of post from one region to another has been exercised malafide for collateral and extraneous purposes which has

Contd....P/7.

X. S.

no nexus with public interest or with any administrative exigencies.

4.13 That the liking of respondent No. 4/5 for respondent No. 6 and the former's desire to help the latter in getting settled at his home town Balonia by resorting to the subterfuge of shifting the post from Shillong to Balonia under the attractive name of public interest, is neither fair nor proper. The action is ex-facie malafide and arbitrary and makes mockery of public interest and matters like administrative exigencies.

4.14 That the ambit and scope of judicial review in the matter of transfer is no longer res-integra and the same has been settled unequivocally in a scores of decisions of Supreme Court. The order of transfer can be challenged on the ground of malafide and if the same has been passed neither in public interest nor in administrative exigencies as has been the case in the instant O.A.

4.15 That till now the impugned Annexure-2 & 3 orders have not been given effect to and Annexure-4 representation is also pending disposal. Hence the instant case is a fit case wherein this Hon'ble Tribunal may be pleased to stay the operation of Annexures-2 and 3 orders till the disposal of this O.A. The applicant has made out a prima facie case of malafide exercise of power and the principles of balance of convenience and that of irreparable loss and injury are also in his favour.

4.16 That this application has been made bonafide and to secure ends of justice.

Contd.....P/8.

*Handwritten signature*

5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the respondent No. 4/5 having no jurisdiction as well as competence to pass the impugned orders (Annexure-2 and 3) has acted illegally and contrary to the provisions laid down in the rules governing the field.

5.2 For that the applicant has got a right to be considered and the respondents have acted in violation of natural justice in not disposing the applicant's representation dated 9.4.96.

5.3 For that the respondent No. 4/5 has acted in clear discriminatory term in not forwarding the application dated 9.4.96 to the appropriate addressing authority.

5.4 For that the respondent No. 4/5 have acted illegally in passing the impugned orders vide Annexures-2 and 3 transferring the post from one person to another without any jurisdiction and power.

5.5 For that in any view of the matter, the impugned orders passed by the respondents are not tenable in law and as such, is liable to be set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of the O.A.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicants has submitted numerous representations but the same has not been replied to. As such, there is no other alternative and efficacious remedy except by way of filing this application - hence this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which the application has been made before any court of law, or any other authority and/or other Bench of the Tribunal and/or any such application, Writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the circumstances of the case, the applicant prays that Your Lordships would be pleased to issue notice on the respondents to show cause as to why the reliefs sought for in this application shall not be allowed, called for the records and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

- 8.1 To direct the respondents to transfer the applicant to his choice place of posting at North Assam Division.
- ~~8.2~~ To direct the respondents to forward the applicant's application dated 9.4.96 to the addressing authority.
- ~~8.3~~ To direct the respondents to dispose of the said representation dated 9.4.96 with reasoned order.
- 8.4 To direct the respondents to allow him to work at his present place of posting till the disposal of the said representation dated 9.4.96 and not to transfer the post which is presently held by the applicant in Shillong.

Contd.....P/10

*K. S. M.*

- 8.5 Quash and set aside the Annexure-2 order of transfer
- 8.6 Quash and set aside the Annexure-3 order of shifting of post from Shillong to Belonia.
- 8.7 Cost of this application
- 8.8. Any other relief or reliefs to which the applicant is entitled under the law.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, the respondents may be directed not to give effect the impugned orders at Annexures-2 and 3 and allow the applicant to work at his present place of posting in Shillong.

10.....

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- (i) I.P.O. No. : 09 346171
- (ii) Date : 1-6-96
- (iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

X Sam

VERIFICATION

I Shri Kamala Kanta Sarma Son of Late Maheswar Sarma presently working as Assistant Field Officer SSB Shillong do hereby verify and state that the statements made in para 1 to 4 and para 6 to 12 are true to my knowledge and those made in para 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 7th Day of June, 1996 at Guwahati.

Applicant

Kamala Kanta Sarma  
(KAMALA KANTA SARMA)

To

The Director, SSB  
East Block-V,  
R.K. Puram,  
New Delhi-110 066.

Through proper channel.

Sub : Prayer for transfer.

Sir,

With due respect and humble submission I would like to bring the followings to your kind notice for favour of kind and sympathetic consideration.

That Sir, I joined in the erstwhile Meghalaya Area in June, 1980 on transfer from my parent N.A. Division. Since then I am serving in different Circles i.e. Dawki, Shillong, Jowai, in the office of the A.O. Cachar, Kashipur and in the office of the D.O. Shillong Division, Shillong.

Sir, it is a fact that there is none to look after my ailing mother at her old age and my dependent sisters at my native place.

Besides, I am staying in Shillong with my Central School going children and family as well for education of my kids.

I, would, therefore like to request your goodself to be kind enough to consider my case of transfer to North Assam Division, to a place having Central School facility like SAO's Office, Changsari or Tezpur so that I can look after my old and ailing mother and sisters and educational aspects of my children simultaneously.

With regards Sir,

Yours faithfully,

*[Handwritten Signature]*  
9/4/86

(KAMALA KANTA SARMA)  
AFO(Medic)

Div. Hqrs. SSB Shillong.

Received vide -  
Receipt Register  
NO. 3815 on 12/4/86  
at DO's Office, SSB, Shillong

*[Handwritten Signature]*  
Mm

*[Handwritten Signature]*  
C/C

No.E-1/1-4/SD/96/  
Directorate General of Security  
Office of the Divisional Organiser  
SSB, Shillong Division, Shillong,  
A/c Secretariat Building,  
Shillong - 793 001, Meghalaya.

Dated : Shillong, the

O R D E R

The Divisional Organiser, SSB, Shillong Division, Shillong is pleased to issue following transfer and posting of Para Medical staff in public interest with immediate effect.

Sl. No.	Name & designation	From	To
1)	Shri K.K. Sharma, AFO(M)	Div. Hqrs., Shillong.	SAO Office Karimganj.
2)	" E.M. Paul, AFO(M)	SAO Office, Karimganj.	SAO Office Belonia.

They are entitled to avail of normal joining time as admissible under rules.

*[Signature]*  
20.5.96

Dy. Inspector General  
SSB Shillong Division  
Shillong.

Distribution :-

- 1) The Director of Accounts, Cab. Secretariat, East Block-IX, Level-7, R.K.Puram, New Delhi-66.
- 2) The Assistant Director(EA), SSB Directorate.
- 3) The Area Organiser, SSB, Tripura.
- 4) The Area Organiser, SSB, Cachar.
- 5) The Sub-Area Organiser, SSB, Karimganj. ✓
- 6) The Sub-Area Organiser, SSB, Belonia.
- 7) The Accounts Officer, SSB, Shillong Divn., Shillong.
- 8) The D.M.O. SSB Shillong Division, Shillong.
- 9) Shri K.K. Sharma, AFO(M), Shillong Division, Shillong.
- 10) Personal File of Shri K.K. Sharma, AFO(M) Div. Hqrs., Shillong.
- Office Order File.
- 12) Office Copy.

CTE  
*[Signature]*  
31/5/96  
Office

Shillong, 31/5/96

*[Signature]*  
31/5/96

*[Signature]*  
am

To

The Deputy Inspector General,  
SSB. Shillong Division,  
Shillong.

(Through Proper Channel)

Sub: Prayer for keeping my transfer in abeyance.

Sir,

Kindly refer to your transfer Order No.  
E-1/1-4/SD/96/4891-4900 dated 30.5.96.

In this connection, with humble submission I would like to request you to kindly reconsider the case of my transfer from Div. Hqr, Shillong to SAO's office, Karimganj and to kindly keep my transfer order in abeyance till I receive the decision / order from the SSB Directorate on my transfer application submitted to the Director, SSB. New Delhi on 09.4.96 seeking my transfer to North Assam Division.

And for this act of your kindness I shall be ever grateful to you.

With regards,

Yours faithfully,

Dated: 31.5.1996.

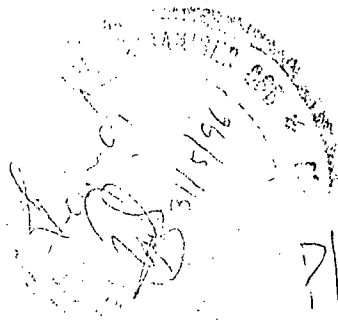
*[Handwritten Signature]*  
31/5/96

(K.K.Sharma)  
AFO(M)  
SSB. Div. Hqr.Shillong.

Advance copy alongwith a copy of my transfer <sup>order</sup> is submitted to the Director, SSB. East Block V, R.K.Puram, New Delhi -110066 for favour of information and to kindly convey the decision on my transfer application submitted on 09.4.96 at the earliest convenience.

*[Handwritten Signature]*  
31/5/96

(K.K.Sharma)  
AFO(M)  
SSB. Div. Hqr.Shillong



2/Copy

*[Handwritten signature]*

No.E-1/1-3/SD/VOL-II/93-96/  
Directorate General of Security  
Office of the Divisional Organiser  
SSB, Shillong Division, Shillong,  
A.P. Secretariat Building,  
Shillong - 793 001, Meghalaya.

Dated : Shillong, the

ORDER

The Divisional Organiser, SSB, Shillong Division, Shillong is pleased to transfer 1(one) post of Assistant Field Officer (Medic Alle) from Divisional Hqrs., Shillong to establishment of Tripura Area which was allotted vide Divisional Hqrs., Shillong Order No.E.1/2-1/SD/90-92/10747-52 dated 20-10-92 in view of filling up the vacant post of AFO(Medic) at SAC Office at Belonia in public interest.

This Order will come into force with immediate effect.

*[Handwritten Signature]*  
20.5.96

Dy. Inspector General  
SSB Shillong Division  
Shillong.

Distribution :-

- 1) The Director of Accounts, Cab. Secretariat, East Block-IX, Level-7, R.K. Puram, New Delhi-66.
- 2) The Assistant Director(EA), SSB Directorate.
- 3) The Area Organiser, SSB, Tripura.
- 4) The Accounts Officer, SSB, Shillong Division, Shillong.
- 5) The D.M.O. SSB Shillong Division, Shillong.
- 6) Office Order File.
- 7) Transfer/Posting File.
- 8) Office Copy.

*CTC*

*90/43*  
*21/5/96*  
Assistant Officer  
SSB, Shillong Division

*Attenu*  
*Actin*