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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 104/96

R.A/C.P No.

E.P/M.A No. 64/97

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SECTION OFFICER (Judl.)

✓ CA No. 104/96

MP No. 104/96

RA No. 104/96

CP No. 104/96

Mr. M.A. Khan

APPLICANT(S)

Union of Respondents

RESPONDENT(S)

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

Mr. G. S. Sharma, Advocate for the Respondents.

Office Notes

Court's Order

25.6.96

Mr B.K.Sharma for the applicant. Mr G.Sarma, Addl.C.G.S.C for the respondents.

Mr B.K.Sharma moves this application against the transfer order No.2(2)/Sankosh-96/BSBN/1294-1307 dated 21.5.96 (Annexure-9).

Issue notice on the respondents to show cause as to why application should not be allowed and the relief sought.

Returnable on 10.7.96

List on 10.7.96

and consideration of the application.

Heard Mr B.K. Sharma for the applicant.

Interim relief granted.

Addl.C.G.S.C opposite the

pendency of disposal of the application.

and consideration of the application shall not be a bar to the respondents to dispose of the application.

the application dated 8.7.96 submitted by the applicant.

therefore the disposal of the application is deferred.

Order of adjournment, the respondents are directed not to present the order No.2(2)/

96/BSBN/1294-17 dated 21.5.96

(Annexure-9), order No.1/4(B)

BSBN/1360-68 dated 27.5.96

This application is in form of a petition. C. F. No. 104/96 deposited vide

100 BT No 345930 dated 23.6.96

24/6/96
24/6

26.6.96

Copy of order dt. 25.6.96

issued to the respondents

on 26.6.96.

Bar

25.6.96 (Annexure-10) and order No.BID/CB-27/96/2306 dated 30.5.96 (Annexure-11) in respect of the applicant.

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

Handwritten signature
Member

pg

10.7.96. Mr. G.Sarma, Addl. C.G.S.C. for respondents is present and ~~present~~ for time for filing show cause.

List on 17.7.96 for show cause and consideration of admission.

Handwritten signature
Member

pg

17.7.96

Mr G.Sarma, Addl.C.G.S.C for the respondents. None for the applicant.

List for consideration of admission on 18.7.96.

Handwritten signature
Member

pg

18.7.96

Mr B.K.Sharma for the applicant. Mr G.Sarma, Addl.C.G.S.C for the respondents.

No show cause has been submitted. However, Mr G.Sarma, Addl.C.G.S.C submits a copy of letter No.BID/CB/CAT-2/96/C-82-84 dated 3.7.96 addressed by Executive Engineer, Bhutan Investigation Division to the Director, Administration, Central Water Commission, New Delhi and letter No.1(18)1/96-BBB/1800-01 dated 15.7.96 addressed by Chief Engineer, Central Water Commission(B&BB), Shillong to him and opposes the admission of this O.A.

Application is admitted. Service waived as copy already received. However, intimate the respondents that the application has been admitted. In view of the urgency of the matter written statement to be submitted within 4 wks.

List on 19.8.96 for hearing. In the meantime the respondents may submit written statement with copy to the applicant.

Mr G.Sarma, Addl.C.G.S.C opposes the grant of interim order. Heard counsel of the parties. It is ordered that interim order dated 25.6.96 will be applicable till disposal of the application.

Member

pg

19.8.96

Mr. G.Sarma, Addl. C.G.S.C. submits written statement today and copy of the same has been served on the counsel of the applicant Mr. S.Sarma. Mr. S.Sarma seeks time to peruse and consider the written statement.

Hearing adjourned to 4.9.96.

Member

22.7.96

Copy of order dated 18.7.96 issued to the Respts and Counsel of the parties.

2-8-96

Notice duly served on respt No. 4,3,6.

Bm
Respondent has not been
served
16/8

20.8.96

W/s on B&B of Respts
filed.

trd
m
19/8

4.9.96 - Mr G. Sarma, learned Addl. C.G.S.C is present for the respondents and ready for hearing. However, Mr B.K. Sharma, learned counsel for the applicant has submitted leave note. Hearing adjourned to 20.9.96.

Member

6.9.96

Notice duly served on Respond No. 5, 4

pg

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2.4.97

Mr B.K. Sharma for the applicant. Mr G. Sarma, Addl. C.G.S.C for the respondents.

The urgency of this case was considered on 18.7.96 and it was fixed for hearing on 19.8.96, on which date Mr. G. Sarma submitted written statement. However, Mr S. Sarma, learned counsel for the applicant prayed for time to enable him to peruse the written statement. The hearing was adjourned to 9.9.96. On 4.9.96 the hearing was adjourned to 20.9.96. However, on that date there was no proceeding.

The Registrar of this Bench is directed to make an enquiry as to why this case was not placed for hearing on 20.9.96 and thereafter.

List for hearing on 9.4.97 in view of the urgency of the matter.

Note

Copy of this order may be given to the Registrar.

Member

By order,

pg

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6.9.97

Rejoinder filed on behalf of the applicant


23-4-97

Yakuladmma filed by
Mr. S.Ali, Sr. C.G.S.C.

9.4.97 The applicant has been allowed amendment of the application vide order passed today in M.P.86/97 in terms of the order therein. The hearing is fixed on 14.5.97 as a last chance.

Vide order of today passed in M.P.64/97 the interim order dated 18.7.96 read with interim order dated 25.6.96 have been vacated.

List for hearing on 14.5.1997.


Member

pg


10/5/97

14.5.97

Mr S.Sarma, learned counsel for the applicant, submits that he may be allowed to withdraw the application. Mr S.Ali, learned Sr.C.G.S.C for the respondents, has no objection.

Prayer allowed. The application is dismissed on withdrawal.

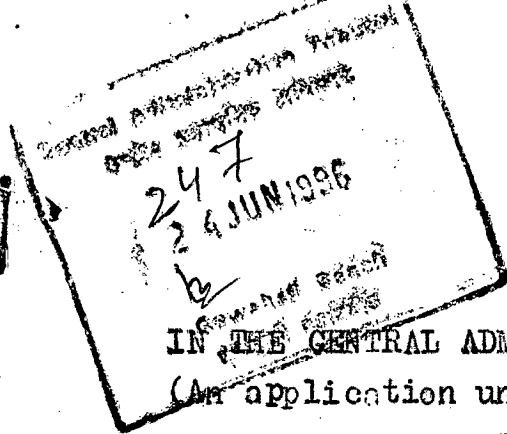

Member

pg

25.97

Copy of the order
sent to the
advocate
parties

and vide d.no
to 2042 d. 10.6.97.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.
(An application under Section 19 of the Administrative
Tribunals Act, 1985)

Title of the case : O.A. No. 104 of 1996.

Shri M.A. Khan Applicant.

Vs.

Union of India & Ors Respondents .

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For use in Tribunal's Office :

Recd Same
Golap AD/CHSC
CAT
4/6/96

Date of filing : 24-6-96
Registration No. OA 104/96
i/e Registrar. 24/6/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 104 of 1996.

BETWEEN

Shri Manneon Ahmed Khan,
Junior Engineer,
Central Water Commission,
Bhutan Investigation Division,
Phuntsholing, Bhutan.

... Applicant.

AND

1. The Union of India, represented
by the Secretary to the Govt. of India,
Central Water Commission,
Sewa Bhawan,
R.K. Puram, New Delhi.
2. The Chairman, Central Water Commission,
Sewa Bhawan,
R.K. Puram, New Delhi.
3. The Chief Engineer,
Brahmaputra Barak Basin,
Central Water Commission,
Shillong.
4. The Superintending Engineer,
Central Water Commission,
Central Investigation Circle,
Teedong, Sikkim.
5. The Executive Engineer,
Bhutan Investigation Division,
Central Water Commission,
P.B. No. 5, Phuntsholing.
6. The Superintending Engineer(C),
Govt. of India, Central Water Commission,
Brahmaputra Barak Basin, Shillong.

... Respondents.

DETAILS OF APPLICATION :

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

The application is directed against O.O. No. 2(2)
Sankosh-96/B & B.B./1294-1307 dt 21.5.96 and O.O. No.1/4(B)/
96/BBB/1360-68 dt 27.5.96. The application is also directed
against O.O. No. BID/CB-27/96/2306 dt 30.5.96.

2. Jurisdiction of the Tribunal :

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

3. Limitation :

The applicant further declares that the application is filed 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 and as such he is entitled to all the rights, protection and privileges guaranteed under the Constitution of India.

4.2 That the applicant entered into the services of Central Water Commission (in short - CWC) on 3.11.78 as Junior Engineer and ever since his entry into the service he has been rendering his service with sincerity and devotion. Presently, he is holding the post of Jr. Engineer in Investigation Sub-Division No. 1, Chukha, Bhutan under Bhutan Investigation Divn., Phungsholing. He was transferred to Bhutan in acceptance of his option as was called for. He was so transferred from Itanagar. Now by the impugned orders he is sought to be transferred and released from there to Itanagar. He is sought to be so transferred to accommodate other persons who are junior to him in so far as transfer to Bhutan is concerned. This is the crux of the incident and the instant application has been filed making a grievance against the orders mentioned here-in-above.

-3-

4.3 That prior to transfer to Bhutan, the applicant was serving at Itanagar under Northeastern Investigation Divn. III, CWC, Itanagar. By a circular No. 20/3/94-Estt/VI dtd 21/29.4.94 issued by the Govt. of India, CWC on the subject of transfer of staff borne on the ministerial cadre of sub-ordinate offices of CWC to Sankosh Investigation Divn. Bhutan, a proposal was flouted for filling up of 10 posts of Jr. Engineers at Sankosh Investigation Divn., Bhutan, on transfer basis from amongst the Jr. Engineers of CWC. By the said circular the officials desirous of being transferred and willing to work in interior of Bhutan at high altitude was directed to send application through proper channel in the prescribed proforma. In the said circular it was further laid down that the selected officials would be entitled to Bhutan compensatory allowance as ~~xxxx~~ admissible to Govt. servant posted in Bhutan besides their pay. The tenure in Bhutan was stated to be for a maximum period of 3 years.

A copy of the said circular dtd 21/29.4.94 is annexed herewith as ANNEXURE 1.

4.4 That pursuant to the aforesaid circular, the applicant duly applied for his transfer to Bhutan, he being interested for such transfer. The sanction of the Chairman, CWC, was conveyed to the setting up of the said Divn. vice Sankosh Investigation Division, Bhutan, with 3 Sub-Division under Central Investigation ~~Division, Bhutan, with~~ Circle vide Office Order No. A-11011/1/94/Estt.IV dt 4/8.4.94. By the said O.O., amongst others 10 permanent posts of Jr. Engineer were allocated to the Division.

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A copy of the office order dt 4/8.4.94 is annexed herewith as ANNEXURE 2.

4.5 That pursuant to the application submitted by the applicant along with others, he was selected for such transfer and by an office order No. 20/3/94-Estt.VII/1175 dtd 22.8.94, the applicant along with 3 others was transferred/posted to Sankosh Investigation Divn. Phungsholing, w.e.f. 1.9.94. However, by another office order No. 1/6/94-Esst/CIC/SKM/1928-37 dtd 1.9.94, the applicant along with others was re-posted as indicated in the order itself. By the said order, the applicant was posted to Chenary (Bhutan) under Bhutan Investigation Divn., CWC, Phungsholing. Thus, he was never posted to Sankosh Investigation Divn. although vide office order dtd 22.8.94, he was transferred/posted to Sankosh Investigation Divn.

Copies of the office order dtd 22.8.94 and 1.9.94 are annexed herewith as ANNEXURES 3 & 4 respectively.

4.6 That again by another office order No. 1/6/92-Estt. CIC/SKM/1988-97 dt 3.9.94, the applicant ~~is~~ along with others, in partial modification of Annexure 4 office order dt 1.9.94 was posted to the Project indicated in the order itself. By the said order, the applicant was posted to Ungarchu Project (Vill. Gargan) under I.S.C. No. 1, which is under Bhutan Investigation Divn. Thus, for all practical purposes and intend, the applicant was transferred to Bhutan Investigation Divn. Pursuant to such orders, the applicant reported for his duty in Bhutan on 17.9.94 on being released from Itanagar. To that effect an Office Order No. BID/CB/PF/131/94/4015-82

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dtd 22.10.94 was issued mentioning therein that consequent upon his transfer from Itanagar, the applicant has reported for duty in Bhutan Investigation Divn., Phungsholing and stood posted to Ungarchu, G & D Site, ISD-I, Chukha, w.e.f. the same date and time.

Copies of the office orders dtd 3.9.94 and 22.10.94 are annexed as ANNEXURES 5 & 6 respectively.

4.7 That there-after by another O.O. No. 1/6/92-Estt/CIC/SKM/2499-2500 dt 10.11.94, the applicant was again re-posted to Investigation Sub-Divn. No. 1, Chukha, Bhutan, which is also under Bhutan Investigation Divn.

A copy of the said office order dtd 10.11.94 is annexed herewith as ANNEXURE 7.

4.8 That when the applicant was discharging his duties to the satisfaction of all concerned, it was whispered in the office that consequent upon proposed closure of Sankosh Investigation Divn. w.e.f. 31.6.96, the applicant might be transferred out from Bhutan to accommodate the incumbents who were working in Sankosh Investigation Divn. On receipt of such ^{information} ~~investigation~~, the applicant made representation on 8.3.96 which was duly forwarded by the Executive Engineer vide his letter No. BID/CB/PF-131/94/1203-04 dtd 14.3.96.

Copies of the forwarding letter and the representation are annexed as ANNEXURE 8 & 8/A respectively.

4.9 That the respondents without paying any heed to the representation made by the applicant, issued the impugned office order No. 2(2)/Sankosh-96/B&BB/1294/1307 dtd 21.5.96

purportedly reposting the applicant under B & B Basin, CWC, Shillong. The office order was stated to be in pursuance of the CWC's Office order dtd 25.3.96 mentioned in the order itself. The reason for such transfer was stated to be on closure of Investigation Sub Divn. No. 1, CWC, Kerabari under Sankosh Investigation Divn. The applicant has not been informed anything till date about the order dtd 25.3.96 mentioned in the office order. The office order further states that posting shall come into effect from 30.6.96 on which date the applicant will stand relieved.

A copy of the said office order dtd 21.5.96 is annexed as ANNEXURE 9.

4.10 That the applicant states that prima-facie the aforesaid office order is illegal and does not make any sense in-as-much-as the applicant was never working under Sankosh Investigation Sub-Divn. No.1, CWC, Kerabari and thus, he has nothing to do with the closure of that Sub Division w .e.f. 30.6.96 and on that ground he cannot be transferred from Bhutan. It will be pertinent to mention here that Sankosh Investigation Divn. was closed w.e.f. 31.3.96. However, one Sub Division, namely Sankosh Investigation Sub Division No.1, CWC, Kerabari under Sankosh Investigation Division was not closed and the same was attached to Bhutan Investigation Divn. which will come to an end on 30.6.96. Thus, apparently the order is wrong in-as-much-as the applicant never worked under Sankosh Investigation Sub Division No.1, CWC, Kerabari as would be evident from the orders mentioned above. Thus, this office order is nothing

but a product of malafide and colourable exercise of power unless for the purpose of accommodating other persons in Bhutan.

4.11 That the applicant states that after the aforesaid order, another office order No. 1/4(B)/96/BBB/1360-68 dtd 27.5.96 was issued in continuation of Annexure 9 order dtd 21.5.96 stating inter-alia that the applicant and the other incumbent mentioned in the order are the longest stayee from amongst the JEs and accordingly, by the said order both of them are reposted to NEID-3, Itanagar, with the stipulation that they would stand relieved on 30.6.96. By another order No. BID/CB/27/96/2306 dtd 30.5.96, the applicant along with another incumbent was stated to be relieved w.e.f. 30.6.96. In the said order it is further indicated that substitutes are being posted/directed to relieve them.

Copies of the aforesaid office order dt 27.5.96 and 30.5.96 are annexed as ANNEXURE 10 & 11.

4.12 That being aggrieved by the aforesaid impugned orders, the applicant made a detail representation on 8.6.96 to the Chairman, CWC, through proper channel urging upon him to allow him to continue full tenure posting of 3 years. Instead of repeating the contentions made in the representation the applicant craves leave of this Hon'ble Tribunal to refer and rely upon the said representation at the time of hearing of the instant application.

A copy of the said representation dt 8.6.96 is annexed herewith as ANNEXURE 12.

Ctd....8

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4.13 That the applicant states that although he was originally transferred to Sankosh Investigation Divn. but from the orders mentioned above, it will be seen that such transfer to Sankosh Investigation Divn. was not materialised and ever since his transfer to Bhutan, he has been working in Bhutan Inv. Divn. against a vacant post of Jr. Engineer earlier being held by one Shri Debashish Roy at Chukha, under Bhutan Inv. Divn. Said Shri Roy was also transferred to Bhutan Inv. Divn. like that of the applicant on tenure basis and on completion of his tenure of 3 years he has again been transferred. The applicant has been absorbed against the said post and he has got nothing to do with the Sankosh Inv. Divn. It will be further pertinent to mention here that it is a normal phenomenon of calling for option for being transferred upon selection to Bhutan and in exercise of such option, incumbents are transferred to Bhutan on fixed tenure of 3 years. The incumbents so transferred to Bhutan, apart from their usual pay shall get Bhutan Compensatory allowance which is fairly a good amount. On their such transfer, they are required to perform their duties in interior places at high altitude. However, in consideration of the financial benefit, they derive upon such transfer to Bhutan, the incumbents exercise their options for such such transfer and ^{on} their such transfer they remain posted for the fixed tenure of 3 years. As per the said practice and procedure and also as per the circular holding the field, the applicant is entitled to complete his tenure posting of 3 years in Bhutan which will be over on 16.9.97.

Ctd....9

4.14 That the applicant states that as will be evident from the impugned order, he is going to be relieved from Bhutan Investigation Divn. on an extrenuous consideration of closure of Sankosh Inv. Divn. and also closure of extended tenure of the Sub Divn. w.c.f. 30.6.96. Although he has got nothing to do with the Sankosh Inv. Divn. in-as-much-as he was /is not an incumbent to accommodate. The impugned orders having not been issued for colateral purpose only with the notice of accommodaing persons belonging to Sankosh Investigation Divn. same are not sustainable and liable to be set aside and quashed.

4.15. That the applicant states that till date, he has not been relieved of his post and no one else has taken over charge from him. However, since he is sought to be released from Bhutan w.c.f. 30.6.96 and his representations are still un-attended to, the applicant has got no other alternative and efficacious remedy than to come under the protective hand of this Hon'ble Tribuna. Under the facts and circumstances stated above, it is a fit case for passing an interim order suspending the operation of the impugned orders with further direction to allow the applicant to continue in Bhutan till he completes his tenure of 3 years which will come to an end on 10.9.97.

4.16 That the applicant states that he having got nothing to do with the Sankosh Investigation Divn., the applicant cannot be affected by the closure of the same and that too for the purpose of accommodating the incumbents of the said Division who are juniors in respect of the date and time of joining in Bhutan. Be it stated here that the said incumbents are

also juniors to the applicant in the service. The applicant cannot be victimised for the purpose of accommodating others. If such stand of the respondents are allowed to stand, there will be miscarriage of justice and violation of Arts. 14 and 16 of the Constitution of India. Law is well settled that a transfer order cannot be issued for the purpose of accommodating another incumbents.

4.17 That the applicant stated that the plea of the respondents that the applicant being the longest stayee amongst the Jr. Engineers ~~now~~ working in Bhutan is not at all tenable in-as-much-as if such a plea is allowed to be materialised, same will result in hostile discrimination. If such a stand is allowed to be materialised, persons who are junior so far as posting in Bhutan is concerned by hardly one month or so, will get the full tenure of 3 years but on the other hand, the applicant being senior to them in so far as posting in Bhutan is concerned hardly by one month will not be allowed to complete his full tenure of 3 years. Such stand hardly make any sense and is also against the principles of ~~laws~~ 'last come first go' or 'first in last out' against the wellknown principle of service jurisprudence. If such a plea is allowed to be materialised same will also be violative of justice in-as-much- merely because an incumbent is hardly one month longer stayee in Bhutan, then another incumbent cannot be deprived of his full tenure of posting in Bhutan but on the other hand, the other incumbent being one month junior in posting in Bhutan will be allowed to continue his full tenure in Bhutan. Furthermore, the applicant being not an incumbent of Sankosh Inv.

Divn. cannot be transferred from Bhutan on its closure and that too for the purpose of accommodating the incumbents of the said Division.

4.18 That the applicant states that malafide and colourable exercise of power are the foundation of the impugned orders in-as-much-as it is the definite case of the applicant that he is sought to be affected by the impugned orders with the sole purpose of accommodating others. It is really unfortunate that on closure of the Sankosh Investigation Divn., the incumbents therein having been affected but on the other hand, the applicant who has been working under the Bhutan Investigation Divn. having no link with the Sankosh Investigation Divn. is sought to be transferred with the sole purpose of accommodating in his post so that the said person completes his tenure posting. ~~xx~~ Such a principle cannot be adopted in the matter of transfer and the judicial review for the same is called for. Although transfer is an incident of service, but the manner and method in which the applicant is sought to be transferred to Itanagar even before his completion of tenure posting, judicial interference is called for in the matter in-as-much-as prima-facie, the impugned order having been issued bonafide but are founded on malafide intention. The respondents are also precluded from issuing such order of transfer in view of the principle of promissory estoppel, waiver and acquiescence.

4.19 That the applicant states that he had opted for being transferred to Bhutan in consideration of financial benefits derived out of such transfer and never before an

an incumbent has been transferred before completion of tenure posting of 3 years. If the transfer of the applicant as has been sought to be done is materialised, this will be solitary instance of transferring an incumbent before completion of tenure posting. The manner and method in which the applicant has been transferred to Itanagar is most arbitrary and illegal and accordingly, interference of this Hon'ble Tribunal is called for. In this connection, mention may be made of closure of Bhutan Hydel Divn. in Aug/Sept 1988 on which occasion, the staff working thereunder were only transferred without disturbing the officials working in Bhutan Investigation Divn. The respondents in a policy matter cannot approbate and reprobate so as to suit their own will and collateral purpose. Thus, the impugned orders are not at all sustainable and liable to be set aside and quashed. It will be pertinent to mention here that under similar circumstances, an incumbent in the cadre of L.D.C., namely, M. Ranjit Singh has approached this Hon'ble Tribunal by filing O.A. No. 61/96 in which the Hon'ble Tribunal while admitting the case has been pleased to pass an interim order of the impugned orders. The applicant seeks same relief like that of the said O.A.

5. Grounds for relief with legal provisions :

5.1 For that the impugned orders are prima facie illegal because the same have been issued with the sole purpose of accommodating others on closure of the Sankosh Inv. Divn.

5.2 For that the applicant being senior to the others working at Sankosh Inv. Division, he having got nothing to do with the said Division, he is not to be affected on closure of the Division.

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5.3 For that the impugned orders clearly depict that the applicant is sought to be transferred only on the ground of closure of the Sankosh Inv. Division whereas the applicant is not an incumbent of the said Division. Furthermore the Bhutan Investigation Divn. has got nothing to do with the said Division.

5.4 For that the law is well settled that a transfer of an incumbent cannot be resorted to for the purpose of accommodating others and if such a recourse is taken, same will be malafide and in colourable exercise of power.

5.5 For that the representations submitted by the applicant in anticipation of his such transfer ought to have been attended to in-as-much-as the applicant has got a right to be considered upon towards cancellation his transfer. Further the representation submitted by the applicant on 8.3.96 and 8.6.96 have also not been disposed of and thereby the applicant has been deprived of his valuable right of being considered.

5.6 For that the respondents are precluded from transferring the applicant before completion of his tenure posting of three years inasmuch as it was upon such promises, the applicant has exercised his option of being transferred to Bhutan. As has already been pointed out above, never before any incumbent has been transferred before completion of tenure posting of three years.

5.7 For that the respondents have acted with malafide intention in issuing the impugned orders inasmuch as the same is primarily based on favouritism inasmuch as pointed out above, the applicant is sought to be transfer to Itanagar with the sole purpose of accommodating others, who are on closure of the Sankosh Investigation Divn., facing reversion to their original division. The applicant has learnt that he is the first victim and various other senior staff are going to be affected by such transfer order with the sole purpose of accommodating the incumbents working in the Sankosh Investigation Division.

5.8 For that although the transfer is an incident of service, but the instant case is required to be viewed having regard to the peculiar facts and circumstances of the case and lifting of the veil is required to find out the truth, intent and purport of the orders of transfer. As pointed out above, the impugned order has been issued with the sole purpose of accommodating junior person at Bhutan Inv. Division which will result in hostile discrimination and will be violative of Arts. 14 and 16 of the Constitution of India.

5.9 For that law is well settled that an order of transfer cannot be resorted to accommodate others and if that is done the order of transfer remains no longer valid and the plea of public interest becomes redundant inasmuch as on the face of the order if it is depicted that same has been done with the purpose of accommodating others, same becomes untenable. In the instant case the order of transfer itself

tainted that the applicant has not been transferred for any other purpose but only on the ground that the Sankosh Inv. Division has been closed. Further the posts being held by the applicant having neither been transferred nor being adjusted in lieu of the post at Sankosh Inv. Divn., the applicant cannot be transferred in the manner as has been sought to be done in the instant case.

5.10 For that in view of the matter, the impugned orders are not sustainable and liable to be set aside and quashed. The manner and method in which the impugned order have been issued further give room to the apprehension that the same have been issued with malafide intention and in colourable exercise of power.

6. Details of remedies exhausted :

The applicant declares that he has got no other alternative remedy except by way of filing this application.

7. Matters not pending before any other court :

The applicant further declares that he has not filed any application, writ petition, or suit before any other authority and/or court and/or any other Bench of this Hon'ble Tribunal in respect of the same subject matter nor any such application, writ petition or suit is pending before any of them.

8. Relief sought :

Under the facts and circumstances stated above, the instant application be admitted, records be called for

and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to grant the following reliefs to the applicant :

- 8.1 set aside and quash the impugned orders dt 21.5.96 (Annexure 9), 27.5.96 (Annexure 10) and 30.5.96 (Annexure 11) so far as the same relate to the applicant.
- 8.2 Issue a direction to the respondent to allow the applicant to continue in his present place of posting till completion of his full tenure of posting in Bhutan on 16.9.97 with all consequential benefits.
- 8.3 Cost of the application.
- 8.4 Any other relief or reliefs to which the applicant is entitled as may be deemed fit and proper by this Hon'ble Tribunal.

9. Interim order prayed for :

Pending disposal of the instant application, the applicant prays that the aforesaid impugned orders dtd 21.5.96 (Annexure 9), 27.5.96 (Annexure 10) and 30.5.96 (Annexure 11) may be stayed with further direction to the respondents to allow the applicant to continue as Junior Engineer in the present place of posting in Bhutan with all consequential benefits. The interim order as has been prayed for if not granted, the applicant will suffer irreparable loss and injury and if the interim orders is granted the respondents will not suffer any loss and injury inasmuch as till date none else has been appointed in ~~the~~ place of the applicant and the applicant has also not handed over charge to any one. Further in terms of the transfer order, the applicant is vested with the right of completion of tenure



Ctd....17

posting of three years which will expire only on 16.9.97. As pointed out above, his transfer order is tainted with malafide inasmuch as he is sought to be transferred to accommodate junior persons. Under the similar circumstances, this Hon'ble Tribunal has been pleased to grant an interim order as has been prayed for in the instant application in O.A. No. 61 of 1996.

10. Particulars of the Postal Order :

- (i) I.P.O. No. .8.09.345930
- (ii) Date : 23.6.96,
- (iii) Payable at : Guwahati.

11.

The application is filed through Advocate.


12. List of enclosures :

As stated in the Index.

VERIFICATION.

I, Shri Mamnoon Ahmad Khan, son of late S.A. Khan, aged about 47 years, at present working as Junior Engineer, Central Water Commission, under Bhutan Investigation Division (ISD-I)/CWC, Chukha, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 4 and 6 to 12 of the accompanying application are true to my knowledge and that made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this Verification on this the 22nd day of JUNE, 1996.


Mamnoon Ahmad Khan
(Signature of the applicant)
(MAMNOON AHMED KHAN)

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ANNEXURE - 1

No. 20/3/94-Extt. VI
GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION

* * *

Room No. 52B, Sewa Bhawan,
R.K. Puram, New Delhi-66.

Dated the 21st April, 94.


C I R C U L A R

SUBJECT:- TRANSFER OF STAFF BORNE ON THE MINISTERIAL CADRE OF
SUBORDINATE OFFICES OF C.W.C. TO SANKOSH INV. DIVISION,
BHUTAN.

* * *

It is proposed to fill up LC posts of JEs sanctioned for Sankosh Inv. Div., Bhutan on transfer basis from among the JEs of C.W.C. Officials who desire to be transferred to the above division and willing to work in interior of Bhutan at high altitude should send their application in duplicate through proper channel in the prescribed proforma (enclosed). The selected officials will be entitled to Bhutan Compensatory Allowance as admissible to Govt. servants posted in Bhutan besides their pay. The tenure in Bhutan will be for a maximum of 3 years only.

Officials who have already served in Bhutan NEED NOT APPLY. It is requested that bio-data of the willing officials who fulfill this eligibility conditions alongwith vigilance clearance may be forwarded to Estt. VI Sec., C.W.C., latest by 15th May, 1994.


(DAYA CHAND)
Under Secretary (ES)
Tel. 605803.

Copy to:

1. All Head of Subordinate Offices of C.W.C.

1525
11-5-94

Attes.ed.

Advocate.

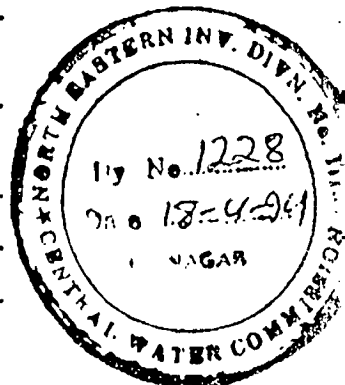
Sewa Bhawan, R.K.Puram, New Delhi.
Dated the 4th April, 1994.

OFFICE ORDER

Sanction of the Chairman, Central Water Commission is hereby conveyed to the setting up of one Division - Sankosh Investigation Division at Phuntsholing (Bhutan) with three Sub-Divisions under Central Investigation Circle for work of Investigation of Sankosh Multipurpose Project with effect from 1.4.1994.

The following posts are hereby allocated to the Sankosh Investigation Division.

S.No.	Name of post	No. of post	Presently utilised in	Name of Scheme
1.	Ex. Engineer	1 Pmt.	O/o CE, NERO	S&I
2.	A.E.	3 Pmt.	1 in NEID-II 1 in FC Dte. 1 in RMCD	Post created on the recommendation of CRC for Grade B&C Engg. cadres. S & I
3.	Head Clerk	1 Pmt.	NEID-III	-do-
4.	U.D.C.	3 Pmt.	2 in BID 1 in O/o CE, NERO	-do-
5.	L.D.C.	3 Pmt.	2 in O/o CE, NERO 1 in NEIC	-do-
6.	Steno-III	1 Pmt.	O/o CE, NERO	-do-
7.	D/Man Gr.I	1 Pmt.	NEID-III	-do-
8.	Jr. Engineer	10 Pmt.	3 in BID 1 in O/o CE, NERO 2 in NEIC 4 in NEID-III	-do-



The Divisional Accountant of Bhutan Investigation Division will look after the work of D/A in Sankosh Investigation Division also till further orders without any remuneration.

Machind
(P. PADMANABHAN)
DEPUTY DIRECTOR

Copy to:

1. The Pay & Accounts Officer, CWC.
2. The Chief Engineer, NERO, CWC.
3. The Director (RMCD), CWC.
4. The Superintending Engineer, CIC/NEIC, CWC.
5. The Ex. Engineer, BID/NEID-III, CWC.
6. All Establishment Sections, CWC.
7. Budget Section, CWC.

Attes.ed.
Advocate.

-21-

136 (R) 186 185

No. 20/3/94-Estt. VI
Government of India
Central Water Commission
....

Room No. 528, Sewa Bhawan,
R.K. Puram, New Delhi-110066.
Dated the 22 August, 1994.

ANNEXURE-3

OFFICE ORDER

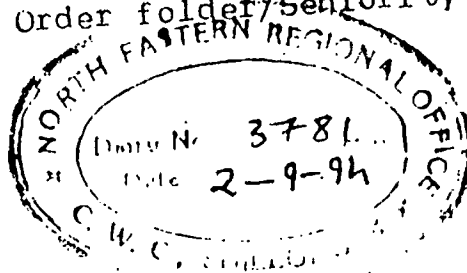
The following Junior Engineers presently working in the offices shown against each are hereby transferred/posted to Sankosh Inv. Division, Phuntshling, Bhutan with effect from 1.9.1994 in public interest :-

S.No.	Name of Junior Engineer	Present place of posting
1.	Ashok Kumar	NERO, CWC, Shillong.
2.	Mohd. Kamaluddin	Sikkim Inv. Division, CWC, Sikkim.
3.	B.K. Sarkar	NEISD-V, CWC, Dhimapur, Nagaland.
4.	M.A. Khan	NEID-III, CWC, Itanagar.

(DAYA CHAND)
UNDER SECRETARY (ES)
TEL.NO.605803

1. Pay and Accounts Officer, CWC, New Delhi.
2. Chief Engineer (NER), CWC, Shillong.
3. Superintending Engineer, Central Inv. Circle, CWC, Gangtok.
4. Executive Engineer, Sankosh Inv. Division, Phuntshling, Bhutan.
5. Executive Engineer, NERO, CWC, Shillong.
6. Executive Engineer, Sikkim Inv. Division, CWC, Sikkim.
7. Executive Engineer, NEID-I, CWC, Silchar.
8. Executive Engineer, NEID-III, CWC, Itanagar.
9. Asstt. Engineer, NEISD-V, CWC, Dhimapur, Nagaland.
10. Persons concerned - 4 copies.
11. Asstt. Director (Publicity), CWC, New Delhi.
12. Transfer order folder/Office Order folder/Seniority file.
13. Spare copies - 10.

The above officers may please be relieved immediately so as to enable them to report for duty to the Executive Engineer (S.C. Gupta), New Sankosh Inv. Division, Phuntshling on or after 1.9.1994.



Attested.
Advocate.

-22-

ANNEXURE-4

GRAND: SUPERINVER
GANGTOK (SIKKIM)

PHONE : (03592) 23695
FAX : (03592) 23695

GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION
CENTRAL INVESTIGATION CIRCLE
TADONG : : : : : 737 102
SIKKIM

No:1/6/92-ESTT./CIC/SKM/ 1928-37

Dated, the. 01.09.1994

OFFICE ORDER

Consequent upon their posting to this Circle for Sankosh Investiga-
tion Division, CWC, Phuntsholing vide Under Secretary (ES), CWC, New Delhi's
Office Order No: 20/3/94-Estt.VI/11/73 dated 22/08/1994, the following
Junior Engineers are hereby reposted as under:-

Sl. No.	Name & Designation	Transferred	
		From	To
1.	Ashok Kumar, Junior Engineer	North Eastern Re- gional Office, CWC, Shillong.	Posted to Paro (Bhutan) under Bhutan Inv.Divn. CWC, Phuntsholing.
2.	Mohd. Kamaluddin Junior Engineer	TISD-II, CWC, Singtam Under Sikkim Inv. Divn., CWC, Tadong.	Posted to Chukha (Bhutan) under Bhutan Inv.Divn. CWC, Phuntsholing.
3.	B.K. Sarkar, Junior Engineer	NEISD-V, CWC, Dimapur, Nagaland.	Posted to Thimpu (Bhutan) under Bhutan Inv.Divn. CWC, Phuntsholing.
4.	M.A. Khan Junior Engineer	NEID-III, CWC, Itanagar	Posted to Chenary (Bhutan) under Bhutan Inv.Divn., CWC, Phuntsholing.

(S.B. SRIVASTAVA)
Superintending Engineer
Central Investigation Circle

Attested.
Advocate.

- 23 -

ANNEXURE-35

GRAND: SUPERINVES
GANGTOK (SIKKIM)

PHONE : (03592) 23695
FAX : (03592) 23695

GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION
CENTRAL INVESTIGATION CIRCLE
TADONG : : : : : 737 102
SIKKIM

No:1/6/92-ESTT./CIC/SKM/1988-11

Dated, the.. 3/1/94

OFFICE ORDER

In partial modification of this office order No. 1/6/92-Estt/CIC/SKM/1928-37 dated 1.9.1994, the posting of following officials in the Junior Engineers grade are made as under :-

Sl. No.	Name & Designation S/Shri	Transferred	
		From	To
1.	Ashok Kumar, Junior Engineer	North Eastern Regional Office, CWC, Shillong.	Posted to Gyetsa under ISD No.1
2.	Mohd. Kamaluddin Junior Engineer	TISD-II, CWC, Singtam Under Sikkim Inv. Divn., CWC, Tadong.	Posted to Chukha (Bhutan) under Bhutan Inv. Divn. CWC, Phuntsholing.
3.	B.K. Sarkar, Junior Engineer	NEISD-V, CWC, Dimapur, Nagaland.	Posted to Thimpu (Bhutan) under Bhutan Inv. Divn. CWC, Phuntsholing.
4.	M.A. Khan Junior Engineer	NEID-III, CWC, Itanagar	Posted to Ungarchu Project (Vill. Gargan) Under ISD No.1

S.B. Srivastava
(S.B. SRIVASTAVA)
Superintending Engineer
Central Investigation Circle



Att. S. ed.
Advocate.

-24-
:- Copy - :-

31
ANNEXURE-6

H

NO.BID/CB/PF-131/94/4075-82
Government of India
Central Water Commission
Bhutan Investigation Division
Phuentsholing (Bhutan).

Dated: 22.10.94.

OFFICE ORDER

Consequent upon his transfer/Posting from North Eastern Investigation Division No.III, CWC, Itanagar vide CWC O.O. No. 20/3/94 - Estt. VI/1175 dated 22.8.94 Shri M.A.Khan, Junior Engineer has reported for duty in this office on 17.9.94 F.N and stand posted to Ungarchu G & D site ISD-I Chukha with effect from same date and time.

sd/-

(S.C. Gupta)
Executive Engineer

Copy to:-

1. The Under Secretary(ES). CWC, New Delhi.
2. The Pay & Accounts Officer, CWC, R.K.Puram, New Delhi.
3. The Chief Engineer, NERO, CWC, Shillong.
4. The S.E. CIC, CWC Gangtok.
5. The E.E. North Eastern Inv. Sub Division No.III, CWC, Itanagar, The LPC/Service Book etc along with leave a/c may please be sent at earliest.
6. The A.E. ISD-I, CWC, Chukha.
7. The A.B. Divisional Office.
8. Office order file.

Attes.ed.
Advocate.

- 25 -

ANNEXURE - 7

32

GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION
CENTRAL INVESTIGATION CIRCLE
TADONG : GANGTOK : SIKKIM

1/6/92-ESTT/CIC/SKM/ 2494-2500

Dated the: 10/11/94

OFFICE ORDER

In partial modification of this office order No. 1/6/92-Estt CIC/SKM/1988-97 dated 3/9/94, the following repostings are hereby ordered with immediate effect in the public interest:-

S.NO.	NAME & DESIGNATION S/Shri	POSTED	
		FROM	TO
1.	M.A. Khan Junior Engineer	Ungerchu Inv. Sub- Division II Bhutan	Inv. Sub-Div- ision No.I Chukha Bhutan ✓
2.	Ashok Kumar Junior Engineer	Gyetsa Inv. Sub- Division No.I Bhutan (under BID)	Paro, Sub- Division NO.I (under Bhutan Inv. Division.

(S.B. SRIVASTAVA)
SUPERINTENDING ENGINEER.

Copy to:-

1. The Chief Engineer, North Eastern Regional Office,
Central Water Commission, Shillong for information.
2. The Executive Engineer, Bhutan Investitation Division,
Central Water Commission, Bhutan.

Executive Engineer

Bhutan

G.W.C. Phuntsholing, Bhutan

No 210/Co. 21/93/Vol. III | 11/51-54

(S.B. SRIVASTAVA)
SUPERINTENDING ENGINEER.

dt 15-11-94

Copy to:-

- 1) Mr. A.R. ISD M-I, cwc, Chukha.
- 2) Mr. M.A. Khan I.E., Ungerchu. } 9/11/94
- 3) Mr. Ashok Kumar, Gyetsa. }
- 4) Mr. A.B. Dinal Officer

Attested.

Advocate.

Executive Engineer

Bhutan

G.W.C. Phuntsholing, Bhutan

14 3 96

BID/CB/PF-131/94/ 1203 04

To

The Superintending Engineer,
Investigation Circle,
CWC, Tadong, Gangtok,
Sikkim.

Sub:- Request for completion of Tenure posting of Three
years under Bhutan Inv. Division, CWC, Phuntsholing
- Shri M.A. Khan, Junior Engineer - reg.

Sir,

Please find enclosed herewith an representation from
Shri M.A.Khan, Junior Engineer of this office addressed
to the Chairman, CWC, New Delhi. The same is forwarded
herewith for favour of further disposal at your end, please.

This office however is not aware and official
informed about transfer or shifting of staff.

This is for your information please.

Yours faithfully,

Encl: Application in
duplicate.

(C.L. Badhawan)
Executive Engineer

✓ Copy to Shri M.A. Khan, Junior Engineer, Inv. Sub-
Division No.I, CWC, Chukha with reference to his applica-
tion dated 8.3.96.

C.L. Badhawan
(C.L. Badhawan)
Executive Engineer

Attes.ed.
Advocate.

27

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ANNEXURE - 8A

From:- Sh. M.A.Khan,
Junior Engineer,
Inv. Sub Division No.1,
Central Water Commission,
Chukha : Bhutan.

To

The Chairman,
Central Water Commission,
R.K.Puram,
New Delhi.

(Through Proper Channel)

Sub:- Regarding Premature Transfer.

Sir,

With due respect and humble submission I beg to lay down the following few lines for favour of your kind consideration.

1. It is understood that Sankosh Investigation Division is going to be closed by 31.3.93 A.M. As a result the senior officials regardless of their duration of posting in Bhutan Investigation Division are likely to be transferred for accommodating the staff of Sankosh Investigation Division incidently I am also apprehending my transfer, My date of joining in Bhutan Investigation Division being 17.9.84.

2. It may also be mentioned here that on closure of Bhutan Hydrol Division in August/September 1988, the staff working there under was transferred without disturbing the officials working in Bhutan Investigation Division.

In view of the facts detailed above I am to request your goodself to kindly consider me for posting Middle Ganga Lower Ram Ganga Sub Division Barailly proper, in case I am likely to be transferred prematurely, due to administrative reasons instead of North East as I have already served there prior to my posting in Bhutan.

Yours faithfully,

(M.A.Khan) J.E.
ISD-1, C&C,
Chukha : Bhutan.

Copy in advance forwarded to the Director administration, Central Water Commission, R.K.Puram, New Delhi, for favour of information and necessary action please.

(M.A.Khan) J.E.
ISD-1, C&C,
Chukha : Bhutan.

Attested.
/s/
Advocate



भारत सरकार
केन्द्रीय जल आयोग - 28 -
वर्तमान एवं भविष्य के
"जल संसाधन" संग्रहित, नोंदवार्त
दिनांक २०२०/२

PHONE : (0364) 226891
(0364) 223495
FAX २ (0364) 226865

GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION
HEADQUARTERS & BARAK BASIN
JAMIR MAHARJOI HONGSHILONG, HONGSHILMMAL
SHILLONG - 793014

ANNEXURE-9



Ref/No. 2(2)/Sankosh-96/BBB/ 1294-1367

Date Dated 21 MAY 96

OFFICE ORDER

The services of following officials working under Sankosh Inv.Sub-Divn.-1, CWC, Kerabari having been placed under Bhutan Inv.Division upto 30.06.1996, In pursuance of CWC Office Order No. 11011/1/94-Coord., dt. 25.03.96, are reposted as detailed below, on closure of the Sub-Division.

- ✓ 1) Shri Ashok Kumar, Jr.Engineer - Under B & B Basin, CWC, Shillong.
- ✓ 11) Shri H.A. Ehan, Jr.Engineer - Under B & B Basin, CWC, Shillong.

These postings shall come into effect from 30.06.96 (AM) and the officials will stand relieved on that date. However, further posting orders of officials at Sl. No. 1) & 11) within B & B Basin, CWC is being issued separately.

This issues with the approval of Chief Engineer, B & B Basin, and Teesta Basin, CWC.

Alekhar

(A. SEKHAR)
SUPTDG.ENGINEER(C)

Copy to :-

1. The Secretary, CWC, New Delhi - 110 066.
2. The Director, N & B Coord., CWC, New Delhi - 66.
3. The Suptdg.Engineer(C), Teesta Basin, CWC, Siliguri.
4. The Suptdg.Engineer, Inv.Circle, CWC, Gangtok.
5. The Pay & Accounts Officer, CWC, New Delhi - 66.
6. The Ex.Engineer, B.I. Divn., CWC, Phuntsholing.
7. The Section Officer, Estt.V, CWC, New Delhi - 66.
8. The Section Officer, Estt.VI, CWC, New Delhi - 66.
9. Person Concerned.
10. Office Order File.
11. File No. 1(1)/96-BB; No. 1/4(A)/96-BBB; No. 1/4(B)/96-BBB.

Shri Ashok Kumar, Jr. E.

To En. Engineer,
B.I. Divn., CWC
Phuntsholing.

Attested.
[Signature]
Advocate.



भारत सरकार

केन्द्रीय जल आयोग

ब्रह्मपुत्र एवं बाराक बेसिन

"जमीर मैन्शन" नोंगशिलियांग, नोंगथ्यमाई

शिल्लोंग - ७६३०१४

GOVERNMENT OF INDIA

CENTRAL WATER COMMISSION

BRAHMAPUTRA & BARAK BASIN

"JAMIR MANSION" NONGSHILIANG, NONGTHYMMAI

SHILLONG - 793014

PHONE : (0364) 226891

(0364) 223495

FAX : (0364) 226865



संख्या/No. 1/4(B)/96/BBB / 1360-68

दिनांक Dated 27 MAY 96

OFFICE ORDER

In continuation of this office order No.2(2)/Sankosh-96/B&BB/1294-1307 dated 21.05.96, vide which the following Junior Engineers working in Bhutan (i) Shri Ashok Kumar & (ii) Shri M.A. Khan were transferred to CE, B&BB, Shillong on closure of Sankosh Sub-divn.-1, Kerabari w.e.f. 30.06.96 on grounds that they are the longest stayee from amongst the JEs now working in Bhutan, are hereby reposted to NEID-III, Itanagar and will stand relieved on 30.06.96 (AN).

(A. SEKHAR)

SUPTDG. ENGINEER(C).

Copy to :-

1. The Suptdg. Engineer(C), Teesta Basin, CWC, Siliguri.
2. The Suptdg. Engineer, Inv. Circle, CWC, Gangtok.
3. The Pay & Accounts Officer, CWC, New Delhi - 66.
4. The Executive Engineer, BID, CWC, Phuntsholing.
5. The Section Officer, Estt. VI, CWC, New Delhi - 66.
6. The Executive Engineer, NEID-III, CWC, Itanagar.
7. Person concerned.
8. Office Order File.

Attested.

 Advocate.

No. 810/CA-27/96/ 2366 11 5
 Government of India
 Central Water Commission
 Bhutan Investigation Division
 Post Box No. 5
 Phuntsholing (Bhutan)

Dated: 30-5-96

OFFICE ORDER

The following Junior Engineers are under order of transfer to E&B Basin, ChC, Shillong vide Chief Engineer, E&B Basin O/O No.2(2)/Sankosh-96/E&BB/1294-1307 dt. 21.5.96, they will be relieved w.e.f. 30.6.96 (AM).

S/No. Name & Designation

1. S/Shri Ashok Kumar, J.E.
- ✓ 2. M.A. Khan, J.E.

Substitutes are being posted/directed to relieve them. They may be asked to keep their all records & T.P ready for handing over on due date to the reliever.

C.L. Wadhawan
 (C.L. Wadhawan)
 Executive Engineer.

Copy to :-

1. The Asstt. Engineer, Inv. Sub-Division No.1, ChC, Chukha.
2. The Junior Engineer (HC).
3. Accounts Branch, Divisional Office.
4. Bill Clerk.
- ✓ 5. Person concerned.

Attested.
 /
 Advocate.

To

ANNEXURE-12

The Chairman,
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi.

(Through Proper Channel)

Subject:- Request for completion of tenure posting of three years under Bhutan Investigation Division, CWC, Phuentsholing (Bhutan) and cancellation of Transfer order.

Respected Sir,

I M.A.Khan, Junior Engineer working under Bhutan Investigation Division, CWC, Phuentsholing (Bhutan) and doing a humble prayer of the following few lines for favour of your kind sympathetic and favourable consideration.

That sir, As per the circular No. 201/3/94 Estt-VI dated 21/29.4.94. I had applied and later on selected. At the time of posting, there was two Divisions of CWC in Bhutan. After selection vide office order no.20/3/94 Estt-VI/1175 dated 22.8.94. I was posted to Ungarchu Project under Bhutan Inv. Division, CWC, Phuentsholing vide Superintending Engineer, CWC, Sikkim office order No.1/6/92 Estt/CIC/SKM/1988-97 dated 3.9.94. After my relieving from NEID-III, CWC, Itanagar. I join my duty on 17.9.94 (F.N) under BID, CWC, Phuentsholing. Which was accepted by Executive Engineer, BID. In month of November '94 I was again transferred from Ungarchu to Chukha under same Division and till date, I am working at same place. Till today I have never posted under Sankosh Investigation Division.

Now, Sankosh Investigation Division, CWC, P'ling has been closed since 1.4.96 and staffs being transferred and adjusted some other places. Authority has made a policy to transfer the senior staffs of Sankosh Division even being a senior of few days without completing the tenure, which I feel it very illegal, under this policy I am being transferred under NEID-III, CWC, Itanagar w.e.f. 1.7.1996.

In this regard, I want to bring a few lines before your kind honour that why, I have affected by closer of Sankosh Inv. Division. When I am working in Bhutan Inv. Division, since my date of joining i.e. 17.9.94 to till date against the existing vacancy in Bhutan Investigation Division, CWC, P'ling. The Question of mine transfer without closing mine Division & without completing mine tenure, just to accommodate other staffs of the other Division seems punishment to me. It also seems an illegal that continuation of Junior Engineer most staffs of closed Sankosh Inv. Division in Bhutan Inv. Division, till the completion of 3 years tenure period other than those of the senior most staffs for a little differences of days, which makes a lot of losses to me in the tenure period as well as ban of future posting of foreign assignment. I have already submitted a prayer for consideration in this regard in March, '96. In view of above facts, I request to your goodself to kindly have a sympathetic consideration and allow me to continue full tenure posting of 3 years. It will be a kind by revoking my transfer order from Bhutan to NEID-III, CWC, Itanagar.

Thanking You Sir,

Yours faithfully,

(M.A. Khan) 96
Junior Engineer
ISD-I/CWC/Chukha

Copy in advance forwarded to the Director administration, CWC, R.K.Puram, New Delhi for favour of information and necessary action please.

Attested.
Advocate.

32

425
23 AUG 1996
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH

Filed in Court
on 19-8-96
Court Master

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by Sarun
21/8
OFFICE OF THE CHIEF ENGINEER
CWC, SHILLONG
Central Administrative Tribunal
Guwahati Branch

19/8/96

In the matter of
OA No.104/96

Shri M.A. Khan - - - - - Applicant

Versus

Union of India and others - - Respondents.

- AND -

In the matter of

Written statement on behalf of the Respondents

Received by
Shri M.A. Khan
19.8.96

I Shri B.S. AHUJA, Chief
Engineer, CWC, Shillong do hereby solemnly affirm
and declare as follows :-

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1. That a copy of application including consolidated one along with an order passed by this Hon'ble Tribunal have been served upon the respondents and being called upon by this Hon'ble Tribunal and being authorised by the competent authority I do hereby file this written statement as common one and say categorically that the save and except what is specifically admitted in this Written Statement, rest may be treated as total denial by all the Respondents.

2. That with regards to the contents made in Paragraph 1 of the application, the Respondents have no comments to offer as only relevant office order details have been quoted by the applicant.

3. That with regard to the contents made in Paragraph 2 of the application that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal, the Respondents beg to submit that this Hon'ble Tribunal has no any jurisdiction to try this case.

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4. That with regard to the contents made in Paragraph 3 of the application, that the application is filed within the limitation period prescribed in Section 21 of the Administrative Tribunal's Act, 1985, the Respondents have nothing to comment.

5. That with regard to the contents made in Paragraph 4.1 of the application, the Respondents have nothing to comment.

6. That with regard to the contents made in Paragraph 4.2 of the application that the applicant is sought to be transferred to accommodate other persons junior to him in so far as transfer to Bhutan is concerned, the Respondents beg to state that this statement is a gross mis-representation of facts. The fact is that consequent upon the closure of Sankosh Investigation Division w.e.f 31.03.96 and consequent reduction in the availability of sanctioned posts of Junior Engineers in Bhutan from 16 to 9, it had become necessary to shift 7 Junior Engineers from Bhutan. As per policy adopted, the longest stayee, who had enjoyed more financial benefit than the others, were moved out as the following list could show :-

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Sl. No.	Name of Junior Engineer	Date of Joining In Bhutan	Remarks
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Transferred from Bhutan

	S/Shri	
1.	Sukhdev Singh	04.09.93
2.	M.R.R. Nair	12.09.93
3.	S.A. Azad	04.10.93
4.	K. Arumugam	04.04.94
5.	A.K. Verma	14.04.94
6.	M.A. Khan	17.09.94
7.	Ashok Kumar	01.10.94

Retained in Bhutan

8.	Kamaluddin	01.11.94
9.	B.K. Sarkar	21.12.94
10.	N. Mohanan	07.12.94
11.	S. Kumar	27.02.95
12.	G. Subba Rao	27.02.95
13.	S. Sekar	27.02.95
14.	Sriram	01.03.95
15.	Manohar Sharma	01.04.95
16.	Arun Kumar	03.04.95

The Junior Engineers at S.Nos. 1 to 7 including the applicant, who had joined earlier than the Junior Engineers at S.Nos. 8 to 16, were thus moved out and S.Nos. 8 to 16 (9 Nos.) retained against sanctioned post. No person who had joined earlier to the applicant has been retained.

7. That with regard to the contents made in Paragraph 4.3 of the application, the Respondents have no comments except to draw the Hon'ble Tribunal's attention to the admission of the applicant that the tenure period mentioned in the CWC circular at Annex.- I

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of the application is for a maximum period of 3 years and not for 3 years.

8. That with regard to the contents made in Paragraph 4.4 of the application, the Respondents have nothing to comment.

9. That with regard to the contents made in Paragraph 4.5, 4.6 & 4.7 of the application that the applicant was never posted to Sankosh Inv. Division but only to Bhutan Inv. Division the Respondents beg to clarify that under the Superintending Engineer, Central Investigation Circle, Gangtok, 2 (two) Divisions existed in Bhutan viz Bhutan Inv. Division (which is continuing) and Sankosh Inv. Division (which has been closed w.e.f. 31.03.96). The Superintending Engineer is fully competent to repost staff within the 2 (two) Divisions in Bhutan as per exigency of work. Since Sankosh investigations had already commenced in mid 1993 with available staff in Bhutan Inv. Division the applicant, on his selection for a Bhutan posting and joining in Sept. 1994, in Bhutan was reposted to Chenary under Bhutan Inv. Division. The terms and conditions are same for a Bhutan posting irrespective of actual place of posting within Bhutan.

10. That with regard to the contents made in Paragraph 4.8 of the application that the applicant had represented on 08.03.96, the Respondents beg to state that since the transfer policy envisaged moving out the longest stayee, the plea of the applicant for his retention could not be accommodated.

11. That with regard to the contents made in Paragraph 4.9 & 4.10 of the application, the Respondents beg to state that although Junior Engineers at S.Nos. 1 to 5 were transferred out in April 1996 on the closure of Sankosh Division w.e.f. 01.04.96, Junior Engineers at S.Nos. 6 & 7, including the applicant, were continued beyond 01.04.96 for 3 (three) more months as one Sub-Division with one AE & 2 JEs posts under Sankosh Inv. Division was given extension upto 30.06.96 to complete pending works. On closure of this Sub-Division also on 30.06.96, it become necessary to shift 2 more Junior Engineers out of Bhutan. By virtue of his date of joining the applicant had already been benefitted by a 3 months additional stay in Bhutan. There is no malafide intention on the part of the Deptt. as has been charged. Moreover, charges of malafide intention can be

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levelled against individual or individuals but not against the whole Deptt.

12. That with regard to the contents made in Paragraph 4.11, the Respondents have nothing to comment.

13. That with regard to the contents made in Paragraph 4.12 of the application that the applicant had sent the representation dated 08.06.96 to Chairman, CWC, the Respondents beg to state that the representation has been disposed off with the approval of Chairman, CWC vide CWC letter no. 12/5/96 - E VI dated 08.07.96, a copy of which is annexed herewith and marked as Annexure R.1.

14. That with regard to the contents made in Paragraph 4.13 & 4.14 of the application that he is entitled to complete a 3 years tenure, the Respondents beg to state that while normally postings in Bhutan do ensure a 3 years tenure, in the instant case, closure of a Division necessitated repatriation of staff. The Hon'ble Tribunal will agree that the posts in Bhutan have to be with reference to work in hand. The tenure is not a fixed one but a maximum of 3 years. Moreover, the applicant is not

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the only person to be transferred out on closure of Sankosh Inv. Division but one Executive Engineer, 6 other JEs, one Draftsman, one LDC and one Steno have also been transferred out. Some of them in fact were working in Bhutan Inv. Division like the applicant when they were moved out.

15. That with regard to the contents made in Paragraph 4.15 of the application that the applicant has not been relieved of his post, the Respondents beg to state that they are complying with the Tribunal's orders dated 25.06.96 directing the Respondents not to implement the transfer orders.

16. That with regard to the contents made in Paragraph 4.16 to 4.18 that the present transfer is miscarriage of justice, the Respondents beg to state that the transfer policy is equitable, just and fair and ensures that the financial benefits associated with such posting are not enjoyed by a select few only. The policy of 'last come first go' proposed by the applicant is applicable only in case of retrenchment of staff and not in a transfer policy. The suggestion of the application is ridiculous to say the least as theoretically a person who has joined

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today in Bhutan can be repatriated the next day on abolition of certain posts as he has come last.

17. That with regard to the contents made in Paragraphs 4.19 & 4.20 regarding the transfer policy, the Respondents beg to state that they have clearly explained the transfer policy which is transparent and unbiased and ensures that the financial benefits accrue to a larger section of the CWC staff instead of a select few as is selfishly being proposed by the applicant. This has been explained clearly earlier also by the Respondents in their written statement filed in a parallel case OA 61/96 (Ranjit Singh vs UOI & Ors.). The Hon'ble Tribunal may therefore be pleased to dismiss both the cases.

18. That with regard to the contents made in Paragraphs 5.1 to 5.10 of the application regarding grounds for relief, the Respondents beg to state that legal provision stated to be quoted in support of the application are totally absent. The grounds on which cancellation of transfer are being sought for by the applicant are selfish, unjust and unfair to other CWC employees in Bhutan with the sole motive of enjoying financial benefits for full 3 years at the expense of others who are

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entitled to this benefit. The representation dated 08.06.96 of the applicant stands disposed off. The Respondents beg the Hon'ble Tribunal to dismiss the application.

19. That with regard to the contents made in Paragraph 6 of the application, the Respondents beg to state that they have nothing to comment.

20. That with regard to the contents made in Paragraph 7 regarding reliefs sought for by the applicant, the respondents beg to state that it is a matter of simple common sense, apart from the law, that the applicant should be relieved as per transfer order to join at Itanagar.

21. That with regard to the contents made in paragraph 9, the respondents beg to state that this Hon'ble Tribunal would be pleased enough to quash the application and uphold the transfer orders since there is no vacant sanctioned post beyond 30.06.96 against which the applicant can be continued in Bhutan. That the direction of this Hon'ble Tribunal that the applicant will continue at Bhutan had put the respondents in much administrative difficulty and

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more so when the post ordered by the Hon'ble Tribunal to continue is not a sanctioned one. Hence the stay order granted by this Hon'ble Tribunal may kindly be vacated.

22. That there being no any cause of action at all the application deserves to be rejected summarily.

23. That the present application is ill-conceived of law and mis-conceived of fact and hence liable to be dismissed.

24. That the balance of convenience being in favour of the respondents, this Hon'ble Tribunal may be pleased to lift the blockade i.e., his continuance in Bhutan in view of the fact that in the event of the applicant being allowed, he will be compensated as there will be no any irreparable loss to him.

25. That the respondents further beg to submit that this Hon'ble Tribunal has no any jurisdiction to try this case.

26. That the Respondents crave leave of this Hon'ble Tribunal of filing additional written statement if so directs.

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27)

That this Written Statement is
filed bonafide and in the interest of justice.

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

I, Shri B. S. AHUJA ---,
Chief Engineer, Brahmaputra & Barak Basin,
Central Water Commission, Shillong do hereby
solemnly declare that the contents made in para-
graph 1 of this written statement are true to my
knowledge and those made from paragraph 2 to 20
are derived from records which I believe to be
true and rest are humble submission before this
Hon'ble Tribunal.

And I sign this verifi-
cation on this 11th day of Aug. 1996
at Shillong.

B. S. Ahuja

DEPONENT

Chief Engineer
B. B. Basin
Central Water Commission
Shillong-793014.

ANNEXURE R-I
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No.12/5/96-E-VI
Government of India
Central Water Commission

Sewa Bhavan, R K Puram,
New Delhi-66.

Dtd.: the 8th July, 1996.

OFFICE MEMORANDUM

WHEREAS Shri M A Khan, Jr. Engineer, had been transferred from BID, Bhutan to the office of CE(B&BB), CWC, Shillong vide CE(B&BB)'s office order No.2(2)/Sankosh-96/B&BB/1294-1307 dtd. 21st May, 1996;

WHEREAS Shri M A Khan had submitted his representation dtd. 8th March, 96 for completion of his tenure posting; and, in case of premature transfer outside, for posting to Middle Ganga Lower Ranganga Sub-Division, Bareilly proper; he had also submitted another representation on 8th June, 96 for completion of his tenure;

WHEREAS Shri M A Khan filed an application OA No.104/96 titled as "Shri M A Khan Vs. Union of India and Others" against the transfer order dtd. the 21st May, 96;

WHEREAS CAT, Guwahati vide its judgement in OA No.104/96 ordered that "pendency of disposal of show cause and consideration of admission shall not be a bar for the respondents to dispose of the representation dtd. 8th June, 96 submitted by the applicant."

WHEREAS on perusal of the said representation dtd. the 8th June, 96 submitted by Sh. M A Khan, JE through proper channel, the following grounds adduced by Sh. M A Khan have emerged:-

- (a) He has been working in Bhutan Investigation Div., Bhutan since 17th Sept., 94;
- (b) On closure of Sankosh Invn. Div., Bhutan, the staff are being transferred and adjusted to some other places;
- (c) He is being transferred without completion of a tenure of 3 years in Bhutan.

...2/-

Attended

DOS
14/8/96

Asstt. Director (W/B)
O/O. the S. E.
H.O. Circle. C.W.C, Ghy-24.

- 5214 (d) If he has to be transferred prematurely then he is adjusted in Bareilly.


WHEREAS the above grounds adduced by Sh. M A Khan in his representation dated 8th June, 96 have been carefully considered by the Competent Authority and the same are analysed here in below :-

- (a) The plea of Shri M A Khan that his posting to Bhutan Inv. Division (BID) is demarcated and it has got nothing to do with Sankesh Inv. Division (SID) is not correct, as the principle of longest stayee in Bhutan rather than independent stay in SID or BID has been adopted while transferring Sh. Khan by CE (B&BB), Shillong.
- (b) There is no fixed tenure for posting in Bhutan, the employees posted in Bhutan are generally transferred out after 3 years. The transfer of Shri M A Khan and other JEs was necessitated by the special circumstances i.e. closure of Sankesh Inv. Division on completion of the task assigned to it.
- (c) The transfer orders dated 21.5.96 in respect of Shri M A Khan have been issued by the CE concerned keeping in view the longest stay of the officials in Bhutan (taking) length of combined stay under Bhutan Inv. Division and Sankesh Inv. Division). This has been done to ensure fair treatment to the staff in general and no segregation at Division level can be done in such cases.
- (d) No employee can claim for posting at any specific place. However, there is no vacancy at Bareilly. As the vacancies existed under his own Chief Engineer he was transferred to fill up one of those vacancies.

Now, therefore after carefully considering the representation dated 8th June, 1996 of Shri M A Khan and the grounds adduced by him, I am directed to

Attested

....3/-


14/8/96

Asstt. Director (W/E)

O/O. the S.E.

H.O. Circle. C.W.C. Ghy-24.

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inform you that the Chairman, CWC has not acceded to the request of Shri M A Khan and has decided to reject his representation dated 8.6.1996.

B R Sharma
(B R Sharma)
Under Secretary
Tele. No. 6107794

Shri M A Khan,
Jr. Engineer,
BID, CWC,
Nongshilliang,
Shillong.

Copy to :-

- 1) The CE (Teesta Basin), CWC, Sevoke Road, Siliguri-734401, West Bengal.
- 2) The SE, Central Inv. Circle, CWC, Tadong, Gangtok (Sikkim).
- 3) The EE, BID, (Phuentsheling Bhutan), w.r.t. his letter No.BID/CB/CAT-2/96/C-82-84 dated 3.7.1996.

Attended

DJS
14/8/96

Asstt. Director (W/A)
O/O. the S. E.
H.O. Circle. C.W.C, Ghy-24

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

O.A. No. 104/96

M.A. Khan ... Applicant

- Versus -

Union of India & Ors. Respondents

REJOINDER TO THE WRITTEN STATEMENT FILED ON BEHALF
OF THE RESPONDENTS.

The applicant abovenamed begs to state as follows :

1. That the applicant has gone through a copy of the written statement filed by the respondents in the aforesaid O.A., have understood the contents thereof. Save and except the statements which are specifically admitted herein below, other statements are categorically denied by the applicant. The statements which are not borne on records are also categorically denied.
2. That with regard to the statements made in paragraphs 1 and 2 of the Written Statement, the applicant does not admit anything contrary to the relevant records.
3. That with regard to the statements made in paragraph 3 of the W.S., it is categorically denied that the Hon'ble Tribunal has no jurisdiction to try this case. The respondents are called upon to substantiate their claim..
4. That with regard to the statements made in paragraphs 4 and 5 of the W.S., the applicant reiterates and reaffirms the statements made in paragraphs 4 and 5 of the O.A.

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5. That with regard to the statements made in paragraph 6 of the W.S., the applicant categorically denies the contentions made therein. There is no gross misrepresentation of any fact as alleged by the respondents. The respondents have taken a volteface of the entire matter. On their own admission, the transfer has been effected of different incumbents consequent upon the closure of the Sankosh Investigation Division. The applicant having been posted to Bhutan Investigation Division, he had nothing to do with the Sankosh Inv. Division and consequent upon such closure of Sankosh Inv. Division, he cannot be transferred to make room for others. The so called principle purportedly adopted by the respondents that "the longest stayees were moved out retaining the relative new entrants." is ridiculous. Some others have not protested to such transfer and/or have not moved the Court of law is all together a different consideration. As will be seen from the chart given in this paragraph, the applicant compared to persons named at Sl. Nos. 8 to 16, has hardly stayed in Bhutan by more than 1½ month, 3 months, 2½ months, 5 months, 5 months, 5 months, 5 months, 6 months, and 6 months respectively. Thus he is branded as longest stayee in Bhutan and in his place others will be continued to their full tenure of 3 years. This can hardly be a ground for transfer of the applicant. In such a situation, irrespective of duration of stay in Bhutan, the persons effected by the closure of Sankosh Inv. Division should have been transferred out of Bhutan instead of disturbing others as was done on earlier occasion. In a system of distributive justice, the stay of the applicant in Bhutan by few months more than the persons named at Sl. No. 8 to 16 as indicated above can hardly be a ground for his transfer out of Bhutan. If the respondents ~~are~~ are

so concerned about the welfare of its employees, they ought to have adopted a rational principle so that all the incumbents are benefitted. ~~Merely~~ Merely because the applicant has stayed about 1½ months more than the incumbent at Sl. No. 8, he cannot be branded as a longest stayee so as to transfer him out of Bhutan, to deprive him from financial benefit and to ~~not~~ bestow the same on another so much so that he will complete the full tenure of three years.

6. That with regard to the statements made in paragraphs 7 and 8 of the W.S., the applicant while denying the contentions made therein reiterates and reaffirms the statements made in O.A. Although in the circular, the tenure period has been mentioned as maximum period of 3 years, on all other occasions, the incumbents have completed full tenure of three years, making the only exception in case of the applicant. Applying the same principle of maximum period of three years, the persons who have been ~~xxxx~~ rendered surplus, consequent upon the closure of Sankosh Inv. Division, ought to have been transferred instead of disturbing the other incumbents who were not appointed in Sankosh Inv. Division. The respondents cannot adopt a double standard in the matter.

7. That with regard to the statements made in paragraphs 9 and 10 of the W.S. while denying the contentions made therein, the applicant reiterates and reaffirms the statements made in the O.A. The applicant having been

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posted in Bhutan Investigation Division, could not have been effected on closure of Sankosh Inv. Division. The so-called policy adopted by the respondents is hardly tenable. The applicant can hardly ~~xxxx~~ be termed as a longest stayee. If this policy is adopted, in due course and in long run, the incumbents who have been retained in Bhutan would be longest stayee to the deprivation of the applicant and others. The respondents are conspicuously silent about this aspect of the matter.

8. That with regard to the statements made in paragraphs 11 and 12 of the W.S. the applicant while denying the contentions made therein, reiterates and reaffirms the statements made in the O.A. The service of the applicant was never utilised in Sankosh Inv. Division and he was all along retained in Bhutan Inv. Division. Thus the transfer of the applicant has no nexus with the closure of the Sankosh Inv. Division.

9. That with regard to the statements made in paragraph 13 of the W.S., the applicant begs to state that his representation has since been disposed of as per order of this Hon'ble & Tribunal making a grievance against which the applicant has filed an application for amendment seeking amendment to the O.A.

10. That with regard to the statements made in paragraph 14 of the W.S., while denying the contentions made therein the applicant reiterates and reaffirms the statements made

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in the O.A. As has been stated above, other effected persons have not moved the Court of law and/or have carried out the order of transfer can hardly be a ground for the respondents to thwart the legitimate claim of the applicant.

11. That with regard to the statements made in paragraph 15 of the W.S., the applicant begs to state that the respondents are duty bound to carry out the interim orders of this Hon'ble Tribunal.

12. That with regard to the statements made in paragraph 16 of the W.S., the applicant begs to state that the transfer policy purportedly adopted by the respondents is inequitable, unjust and unfair. It is denied that the financial benefits associated with such posting are not enjoyed by selected few only. By adopting the principle of moving of longest stayee, the respondents have ensured full tenure of three years in respect of others who are hardly few months junior to the applicant so far as stay in Bhutan is concerned. By adopting such a principle, the respondents have bestowed the benefits to those persons and their own policy of moving out the longest stayee has been violated. The policy of "last come first go" is equally applicable in such matter more particularly when the transfer is required to be effected on closure of a particular Division, in which the applicant was not appointed. The respondents are at liberty to ridicule the proposition of the applicant but it is emphatically stated that the so called principle of the respondents to move out the longest stayee is more

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ridiculous. By adopting such a principle the persons who are hardly 1½ months junior than the applicant so far as stay in Bhutan is concern, would be allowed the benefit of longest stay i.e. three years, which is hardly a ground. This is most unreasonable and unrealistic principle sought to be adopted by the respondents.

13. That with regard to the statements made in paragraph 17 of the written statement, the applicant while denying the contentions made therein, reiterates and reaffirms the statements made in ~~paragraph~~ the O.A.

14. That with regard to the statements made in paragraph 18 to 27 of the W.S., the applicant while denying the contentions made therein, reiterates and reaffirms the statements made hereinabove. It is unfortunate that the respondents have stated that the grounds on which the cancellation of the order of transfer are being sought are unjust, selfish and unfair to other C.W.C. employees in Bhutan, rather these adjudication are attributable to the respondents.

15. That in view of the aforesaid facts and circumstances the instant application deserves to be allowed with cost.

Verification.....

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VERIFICATION

I, Shri M.A. Khan, the applicant in O.A. No. 104/96, do hereby solemnly affirm and verify that the statements made above are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 30th day of ^{MARCH} ~~APRIL~~ 1997 at Guwahati.

Mamnoon Ahmad Khan,