

50/600

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 126/96.....

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

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

1. Orders Sheet..... OAPg. 1to 2.....
2. Judgment/Order dtd. 1.3.7.1.96.....Pg. 1.....to 11.1.96 11.1.96 11.1.96
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 126/96Pg. 1to 1.8.....
5. E.P/M.P.....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 (Judl.)

24.1.18

DA No.

MP No.

RA No.

CP No.

(DA)

(DA)

(DA)

Mr. Bijay Kr. Datta Jaisankartha APPLICANT(S)

Union of Andhra Pradesh RESPONDENT(S)

Mr. J.L. Sarkar Advocate for the applicant.

Mr. G. Sarma Addl. C.G.S.C Advocate for the Respondents.

Office Notes 57 Court's Orders

This application is in
form and within time
C. F. of Rs. 50/-
deposited vide
IPO/BD No 346826
Dated ..12.2.96

By Registrar
12/2

18.7.96

Mr J.L.Sarkar for the applicant. Mr
G.Sarma, Addl.C.G.S.C for the respondents

This application has been submitted
against the Transfer Order No.DA Cell/5
dated 19.6.96 (Annexure-1) transferring
the applicant from the office of the
Executive Engineer, Along Civil Division
Arunachal Pradesh to Gas Thermal
Division, Rokia, Agartala, Tripura. The
main ground of the applicant in this O.
is that he has been transferred from
Pasighat to Along only in August, 1995 and
now he has been again transferred from
Along to Agartala. He has already settled
in Along and arranged education for his
son. The transfer will cause irreparable
loss to the academic career of his son.
It appears that after the transfer order
dated 19.6.96 (Annexure-1) ^{was} issued the
applicant has not submitted any
representation before the competent
authority of the respondents to consider
his case against the transfer. Therefore
I consider it premature to entertain this
application. The application is disposed
of with a direction to the applicant to
submit a detail representation before the
competent authority of the respondents
within one week from today. Further the
respondents are directed to dispose of
the representation submitted by the
applicant expeditiously and to retain the
applicant in his present posting in A

7

18.7.96 till disposal of the fresh representation, if any submitted by the applicant. In the event of failure on the part of the applicant to submit fresh representation, the respondents are at liberty to implement the transfer order dated 19.6.96 transferring the applicant from Along to Agartala.

19.7.96

Copy of order
issued to the parties
vide D.No. 2187 to
2173 dt. 19.7.96

Application is disposed of as above.

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

wh
19/7

60
Member 18.7.96

pg

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
17 JUL 1995
Sri Bijoy Kumar Dutta Purkayastha
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



9876/171
J. Sankar
Advocate
Filed by
Chugh

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

O.A. No. 126/96

Sri Bijoy Kumar Dutta Purkayastha

-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	Transfer order dt. 19.6.96 under Memo dt. 27.6.96	14-15
4	2	Representation dated 28.5.96	16-17
5	3	Letter dt. 29.6.96	18

Copy is handed
over to Sri G. Sharma,
Advocate
17/7/96

Filed By :

N. K.
Advocate

S. K.

2. Particulats of the Applicant.

Shri Bijoy Kumar Dutta Purkayastha

Son of Late Bipra Chandra Dutta Purkayastha

Working as Divisional Accountant in the
Office of the Executive Engineer,

Department of Power, Along Civil Division

P.O. Along, West Siang District,

Arunachal Pradesh.

..... Applicant

2. Particulars of the Respondents

1. Union of India,

(Through Comptroller and Auditor

General of India, New Delhi).

2. The Accountant General (A&E)

Meghalaya Etc. Shillong.

3. The Executive Engineer

Along Civil Division

Department of Power,

P.O. Along, Dist.-West Siang

Arunachal Pradesh

4. The Chief Engineer, R.W.D.,

Arunachal Pradesh,

Itanagar

..... Respondents



3. Particulars for which this application is made.

This application is made against the order of transfer issued under letter No. ~~DA~~ E.O. No. DA Cell/53 dated 19.6.96 under Memo No. A Cell/PC/BKDP/608-616 dated 27th June 1996 whereby the applicant is sought to be transferred at Gas Thermal Division, Rokia Agartala, Tripura and also against an apprehension of repatriation to the parent department in consequence of the Judgement and Order dated 12.6.96 passed in O.A. No. 90 of 1993.

4. Limitation

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

5. Jurisdiction

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

6. Facts of the case :

6.1 That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant presently working as Divisional Accountant in the office of the Executive Engineer, Along Civil Division, Deptt. of Power, Along, West Siang District, Arunachal Pradesh under the Accountant General (A&E), Meghalaya, Shillong etc.



6.2 That the applicant was initially appointed as L.D.C. on 5.10.1977 under the office of the Chief Engineer, P.W.D., Arunachal Pradesh, Itanagar. He was promoted as U.D.A. in the year 1981 in the same office at Itanagar.

6.3 That during the year 1989 the Accountant General (A&E), Meghalaya etc. Shillong was in need of services of some divisional Accountants in the existing regular vacancies of the Divisional Accountant of the department. There is a provision for recruitment of divisional Accountant, the following extracts from Chapter VII of the Comptroller and Auditor General's Manual of Standing Orders are quoted hereunder :-

" ORGANISATION.

247. The Divisional Accountants are constituted in the separate cadre with its own leave and training reserve under the administrative control of the Accountant General. This cadre is intended to provide one trained Accountant for each Public Works Division or other independent executive charge and one for each of certain appointments in the Audit Office."

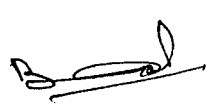
" Source of Recruitment.

249. Subject to such exceptions as may have been authorised by the Comptroller and Auditor General, recruitment to the cadre of Divisional Accountants is made by the Accountant General by selection from the following three sources through a competitive and qualifying test called the initial Recruitment Examination for Divisional Accountants (Vide Annexure-I to this Chapter)

- (1) P.W.D., Accounts Clerks.
- (2) Upper Division Clerks of the Audit Offices.
- (3) Direct Recruit"


It is quite clear from the above that the P.W.D. Accounts Clerks are treated as the first category of source of recruitment of the Divisional Accountant.

6.4 That the Accountant General, Meghalaya (A&E), Shillong etc. however, prefer to recruit the Divisional Accountant in the year 1989 from amongst the P.W.D./RWD Accounts Clerks of the Chief Engineer, P.W.D./R.W.D., Arunachal Pradesh on deputation basis and requested the Chief Engineer, R.W.D. Arunachal Pradesh to recommend the names of volunteers having requisite qualification and experience in Public Works ~~Department~~ Accounts. Accordingly, the Chief Engineer, R.W.D, Arunachal Pradesh had recommended the name of the applicant for the post of Divisional Accountant. The applicant thereafter selected by the office of the Accountant General (A&E) Meghalaya, Shillong and offered the post of Junior Grade Divisional Accountant in the pay scale of Rs. 1400-40-1600-50-2300-EB-60-2600/- under the Administrative control of the Accountant General (A&E) Meghalaya etc. Shillong under their office order No. E.O. No. WM-1/DA Cells/5 dated 6.4.90 on deputation basis. The applicant was initially posted in the office of the Executive Engineer, Tamenglong, P.W.D, Manipur, thereafter he was transferred and posted as Divisional



Accountant in the office of the Executive Engineer, Micro Hydel Division, P.W.^D., Arunachal Pradesh and the applicant again transferred and posted at Along Civil Division, Deptt. of Power, on 7th August, 1995 and got his son admitted in the Ram Krishna Mission School at Along, during April 1996.

That your applicant begs to state that he had filed an Original Application before this Hon'ble Tribunal for his regular absorption in the borrowing department i.e. office of the Accountant General (A&E) Meghalaya etc. Shillong in terms of the provision laid down in CPWA Code. The said application was registered as O.A. No. 90/93 and the Hon'ble Tribunal was pleased to stay the order of repatriation at the admission stage of the said O.A. i.e. O.A. No. 90/93 and thereafter the applicant is continued to serve in the borrowing department in different places as Divisional Accountant. The applicant was transferred and posted at Along only on 7th August 1995 as Divisional Accountant, Department of Power in the Along Civil Division vide order No. S/WD/474/88-89 Pt. II dated 1.3.94 consequent upon the shifting of the office of the Micro Hydel Division Pasighat and the same is renamed as Along Civil Division under the department of Power with the headquarter at Along and the son of the applicant Shri Saurodeep Dutta Purkayastha is admitted in the Ram Krishna Mission School at Along in the present academic session only in the month of April 1996 and now



about only 4 months is completed at Ram Krishna Mission School. Be it stated that there is ~~not~~ Ram Krishna Mission School at Itanagar. But most surprisingly he is now sought to be transferred and posted at Agartala ~~vide~~ by the office of the Accountant General (A&E) Meghalaya etc. vide office Order No. ~~BA~~ E.O. No. DA Cell/53 dt. 19.6.96 under Memo No. DA Cell/PC/BKDP/608-616 dated 27 June 1996 in the middle of the current academic session of the son of the present applicant who is studying in Class II at Ram Krishna Mission School at Along. In this connection it may also be stated that the applicant was transferred and posted at Along Only in the month of August, 1995 therefore it will be a great difficulty on the part of the applicant to move any other place on transfer in the middle of the current academic session of his son. The applicant therefore represented to the higher authorities through his representation dated 28.5.96 at the time while the transfer case of the applicant was under process and the Executive Engineer of the Along Civil Division, Department of Power, Along very strongly recommended for retention of the ~~applicant~~ applicant in the present place of posting for only on the ground of smooth running the education of the son of the present applicant which was forwarded to the Accountant General (A&E) Meghalaya, Arunachal Pradesh etc. Shillong vide his letter No. ACD/DOP/E-5/96-97/258 dated 29th May, 1996. In this connection it may also be stated that in the said representation submitted by the applicant especially stated that if the second transfer order is implemented

within one year in that event there would be an irreparable loss is likely to be occurred in the academic career of the son of the present applicant and it would be appeared from the recommendation of the Executive Engineer of the Along Civil Division, Department of Power, Along where the Executive Engineer had very strongly recommended the case for retention of the applicant at Along for the educational interest of the son of the present applicant.

A copy of the transfer order dated 19.6.96 issued under Memo dated 27.6.96 and representation of the applicant dated 28.5.96 and Executive Engineer's recommendation letter dated 29.5.96 are ~~xxxxxxx~~ annexed and the same are marked as Annexure 1, 2 and 3 respectively.


6.6 That your applicant further begs to state that in the month of June, the Original Application filed by the present applicant for regular absorption as Divisional Accountant on the event of his passing the departmental test also came up for hearing on 12.6.96 and the Hon'ble Tribunal was pleased to dismiss the said Original Application No. 90/93 and the stay order earlier granted by the Hon'ble Tribunal also vacated in the Judgement and Order dated 12.6.96 passed in O.A. No. 90/93 and as a result the applicant also apprehending that that the authorities may also ~~xxxxxxx~~ repatriate the applicant to his parent department during the middle



of the academic session of the son of the present applicant which is also likely to cause academic career of the son of the present applicant. In this connection it may also be stated that in the service life of a Government employee the academic career of his children is very important therefore the Hon'ble Tribunal be pleased to direct the respondents to retain the applicant in the present place of posting and not to repatriate him to his parent department the the current academic session of the son of the applicant is over i.e. ^{6th} March 1997. The applicant is apprehending that he may be repatriated at any moment and there is no scope to make any further representation for retention in the present place of posting before the concerned authorities with therefore the only remedy is available ~~to~~ the applicant to approach the Hon'ble Tribunal for adequate remedies and in the circumstances the applicant preferred this present Application before this Hon'ble Tribunal for a direction on the respondents not to transfer or repatriate the applicant in the middle of the academic session of his son who is studying in Ram Krishna Mission School at Along. The applicant categorically states that he is still serving as Divisional Accountant in the office of the Executive Engineer, Along Civil Division, Department of Power, Along.

6.7 That the applicant begs to state that he ~~has~~ has not received the copy of the Judgement and Order passed in O.A. No. 90/93 which is decided on 12.6.96, however he has come to learn from his Lawyer that the case is decided against the applicant on 12.6.96.

6.8 That this application is made bonafide and for the ends of justice.



7. Reliefs sought for :

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

1. That the respondents be directed not to transfer the applicant interms of transfer order dated 19.6.96 under Memo dated 27.6.96 (Annexure-1) in the middle of the academic session of the son of the applicant.
2. That the respondents be directed not to repatriate the present applicant in the middle of the academic session of his son as a result of the Judgement and Order dated 12.6.96 passed in O.A. No. 90/93.
3. That the respondents be directed to allow the applicant to retain the applicant till the current academic session of the applicant is over ^{on} i.e. March 1997, at Along Civil Division.
4. To pass any other order or orders as deemed fit and proper under the facts and circumstances stated in this application.

The above reliefs are prayed on the following amongst other -

- G R O U N D S -

1. For that the Applicant's one is admitted in the Ram Krishna Mission School at Along only in the current academic session in the month of April 1996 and now it is the middle of the



academic session therefore the transfer/
~~repatriation~~ of the applicant in terms of
the order dated 19.6.96 under Memo dated
27.6.96 (Annexure-1) is likely to cause an
irreparable loss to the academic career of
the son of the present applicant.

2. For that the applicant is transferred and
posted only in the month of August, 1996 at
Along in the Aong Civil Division, Department
of Power, State of Arunachal Pradesh therefore
further transfer is uncalled for.
3. For that the applicant is ready to carry out
the order of transfer or the order of
repatriation if any as an obedient Government
servant only on completion of the current
academic session of the son of the applicant.
4. For that transfer order or any order of
repatriation in the middle of academic session
is likely to cause irreparable loss to the
education of the son of the applicant.

8. Interim relief prayed for :

During the pendency of this case/application the
applicant prays for the following interim reliefs :

That the respondents be directed not to release the
applicant in terms of transfer order dated 19.6.96 under
Memo dated 27.6.96 (Annexure-1) and the Hon'ble Tribunal



be pleased to direct the respondents not to repatriate the applicant to his parent department in the middle of the current academic session of the son of the applicant and further be pleased to direct the respondents to allow the applicant in the present place of posting i.e. at Along in the Along Civil Division, Department of Power, Arunachal Pradesh till the current academic session of his son is over.

The above interim reliefs are prayed on the grounds explained in paragraph 7 of this application.

9. Details of remedy exhausted :-

There is no scope of any other remedy except the application before this Hon'ble Tribunal.

10. Matter is not pending in any other Court/Tribunal.

The applicant declares that he has not filed any other application before any other Court/Tribunal.

11. Particulars of the Postal Order :-

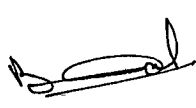
Postal Order No.	: 346526
Date of Issue	: 17.7.96
Issued from	: G.P.O., Guwahati.
Payable at	: G.P.O., Guwahati

12. Details of Index

An Index showing the particulars of documents is enclosed.

13. List of enclosures :-

As per Index.



VERIFICATION

I, Shri Bijoy Kumar Dutta Purkayastha aged about 39 years son of late Bipra Chandra Dutta Purkayastha, office of the Executive Engineer, Along ~~Civil~~ Civil Division, Department of Power, West Siang District, Arunachal Pradesh applicant in this application do hereby declare that the statements made in this application are true to my knowledge and I have not suppressed any material facts.

I Sign this verification on this the 17th day of July, 1996 at Guwahati.

Bijoy K. Dutta Purkayastha

Signature

BIJOY KUMAR DUTTA PURKAYASTHA

Annexure-1

OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA : ETC:
SHILLONG

E.O. No. DA Cell/53

Dated 19.6.96

O R D E R

Shri/Smti B.K.Dutta Purkayastha
Divisional Accountant/Divisional Accounts Officer
Grade on deputation Office of the E.E. Along Civil
Division is transferred and posted to Gas Thermal
Division Rokia Agartala Tripura vice Shri
is transferred.

2. The transfer is in Public Interest.

Sd/- Illegible

~~Senior/Deputy/Accountant/General(A&E)~~
Senior Accounts Officer.

Memo No. DA Cell/PC/BKDP/608-616 Dated 27 JUN 1996

Copy forwarded to

1. The Accountant General (A&E)
2. The Chief Engineer Power, Agartala Tripura.
3. The Chief Engineer (Power), Itanagar, Arunachal Pradesh.

Contd...P/2

Attested
B. K. Dutta

Annexure-1 (Contd.)

- REGD. 3. The Executive Engineer Along Civil Division, Arunachal Pradesh is requested to release Shri B.K. Dutta Purkayastha DA on deputation immediately without waiting for substitute. A copy of the release order may please be sent to this office.
- REGD. 4. The Executive Engineer, Gas Thermal Division Rokia Agartala Tripura. The date of joining of Shri B.K. Dutta Purkayastha DA on deputation may please be intimated to this office.
- REGD. 5. Shri B.K. Dutta Purkayastha DA on deputation Office of the Executive Engineer, Along Civil Division, Arunachal Pradesh.
6. E.O. File
7. S.C. File
8. D.P.C. File
9. P.C. File of Shri B.K. Dutta Purkayastha

Sd/- Illegible 21.6.96

Sr. Accounts Officer

I/c DA Cell.

Attested
B. S. S.

Annexure-2

To

The Accountant General (A&E)
Meghalaya, Arunachal Pradesh etc.
Shillong, Meghalaya

(Through Executive Engineer, Along Civil Division,
Deptt. of Power, Along).

Sub : Prayer for retention of Transfer.

Sir,

I have the hono^{ur} to lay before you a few lines in connection with my transfer from Along Civil Division, Department of power, Along for favour of your kind consideration and sympathethic action please.

Sir, I had been posted to Micro Hydel Division, Pasighat (A.P) from Tamenglong P.W. Division, Manipur during ~~April/88~~ April/91 and joined on 22nd April/91. Till July/95 I worked in the Micro Hydel Division, Pasighat, East Siang district (A.P.) Consequent upon Govt. decision vide No. SPWD/474/88-89/Pt.II dated 11.4.94 the said Division is renamed as Along Civil Division, Department of power, Along and asked to shift the Head Quarter at Along that is a long distant place from Pasighat which is situated in another District of Arunachal Pradesh namely West Siang District. Accordingly the Division shifted to Along during 1st part of August/95, though my transfer was not made from your honour I was compelled to shift/transfer from Pasighat to Along since the office was shifted, which effected me in all respects. Further as the transfer was made in the middle of the academic session I had to leave my family and school going son at Pasighat till completion of academic session. I shifted my establishment from Pasighat to Along during this year and got my son admitted to R.K. Mission School Along.

In this connection, I beg to inform your honour that I have completed only 9(Nine) months service at Along 'i.e. August/95/to May 1996) in Along Civil Division, Department of Power, Along (AP), in the meantime if I am transferred out from here this will be second transfer within a year which will effect me very much especially academic career of my son because of frequent change of Educational Institution

Attested
[Signature]

and also it may not be possible to get him admitted to any school in the middle of the academic session at a new place and he will loss 1(One) year of his educational career.

I would therefore beg to request your honour kindly consider my case sympathetically and allow me to stay at Along under Along Civil Division till completion of my tenure considering the educational problem of my son.

Sympathetic action from your honour is highly solicited.

Dated Along,
the 28th May '96

Yours faithfully,

Sd/- B.K.Dutta Purkayastha
Divisional Accountant
Along Civil Division
Deptt. of Power : Along

Copy to :-

The Chief Engineer(Power) Department of power,
Itanagar, Arunachal Pradesh for information and necessary
action please.

Sd/- B.K.Purkayastha
Divisional Accountant,
Along Civil Division,
Deptt. of Power : Along.

Attested
B.K.Dutta

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Annexure-D 3

GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE EXECUTIVE ENGINEER : ALONG CIVIL DIVISION
DEPARTMENT OF POWER : ALONG

No. ACD/DOP/E-5/96-97/258

Dated Along, the 29th May/9

The Accountant General (A&E)
Meghalaya, Arunachal Pradesh etc.
Shillong, Meghalaya

Sub : Retention of Transfer in respect of Shri B.K.Dutta
Purkayastha, Divisional Accountant.

Sir,

It is to inform you that the Along Civil Division, Department of power started functioning with the Head Quarter at Along from 7th August/95 with the staff of Micro Hydel Division, Pasighat which became defunct as per Govt. Order No. SPWD/474/88-89/Pt-II dated 11.3.94 and renamed as Along Civil Division. Since the Micro Hydel Division, Pasighat was shifted to Along and renamed as Along Civil Division-Shri B.K.Dutta Purkayastha, Divisional Accountant was also shifted along with the office to Along. This sudden shifting of working place had effected his Children's academic life as they had to be left behind with relatives at Pasighat. Again after a spell of 9 months, when his children had been admitted in R.K.Mission School, Along in the mid of the academic session, his transfer order has been issued. This will only dislocate his children and effect their academic lives. This being the state of affairs, -without any biasness, it is requested that he may be allowed to complete his tenure at Along Civil Division. In this connection a representation received from Shri B.K.Purkayastha, Divisional Accountant is forwarded herewith.

His case is strongly recommended for retention till completion of his tenure.

Enclo : As above.

Yours faithfully,

Sd/-

(Er. Gamnya Padu)
Executive Engineer (C)
Along Civil Division
Deptt. of power : Along.

Attended
B. S. D.