

30/100

8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A.T.A No. 160/96

R.A/C.P No.

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

....

OA No. 160 196

Sr. Nikamal Kumar Ray Applicant(s)

VS-

Union of India Respondent(s)

Mr. A. Dasgupta, S. Chatterjee Advocates for the applicant(s)

Mr. S. Ali, B. Bose Advocates for the respondent(s)

Office Notes	Date	Courts' Orders
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This application is in form and within time C.F. of Rs. 50/- deposited vide IFO 13 No ... 3.4.66 Dated ... 7. ... 8. ...

[Signature]
Dy. Registrar

9.8.96

Learned counsel Mr A. Dasgupta for the applicant. Mr S. Ali, learned Sr. C.G.S.C., for the respondents.

In this application the applicant has assailed the transfer order No.13/1/ADM/DE dated 21.5.1996, Annexure G, transferring him from Agartala Thirubantha Puram. The contention of the applicant is that the impugned order is not only illegal or based on extraneous reasons not material for the genuine cause of transfer, but it is absolutely based on malafide reasons.

Heard Mr Dasgupta for admission. Perused the contention in the application and the reliefs sought. The application is admitted. Issue notice on the respondent by registered post. Written statement within six weeks.

List for written statement and further orders on 18.9.96.

Mr Dasgupta submits ^{for} interim order as prayed for. Issue notice on the respondents to show cause as to why the interim relief sought in this O.A. should not be allowed.

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List for interim order on 23.8.96.

9.8.96

Pending order on the show cause on the interim relief prayer on 23.8.96, the respondents are directed to keep the operation of the impugned order dated 21.5.1996 in abeyance till that date.

Steps within today.

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

Member

nkm

23.8.96

Mr S.Ali, Sr.C.G.S.C for the respondents.

Show cause has been submitted. None for the applicant. However, considering the fact that the counsel of the applicant has not received the copy of the show cause, adjourned for order on interim relief prayer to 26.8.96.

Interim order dated 9.8.96 shall continue till 26.8.96.

Member

pg

2378

26-8-96

Learned counsel Mr.A.Dasgupta for the applicant. Learned Sr.C.G.S.C. Mr.S.Ali for the respondents.

On perusal of the contents of the application the O.A. was admitted. However interim prayer as prayed was not granted pending hearing of the respondents on the prayer. Now the respondents have submitted the show cause stating that granting of stay order or even continuing the stay order dated 9-8-96 will cause irreparable administrative difficulties to them. The reasons given by them are :-

contd/-

21-8-96

Notice issued to the concerned parties vide No 2622 dt. 16.8.96.

22-8-96

Show Cause reply filed by R. no. 1, 2, 3 & 5 at Rs 45000/-

26-8-96

(1) Shri P.K.Das, the reliever of the applicant, had since been relieved of his post by the incoming officer, Shri Nair, and if the interim order is continued or granted Shri P.K.Das will not be able to join in Agartala as there is only one post in there.

(2) The allegations of malafide are baseless and unwarranted. Allegations of malafide are made in the application against the respondents No.2, which is not the administrative authority. Respondent No.1 is the authority who has transferred the applicant.

(3) The transfer was made in a normal and routine manner and for public interest when the applicant had completed two years in Agartala.

Learned Sr.C.G.S.C. supports the contentions stated in the written show cause and submits that the interim order dated 9-8-96 be vacated and opposes any further interim order.

Mr.Dasgupta, learned counsel for the applicant, resists the contentions of Mr.S.Ali. He has submitted that there is malafide in the transfer of the applicant because respondent No.1 had issued the order of transfer immediately after the allegations were made by the respondent No.2 against the applicant. He has also submitted that the administrative problem regarding Shri P.K.Das has arisen by the action of the respondents taken by them only after he had served the copy of the interim order dated 9-8-96 on the

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R

4.

26-8-96 respondent No.3 on 9-8-96. Further Mr.Dasgupta has submitted that the applicant is from outside North Eastern Region and if he has completed the tenure in the North Eastern Region he is entitled under normal circumstances to exercise an option giving his choice of the places of posting. However Mr.Dasgupta submits that the matter may be finally disposed of within seven days if the respondents can submit written statement and he prays that till then the operation of the order of transfer may be kept in abeyance Learned Sr.C.G.S.C. Mr.S.Ali is agreeable to see that the application is finally disposed of within 10 days, from to-day.

Heard counsel of both sides.

This O.A. has been listed for written statement and further order on 18-9-96. In view of the submissions of the learned counsel of both sides as above the O.A. is instead to be listed for hearing on 5-9-96. As such it is hereby ordered that the respondents ~~aka~~ shall keep the operation of the impugned order dated 21.5.96 in abeyance till date of hearing mentioned above in-so-far as it relates to the applicant. Further order as may be necessary will be issued on 5-9-96.

List for hearing^{of O.A.} on 5-9-96. Written statement to be served by the respondents on the counsel of the applicant in advance.

Copy of this order may be furnished to counsel of both sides.

[Signature]
Member

Mr Bono, pl. may be furnished to counsel of both sides to the parties.

m
26/8/96.

27-8-96

Copy of order dtd. 26.8.96 issued to the concerned parties and Counsel of both side.

lm
m
26/8

Bm

OFFICE NOTE

DATE

ORDER

5-9-96

Learned counsel Mr.A.Dasgupta for the applicant. Learned Sr.C.G.S.C. Mr.S. Ali for the respondents. Mr.Ali submits ~~xx~~ that written statement ~~xxx~~ is ready and the hearing may be adjourned for few days. Hearing adjourned to 9-9-96. Mr.Ali may submit written statement with copy to Mr.A.Dasgupta.

Interim order will continues till hearing of the case on 9-9-96.

lm
Member

3-9-96
Written argument filed by the applicant.

Service reports are ~~SSN~~ ~~enrolled~~

lm

lm
5/9/96

comply the above order dated 5-9-96

9-9-96

Learned counsel Mr.D.K.Biswas and Mr.A.Dasgupta for the applicant.Mr.S.Ali Sr.C.G.S.C. for the respondents. Learned counsel Mr.D.K.Biswas makes his submission in part and in particular proposes that he does not want to press other submission if the competent authority of the respondents would allow him opportunity to exercise option for posting in place of his choice and if they consider his representation for retaining him in Agartala till the end of present academic Session of his son. Mr.S.Ali, Sr.C.G..S.C seeks adjournment for taking instructions on this proposal of Mr.Biswas.

Hearing adjourned to 19-9-96.

Interim order will continue till the next date of hearing.

lm
Member

5-9-96
lm 5/9/96
6.9.96
Notice duly served on receipt No. 3, 4, 5.

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Wt stated. he not know to W

lm

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10/9

10-9-96
WTS filed by the R. No. 1, 2, 3 & 5. dt-19-53

18.9-96

Option of the applicant as well as Govt. Circular instructions submitted by Mr. D.K. Biswas, advr to the applicant.

OFFICE NOTE

DINE

ORDER

1) Notice duly served on
 Resplts nos 3, 4, & 5, 19.9.96

2) Show cause has been b'w
 3) w/statement has been b'w

SP
 19/9

Learned counsel Mr A. Dasgupta for the applicant. Learned Sr.C.G.S.C Mr S. Ali for the respondents.

Mr Ali has submitted a reply to the proposal made by the learned counsel for the applicant on 9.9.96 and the respondents have stated that they are ready to allow the applicant an opportunity to submit an option indicating 3 places of his choice for posting on transfer outside North Eastern Region and that such option will be considered subject to availability of vacancy in those places of his choice. Copy of this reply has been served on the counsel of the applicant. After hearing counsel of both sides this application is disposed of with the following directions :

1) The applicant is directed to submit his option for posting to a place of his choice by indicating 3 places of his choice to the competent authority of the respondents through proper channel within 10 days from today.

2) The competent authority of the respondents shall consider and dispose of the option of the applicant on merit expeditiously.

3) Further, the applicant may within 10 days from today submit a representation to the competent authority of the respondents through proper channel requesting them to consider the problem he will face in the event of his transfer before the end of the current academic session of his son who is studying in Kendriya Vidyalaya, Agartala.

4) The competent authority of the respondents shall consider and dispose of the representation of the applicant

contd...

19-9-96


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19.9.96 expeditiously and sympathetically.

5) The respondents shall not release the applicant from Agartala till disposal of the option and the representation that may be submitted by the applicant as mentioned above.

The application is disposed of in terms of the directions given above. No order as to costs.

Copy of this order may be furnished to the counsel of both sides.

 19.9.96
Member

24.9.96


Copy of order issued to the parties alongwith the L/Advocate of the parties vide S.No. 3252 to 3259 d.26.9.96

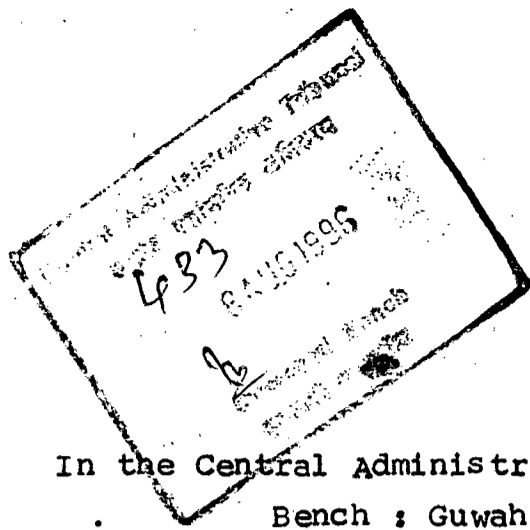
pg

pg

24/9

Received
on behalf
of Mr. A. Dargupta
Advocate.


Adv.
24.9.96.



9
Filed by -
Nirmal Kumar Ray
Officer, Guwahati
D-110/Calc
8-8-96

In the Central Administrative Tribunal
Bench : Guwahati.

O.A. 160 /96.

Nirmal Kumar Ray

-vs-

Director General Defence Estates & Others.

I N D E X

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6.	A copy of Impugned order dated 21.5.96 issued by the respondent No.1.	G	39 - 41
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Received Copy
File No. 4524
02/09/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH,
G U W A H A T I

O.A. 160 /96.

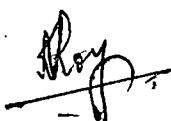
1. PARTICULARS OF THE APPLICANT :

Nirmal Kumar Ray, Son of Late Amulyadhan Ray,
Assistant Defence Estate Officer, P.O. Abhay
Nagar, Agartala-799005, West Tripura.

2. PARTICULARS OF THE RESPONDENTS :

- (i) Director General, Defence Estates,
Govt. of India, Ministry of Defence,
West Block No.4, Wing No.3 & 7, Sector-1,
R.K.Puram, New Delhi-110066.
- (ii) Director, ^{(KandS),} Defence Estates, Govt. of
India, Ministry of Defence Eastern
Command, 13 Cammac Street (7th Floor),
Calcutta-700017.
- (iii) Defence Estate Officer, Guwahati Circle,
P.O. Silpukhuri, Guwahati-781003.
- (iv) Sri Pradip Kumar Das, ^{Assistant} _{Jr}
Defence Estate Officer,
Guwahati Circle, P.O. Silpukhuri,
Guwahati-3.

Contd....2.



(v) Union of India,

(Represented by Secretary to the Govt. of
India, Ministry of Defence, New Delhi.)

WHICH

3. PARTICULARS OF THE ORDER AGAINST THIS APPLICATION
IS MADE :

Order No.134/1/ADM/DE issued by Director General,
Defence Estates, New Delhi on 21.5.96 whereby the
applicant has been transferred from Agartala
to Thirubantha Puram at Kerala.

4. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of
the Order against which he wants redressal is
within the jurisdiction of the Tribunal.

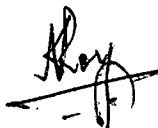
5. LIMITATION :

The applicant further declares that the applica-
tion is within the period of limitation ~~as~~ as pres-
cribed in Section 21 of the Administrative Tribunal Act,
1985.

6. FACTS OF THE CASE:

The humble petition of the applicant above-named;
MOST RESPECTFULLY SHEWETH :

- (i) That the applicant is a citizen of India and a
resident of Abhay Nagar, Agartala, West Tripura.



Contd....3.

(ii) That the applicant is a civilian in Defence Service under the Ministry of Defence, Govt. of India. At present he is posted at Agartala as an Assistant Defence Estate Officer. Initially he was appointed as S.D.O (Sub-Divisional Officer, Grade-II) on 10.9.68. Thereafter he was promoted to the post of S.D.O (Grade-I) on 16.10.74. Subsequently, he was promoted to his present post of Assistant Defence Estate Officer on 16.12.93. His Service to the ministry of Defence was not spotted by any stigma whatsoever. His honesty or integrity was not questioned in any manner whatsoever.

(iii) That the applicant during this period of service has been frequently transferred from one place to another. His initial post of appointment was at Shillong. He stayed there for a period of two years. Thereafter he was transferred to Guwahati for a period of one year. Again he was transferred to Shillong in the year 1971 where he stayed for a period of one year. Similarly in the year 1973 he was posted at Bhatinda in Punjab for one year. In this way he was transferred to Calcutta in the year 1974, with a tenure of posting for five and half year and in Siliguri, in the year 1980, for a period of three and half years and in Danapur, Bihar, in the year 1983 for a period of two years six months, in Bhubaneswar (in the 1986) for a period of two years. Thereafter he was posted to

SH	2 yrs	
Gley	1 yr	
Sh	1 yr	
Bha	1 yr	
Cal	5 1/2 yrs	= 74
SP	3 1/2	= 80
Shan	2 1/2	= 83
Bhu	2	= 86
Mhow	5	= 88
Agar	2 1/2	= 93

Contd.....4.

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Mhow (M.P) by the transfer Order dated 2.6.1988. From Mhow, he was transferred to Agartala by transfer Order No.102/200/ADM/DE dated 16.12.1993. Now he is being illegally sought to be transferred to Thirunanthapuram at Kerela.

(iv) That though the applicant was frequently transferred from one place to other, but he never lodged any grievances or protest against these orders of transfers though these caused a lot of inconveniences to the Education of his children and also to the internal arrangements of his family affairs. But this time the applicant has no other alternative but to assail the order of transfer before this Hon'ble Tribunal as the impugned order is not only illegal or based on some extraneous reason not material for the genuine cause of transfer, but it is absolutely based on malafide reasons. The brief facts of this order of transfer is stated in the subsequent paragraphs.

v) That in Tripura, the Ministry of Defence was in urgent need ^{of} land for establishing a key to ^{location} ~~Elion~~ plan. ^{For} ~~That~~ that purpose they approached, Govt. of Tripura ^{for} for acquisition of land measuring 1782.135 acres. Accordingly, in the year 1982-83 necessary notification under the provisions of land acquisition Act, 1894 was made and the required land was handed over to the Defence Department by the Collector under land acquisition Act. Being aggrieved by the quantum of compensation awarded by the Collector, some of the Ex-land owners sought for references



Contd.....5.

for redetermination of compensation. In these cases the Union of India was not allowed to defend their case. The reference Court enhanced the compensation about 3 times of the award made by the Collector. In some cases, the Union of India preferred appeal before Hon'ble Gauhati High Court at Agartala Bench. Those cases were also dismissed as according to the Hon'ble High Court, the Union of India had no locus standi to prefer this appeal.

Being aggrieved by the order of the reference Court and also of the Hon'ble High Court the Union of India preferred special leave petition (SLP) before the Hon'ble Supreme Court.

All of these SLP were against the order of the Hon'ble High Court except one which was directly against the order of the learned reference Court. After posting at Agartala, the applicant along with other officials had look after the Cases filed in the Hon'ble Supreme Court. All these appeals were allowed. The ~~xxxxxx~~ cases were remanded back to the reference court for fresh determination of the value of the land. The Union of India was allowed to implead as a Respondent.

Copies of Judgment and order passed by the Hon'ble Supreme Court are annexed hereto and marked as ~~XXXXXX~~ ANNEXURES- A&B respectively.

Contd...6



vi) That the applicant begs to state that the respondent No.2, the Director, Defence Estate for reasons best known to him, was not happy with the filing of SLP before the Hon'ble Supreme Court. The Apex Court admitted these appeals on 17.3.94. Even after admission of this appeal, the Respondent No.2 expressed his legal opinion on the subject. According to him these appeals were not maintainable. These cases were involved with ^{large} amount of money to be paid from the defence Exchequer. Despite this why he was against these cases were best known to him. He expressed this opinion when the Hon'ble Supreme Court had admitted the SLP by Condoning delay on 12.9.95, ^{The} Respondent No.2 lodged allegation against the Applicant to the Defence Director General, Defence Estates by stating inter-alia that applicant and his staff filed SLP to the Supreme Court directly against the Order of the Lower Court which is, according to him against all procedure and known official function. By this letter he also directed Defence Estate Officer, Gauhati Circle to take up the matter and do the needful in the Supreme Court. A copy of this letter was also communicated to the applicant.

A copy of the letter dated 12.9.95 is annexed hereto and marked as ANNEXURE-C.

vii) That on 14.2.96, the Respondent No.2, again wrote a letter to the Joint Director, Defence Estate,



Contd.....7.

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N.E.Region, Shillong by stating inter alia that the applicant should be chargesheeted for engagement of Dr. A.K.Bhattacharjee, an Advocate of Gauhati High Court at Agartala Bench. According to him, Dr. Bhattacharjee was not in the state Government panel. In this context it is to be noted that Dr. Bhattacharjee was and is still in the State Government panel. That apart the applicant had nothing to do with his engagement as the Counsel of the Defence department to defend the acquisition cases. He was engaged in the year 1991 by the Director General, Defence Estates on the basis of the recommendation of Mr. K.N.Bhattacharyya, Senior Govt. Advocate, Agartala. At that time the applicant was not even at Agartala. He ~~was~~ ^{was} at Mhow Cantonment, at M.P.

By this letter the Respondent No.2 further informed the Additional Director General (Acquisition), Ministry of Defence, New Delhi that the applicant is not fit to be kept at Agartala. Relevant portion of this letter runs as follows :- " This Officer is not fit to be kept at Agartala as he has also done a strange feat of filing an SLP in the Supreme Court directly against some order of law Court in Agartala ".

This letter dated 14.2.96 was served upon the applicant by the Director General vide their Post copy Telegram No.DC.XVI.201/295/ACQ/EC/DE dated 1st July 1996.

Contd....8.

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So far engagement of Dr.H.K.Bhattacharjee is concerned the applicant further begs to refer a letter issued by the Senior Central ~~Government~~ Govt. Standing counsel Sri K.N.Bhattacharyya who confirmed that Dr.Bhattacharyya is a State Government panel Lawyer.

Copies of the letter dated 14.2.96 issued by the Respondent No.2 and the letter dated 22.6.96 ~~e~~ 17.11.90 issued by the Sr.Central Government Standing Counsel at Agartala are annexed hereto and marked as ANNEXURE-D & E respectively. *JKW*

viii) That the applicant begs to state that he informed all officials ^{about} of the matters relating to the land acquisition cases to the Defence Estates Officer, the Gauhati Circle vide his letter dated 9.2.96.

A copy of the said letter is annexed hereto and marked as ANNEXURE-F.

ix) That in consequence of different letters issued by the Respondent No.2, the petitioner has been transferred to Thiruvanthapuram. This was done during his due tenure of posting at Agartala, and that too in the midst of the academic sessions of his eldest son who would appear in H.S.Examination under C.B.S.E. in the month of April, 1997.

Contd.....9.

JKW

5/96

A copy of the Order of Transfer is annexed hereto and marked as ANNEXURE-G.

x) That against the aforesaid Order of transfer the petitioner preferred a representation before the Respondent ~~No.1~~ on 31.5.96 by stating inter alia that his eldest son is a student of Class-X and he would appear in H.S.Examination. In the midst of the circumstances if the transfer is given effect to it would cause a great hardship to the applicant.

A copy of the representation submitted by the Applicant on 31.5.96 is annexed hereto and marked as ANNEXURE-H.

xi) That the Respondent did not pay any heed to same. On the contrary, the Respondent No.1 issued a ^{telegram} ~~letter~~ on 31.7.96, by this ^{telegram} ~~letter~~ it was informed to the petitioner that if the order transfer was not complied with, the applicant would be inflicted with disciplinary action.

A copy of the ^{telegram} ~~letter~~ dated 31.7.96 is annexed hereto and marked as ANNEXURE-I.

xii) That the applicant begs to state that he has been transferred to ~~Thiruvananthapuram~~ Thiruvananthapuram. One Sri P.K.Das, Assistant Defence Estate Officer has

Contd.....10.

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been posted in place of the applicant. In the order of transfer, it is clearly stated that on being relieved by Sri P.K.Das, the applicant would be transferred. But said Sri P.K.Das not reached at Agartala to relieve the applicant.

7. RELIEF SOUGHT :

In view of the facts stated above the applicant prays for following reliefs :-

- (i) That the impugned order of transfer issued by Director General, Defence Estate, New Delhi on 21/5/96 vide his Order No.134/1/ADM/DE be set aside and quashed.
- (ii) To direct the Respondents to post the applicant to the Office of the Assistant Defence Estate Officer at Agartala and/or ;
- (iii) To pass any further or other order or Orders as this Hon'ble Tribunal may deem fit and proper.

The aforesaid reliefs are sought for the following amongst other; ~~XXXXXXXXXX~~

G R O U N D S

- (i) ^{For that} ~~Further~~ the impugned Order is absolutely based upon some extraneous reason. The Respondent No.2

Contd.....11.

[Handwritten Signature]

does not want the applicant to stay at Agartala as an Assistant Defence Estate Officer to look after the acquisition cases.

(ii) For that the Respondent No.2 Specifically informed the Higher authority that the petitioner should not be kept at Agartala as he filed ^{an} ~~some~~ SLP against the order of the reference Court. According to him it was against all Established Procedure. This impression was not at all correct and all SLP so filed in the Hon'ble Supreme Court were allowed. The impression conceived by the Respondent No.2 was not only erroneous ; it was a malafide one which is evident on the face of the record that even after the order of the Hon'ble Supreme Court, the Respondent No.2 propagating his profounding view here and there.

(iii) That the Respondent No.2 wants that all acquisition cases of Agartala Should be dealt with by the Assistant Estate Officer at Guwahati. Though the applicant has no objection whatsoever with this and he has already handed over all papers to the concerned Officer, but, he has not understood as to why the Respondent No.2 is so interested with these acquisition cases even all

Contd.....12.



efforts adopted by the applicant and his staff succeeded in the Hon'ble Supreme Court and the amount of compensation fixed by the Reference Court has been set aside with a direction that the reference Court will consider the cases afresh by allowing the Union of India to adduce evidence on the amount of compensation to be paid from the Defence Exchequer.

- (iv) That the Respondent No.2 is not only against the applicant. He is also against the Counsel, Dr. H.K.Bhattacharjee who appeared for the defence Department. The Respondent No.2 raised some extraneous issues with regard to engagement of Dr. H.K.Bhattacharjee, advocate. These points are not at all tenable as Dr.Bhattacharjee is all along ^{in the} a state panel Advocate and he was engaged by the Addl. Director General of Defence Estate on the basis of the recommendation of M Sri K.N.Bhattacharjee who was then the Senior Government Standing counsel and at present the senior standing counsel of Union of India. ^{Moreover,} ~~He~~ ^{has} ~~nothing~~ ^{done} ~~to~~ ^{over} the applicant had nothing to do with the engagement of Dr.H.K.Bhattacharyya, he was engaged long before the applicant was posted at Agartala.

Contd.....13.

Ray

- (v) That the impugned order of transfer has resulted a great hardship to the applicant. It was issued in the midst of academic Sessions of the applicant's eldest son who is a student of Class-X and will appear in the ensuing Board Examination under CBSE.
- (vi) For any view of the matter the impugned order is liable to be set aside and quashed.

8. INTERIM ORDER PRAYED FOR :

The applicant prays for following interim relief:-

- (i) Till disposal of his application, the Respondent may be directed not to transfer the petitioner from Agartala to his place of transfer at Tiruvananthapuram or ;
- (ii) This Hon'ble Tribunal may be pleased to stay the operation of the impugned Order dated 21.5.96 issued by the Director General, Defence Estate, New Delhi vide his Order No.134/1/ADM/DE ; or
- (iii) Pass any further or other order or orders as this Hon'ble Tribunal may deem fit and proper.



9. DETAIL OF THE REMEDIES AVAILABLE :

The applicant declare that he has exhausted all the remedies available to him under the relevant Acts., and Rule and he has no other alternative and efficacious remedy available to him except this application.

10. MATTER NOT PENDING IN ANY COURT :

The applicant further declares that the matter regarding which this application has been made is not pending before any Court of law or any other authority.

ii. I.P.O No-809346661 Dt-7-8-96 For Rs 50/- Payable at G.P.O Guwahati.

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

I, Shri Nirmal Kumar Ray, Son of Late Amulloyadhar Ray, by profession-Central Govt. employee, aged about 53 years, or resident of Agartala, P.O. Abhoynagar, West Tripura do hereby solemnly verify that the statements made in paragraphs 6[i, ii, iii, iv, xii] of the original application are true to my knowledge and those made in paragraphs 6[v, vi, vii, viii, ix, x, xi] are matters of records derived therefrom which I believe to be true and rest are my humble submission before the learned Tribunal. I put my signature on this verification on 7th day of August, 1996 at Guwahati.

Date :- 7-8-96.


Nirmal Kumar Ray
SIGNATURE

(N. K. RAY)



KVN SLP (c) No 5692-93/94

ITEM NO.4

COURT NO. 6

SECTION XIV

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

1.A.No.1-2 in &

Petition(s) for Special Leave to Appeal (Civil No.(s)...../94

CC24309

(From the Judgment and order dated 27.4.1988 on the
Lend Acquisition Judge, West, Tripura at Agartala in Misc.L.51/86 &
160/87) ✓

Union of India

Petitioner (s)

-versus-

Renu Bala Sharma & Ors.

Respondent (s)

(For Permission to file SLP)

Date : 17.3.94 This/These petition(s) was/were called on for
hearing today.

CORAM:

Hon'ble Mr. Justice

K. Ramaswami

Hon'ble Mr. Justice

N.V. enkatachala

Hon'ble Mr. Justice

For the petitioner (s) Ms. A. Subhashini, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following

ORDER

1.A.Nos.1-2 are allowed.

Issue notice on application for condonation of
delay and the special leave petitions.Post along with ~~subject~~ S.L.P.(C) No.....

(CC Nos.22133 & 22137).

Sd/- S.B.Sharma
Court Master.A. H. S. S. S.
N. S. S. S. S.
8-8-76

The cases are remitted to the reference Court which would give opportunity to the parties including the Union of India to adduce evidence afresh. The reference Court, thereafter would consider and dispose them of according to law. The parties are directed to appear before the reference Court on May 25, 1996.

We are informed that the compensation amount determined in the appeal arising out of SLP (C) Nos. 5692-93/94 has already been paid. The payment will be subject to the order that may be passed by the reference Court. But, in the meanwhile, recovery should not be made.

Appeals are accordingly allowed. No costs.

Sd/- K. Ramaswami.

New Delhi,

Sd/- G.B. Pattanaik.

April 18, 1996.

ANNEXURE C

-18-

COPY

No. TR/234/ACQ/LC-8

Directorate of Defence Estates

Min of Defence , Eastern Command

13 Camac Street, Calcutta-700012

Dated 12 sept, 1995.

To

The D.E.O.
Gauhati Circle
Gauhati-781003.

Sub : FILING OF AFFIDAVIT/PROCESSING CASES IN SUPREME COURT
NEW DELHI.

With immediate effect you would personally under take the Subject work for ADEO, Agartala Supreme Court cases. As and when either you should move to Agartala or call ADEO Agartala to Gauhati for this purpose to get proper and complete information/documents.

Sd/-

Director
Defence Estates
Eastern Command

Cppy to:-

The Director General - It is noticed that instruction is that
(Acqn. Sec) minimum under Secretary to the Govt. of
Defence Estates India equivalent to the DEO can file
Ministry of Defence Affidavit in the Supreme Court. Besides
New Delhi-110066 concrete case has come to notice when
ADEO Agartala and his staff have filed
an SLP in the Supreme Court direct against the order of
local lower court which is against all procedure and known
official functioning , Govt. cannot take risk in cases of this
type. Hence the procedure in ~~xxx~~ this letter is in the interest
of the state.

The JD, DE
MINISTRY OF DEFENCE
SHILLONG
The ADEO
AGARTALA

- for ensuring compliance of
this letter.

- for compliance.

Attested
Signature
5-8-96

Annexure D

-19-

SHARAT BHUSAN
DIRECTOR
DEFENCE ESTATES(LANDS).

CONFIDENTIAL/REGISTERED.
DO NO .TR/234/AOQ/LC-8
DIRECTORATE OF DEFENCE ESTATES
MINISTRY OF DEFENCE, EASTERN COMMAND.
13 CAMAC STREET (7th FLOOR)
CALCUTTA- 700017
DATED, CALCUTTA THE 14 FEB 96.

Please refer to your letter No. TR/234/REF/ FEES.
dated 22.1.96 regarding reference cases of ADEO, Agartala office.

Since the ADEO, Agartala has indulged in irresponsible correspondence as is clear from his letter No. TR/234/FEES/51, dated 09-2-96 copy interalia to you by persisting his complete inefficient handling of the case by suppressing even fundamental information on the availability of the Counsel for appearing on behalf of Ministry of Defence, you are requested to urgently inter-act D.E.O. Guwahati with copy for information to the DDE(LANDS) to act as per advice given in our post copy telegram No. TR/234/ACQ/LC-8/194, dt. 18.1.96. The fee found to be disproportionate/exorbitant recommended by ADEO. Agartala at Rs. 97,580/- which on scrutiny by us come to Rs. 27,200/- was found impossible to be verified by the Bench law Secreteriate Calcutta and on their advice it has been referred to their Head Office in New Delhi whose reply is yet awaited. ~~xxxxxxx~~ We are not aware as to what use has been made by ADEO, Agartala of the cash assignment already released in his favour quite some time earlier Dr. Bhatta- charya when appointed has precondition that he was on the State Govt panel which the ADEO, Agartala failed to report to his higher authorities unless asked and came to inform only recently that this Counsel is no longer retained on the state Govt .Panel of Advocate .

CONTEDE.....2

Added
Agartala, Asst. Secy
8-8-96

Besides ADEO, Agartala has been falsely mis-representing Dr. Bhattacharya as Central Govt. Standing Counsel in all his correspondence. Due to such careless handling by ADEO Agartala of this case the previous period, there is no course left open except recommended to the higher authorities to charge - sheet him for his conduct. When you are pursuing as per my instruction the various irregularities perpetrated by ADEO, Agartala please ensure by directing D.E.O. Guwahati that the arrangement prior to appointment of Dr. Bhattacharya for defence of these reference cases in Agartala should be adopted utilising the case assignment already released for which purpose D.E.O. Guwahati if necessary must proceed to Agartala. I would like to have the compliance report from you/DEO Guwahati within next fortnight.

Yours

Sd/- Illegible

Bharat Bhusan

Sri A. Chhawnlawia
Joint Director,
DE Min. of Def.
North East, Cannt-33
Shillong-793001.

*To the effect
Inagubne, Nalvo Gali
8-8-76*

Contd. 3.

✓ 30

→ Copy to:-

CONFIDENTIAL/REGISTERED.

1. Sri S.A.A.Rizvi-----
Addl DG DE(ACQ),
Min. of Defence
New Delhi -110066.

The entire position projected by ADEO, Agartala is not with proper context and is complete misrepresentation. This officer has been dodging his higher authorities by incorrect and baseless information at every stage doing no verification of any fact.

It is height of inefficiency of this officer that he wanted his superior authorities

to engage a Counsel in this case who is no longer in the State Govt. Panel Counsel a condition precedent stated in the DG DE sanction is a few years earlier. The ADEO, Agartala has been falsely reporting that Dr Bhattacharya a Central Govt. Standing Counsel which he was never and which he is not. As a result instead of attending the cases with cash assignment already released for nearly last 2 months which might not have been put to use by him as he is bent upon swelling the file with baseless and connected information-s. This officer is not fit to be kept at Agartala as he has also done a strange feat of filing an SLP in the Supreme Court directly against some order of lower Court in Agartala. We are taking all possible action for defending the reference cases by resorting to the arrangement already being followed prior to Dr Bhattacharya's appointment in the interest of the State under personal supervision of DEO, Guwahati.

Contd.....2

*To Desked
Agartala, Assam
8-8-76*

-4-

CONFIDENTIAL/REGISTERED.

2. The Defence Estates Officer (By name) .. For urgent
Guwahati Circle, Guwahati.. action and report all
proper action taken in

the interest of state by 29th February, 96 and approaching
this Directorate if a further cash assignment is required.
You should know that the previous requirement of ~~Rs 97,580/-~~
Rs 97,580/- projected by ADEO, Agartala and forwarded by you
has not been endorsed at all by the Branch Secretariate
at Calcutta and neither so far their Head Office in
Delhi has been able to throw any line on this quantum
showing that this demand is not appropriate. This Direc-
torate cannot be forced to release cash assignment just
on the whim of ADEO, Agartala who has decided to mislead
his higher authorities on facts.

Sd/- xx xx xx

N .O.O.

Director, DE (lands), EC Calcutta.

Conf/Regd.

Shri R.P. Sehgal
Addl DG DE (ADM)
Min. of Defence
New Delhi -110066.

for information please and
definite clarification that
ADEO, Agartala has been found
to be careless in doing
his duty and acting in

disregard of the functional instruction
of his Superior Officer.

*A Westhead
Agartala, Assam date
26-8-76*

K.N. Bhattacharya

Sr. Advocate

Senior Central Govt Standing
CounselGOVT. OF INDIA
MINISTRY OF LAW JUSTICE
& COMPANY AFFAIRSOffice of the
Senior Central Standing Counsel

GAUHATI HIGH COURT.

AGARTALA BENCH,

Agartala - 799001

Dated:- 22-6-96

To
The Defence Estate Officer,
Gauhati Circle,
Camp at Agartala.

Ref : Your letter No. TR/234/REF/Fees dated 21.4.96

Sub : Appointment of Dr.HK. Bhattacharya,
Advocate, for defending court cases.

Sir,

I have explained to you orally every thing during discussion in my chamber on 21.04.1996.

The points you raised in your letter are answered as follows:

Re : Paragraph (a)

I had recommended Dr. H K. Bhattacharya ,Advocate, for appointment considering his performance and standing as a practising lawyer.

It is not correct that he is no more a state Govt. panel lawyer. Please vide Govt. of Tripura , memorandum dated 3.6.93 (copy enclosed) in which his name appears in the High Court and District Courts.

Contd...2

*A. K. S. S. S. S.
Agartala, M. K. G. S.
8-8-76*

-2-

By a notification dated 23.9.94 some Assistant Public prosecutors were appointed by the Govt. of Tripura for conducting criminal cases. This ~~nothing~~ has nothing to do with the list of panel Lawyers (Civil) appointed by the State Govt, vide memo dated 3.6.93 referred to above.

Re : Paragraph ~~120~~ (b)-

Payment of fees are normally to be made as per Min of Law Schemes unless a different rate is fixed by negotiation. The appointment of Dr. Bhattacharya may be regularised if it is already not a regular appointment.

I have seen his sincerity in conducting your cases and his dealings with your Officers which I found quite ~~appreciable~~ appreciable.

Re : Paragraph (c)-

Since Dr. Bhattacharya has conducting the cases in question in District Court as well as in the High Court and the cases went up to Supreme Court from where these have been remanded to Reference Court and since Dr. Bhattacharya is well conversant with these cases, I feel he may be entrusted with these cases, He may be advised to take my advice as and when he finds any difficulty. Moreover the Govt. Advocate Tripura remains extremely busy with State Govt. cases. The High Court on some occasions remarked that the State Govt. should engage more Govt. Lawyers and as such I feel Dr. Bhattacharya, may be entrusted with the cases in the interest of proper conduct of the cases. However it is up to your Department to decide.

Thanking You

Yours faithfully

(K.N. Bhattacharya)

No.F.23(1)-Law/75
GOVERNMENT OF TRIPURA
Law Department

Dated, Agartala, the 3rd June, 1993

M E M O R A N D U M

In continuation of this Department's memo of even number dated the 15th May, 1993, the State Government hereby approves the additional list of panel lawyers as mentioned below for conducting **Civil and Criminal** in the Gauhati High Court, Agartala Bench and Courts Sub-ordinate there-to Agartala for and on behalf of the State of Tripura or for conducting such cases may be assigned to them by the State Government from time to time.

LIST CONTAINING THE NAMES OF PANEL OF SENIOR ADVOCATES FOR HIGH COURT AND DISTRICT COURTS/

1. Shri S. Deb.
2. Shri B. Das.
3. Shri K. N. Bhattacharya

While conducting cases for the Government they will do so independently along with a Dr. Lawyers of their choice.

LIST OF PANEL LAWYERS (CIVIL) FOR HIGH COURT AND DISTRICT COURTS.

1. Shri M. Nath.
2. Shri Madhusudan Mazumdar.
3. Shri Sankar Das.
4. Dr. H. K. Bhattacharya.
5. Shri Abhijit Ghosh.

LIST OF PANEL LAWYERS (CRIMINAL) FOR HIGH COURT AND DISTRICT COURTS.

1. Shri Hirendra Kr. Choudhury.
2. Shri Bhaskar Choudhury.
3. Shri Pradip Das.

*A. Desai
Agartala, Assam
8-8-93*

P. K. Sarkar.
L. R. & Secretary, Law,
Government of Tripura.

Con - 2

Copy forwarded for information to:-

1. The Joint Secretary to the Hon'ble Chief Minister, Tripura for kind information of the Chief Minister.
2. The Advocate General, Tripura.
3. The Registrar, Gauhati High Court, Agartala Bench, Agartala.
4. The District & Sessions Judge, West Tripura, Agartala/South Tripura, Udoipur/North Tripura, Kailashahar.
5. The D.M. & Collector, west Tripura, Agartala /South Tripura Udoipur/North Tripura, Kailashahar.
6. The Government Advocate, Tripura, Agartala.
7. The public prosecutor, ~~West Tripura District~~ Agartala Bench of the Gauhati High Court.
8. The Public Procecutor, West Tripura District Agartala
9. The Government pleader, west Tripura Agartala.
10. All Department's /Heads of Departments.
11. The panel lawyers concerned Shri/smti Dr. H.K. Bhattacharya Advocate, Agartala Bar, West Tripura.

Sd/- G.C.Saha

Under Secretary, Law,

GOVERNMENT OF TRIPURA

-24-

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ANNEXURE- E-1

K.N.Bhattacharyya
SENIOR GOVT. ADVOCATE
TRIPURA, AGARTALA

DIAL: ~~4266~~ Office 4266

RESI: 3303

No. 1119 /GA/90 Dated, Agartala, the 17/11/1990

Dear Mr,

As discussed with you, I propose the name of Dr. H.K.Bhattacharjee, Advocate, Agartala Bar, who will agree to your terms of fees payable to Central Government Standing Counsel, if he is appointed. He is a Government Panel Lawyer.

With kind regards,

Sincerely Yours,

(K.N.BHATTACHARYYA)

Senior Government Advocate

TRIPURA.

To
Mr. K.P.S.Bawa,
Joint Director,
Defence Estates,
Shillong.

*A. West
Agartala, Advocate
26-8-76*

ANNEXURE :- F

DO.NO.TR/234/REF/FEES/51

ASSTT. DEFENCE ESTATES OFFICE

PO ABHOYNAGAR : ~~XXXXXXXX~~ AGARTALA

Dt. 09 FEBRUARY 1996

Your kind attention is hereby invited to inordinate delay in implementation of the Hon'ble Supreme Court orders dated 25-7-95 and 26.7.95 passed in 68 Nos of SLPs filed by the ADEO, Agartala by misinterpreting the said orders as well as raising irrelevant queries time and again at this vital stage specifically when the verdict of the Apex Court is in our favour. The best reasons of dragging those cases jeopardising Govt. interest is not understood by this office.

In this context, kindly refer to your Dte. Gen. letter No. PC XVI/201/295/ACQ/EC/DE dated 5.12.95 and this office latest post copy of telegram No. TR/234/REF/FEES/ADVOCATE/49 dated 16.1.96 (forwarded by Speed post service) addressed to Director, (Lands) DE.EC/JD,DE, Shillong/ DEO,Gauhati enclosing copy to the Dte. Gen. regarding payment of legal fee to Sri H.K. Bhattacharjee for defending the above subject cases in compliance with the Apex Court orders .

It is submitted that despite your valuable advice contained in your letter under reference and our repeated requests reminders continuing since last five months, neither any placement of fund nor any concrete decision in this regard

Contd....2

*Alloved
Agartala,
Asstt. Secy.
8-8-96*

has so far been received in this office . On the other hand, the Court below at Agartala have to dispose of these cases within three months w.e.f. 28.8.95 as per directive of the Apex Court . Accordingly some cases were listed for orders on 2.1.96 and subsequently passed over. Some cases are again listed on 26.2.96 and 29.2.96 But the defending Govt. Counsel is unable to take any steps due to adverse suggestions as offered time to time by our deptt. and a paucity of fund . Owing to our inability to take any firm decision even after a lapse of five months, the defending counsel is now insisting upon the decision as to whether our deptt. is at all interested to contest those cases in accordance with the order of the Apex Court .

If such delay process continues in declining such vital cases at this critical juncture, an exparte decision in favour of the claimants may taken place resulting payment of several crores of Govt. money and in that case this office will not be held responsible in future .

In view of the above actions as to how these cases are being dragged during last few months instead of taking any effective measures is furnished hereunder for your ready reference and immediate intervention to safeguard the Govt. interest please .

Contd...3

At the very outset, it is needless to mention here, it was noticed by D.G., DE that collector did not take adequate interest to defend the reference cases u/s 18 of the LA Act and arbitration References under RAIP Act, 1952 . Accordingly it was decided that the DEO/ADEO should implede as a party to safeguard Govt. interest properly .

Similarly, considering deep concern at disproportion-
ate enhancement of ^{valuation of} ~~value~~ acquired land by the Id.
Distt. Judge and LA Judge and as confirmed by the Hon'ble
High Court at ~~Agartala~~ Agartala the Deptt. decided to file
SIPs against all such impugned orders. As you are fully
aware that ultimately their Lordships of the Hon'ble
Supreme Court were pleased to pass the above subject
orders dated 25.7.95 and 26.7.95 (Appendix-'A' and 'B'
resp.) by remitting those cases to the Reference Court
for ~~the~~ fresh trial setting aside the award and decree
pronounced earlier by the Id. LA Judge and as confirmed
by the High Court in their impugned orders passed in all
those cases. The Apex Court further directed the Ref.
Court to consider and dispose of those cases afresh
within three months from August 28, 1995 . The appellant
ile. Union of India was also directed to appear before
the Ref. Court on 28.8.95 to adduce legal evidence for
for determination of true and correct market value of

Contd...4

land prevailing as on the date of notification .

Immediately after receipt of the aforesaid order dated 26.7.95 and Decree disposing of the Appeals from the Registrar, Supreme Court through Speed post service on 31.8.95 and 19.9.95 respectively Dr. H.K. Bhattacharjee, defending counsel was requested to take necessary steps. Dr. Bhattacharjee, in turn intimated this office categorically specifying the ~~near~~ necessary steps required to be taken by the deptt. vide his letter dated 19.10.95 (Appendix-C) enclosing a pro-receipted bill amounting to Rs. 97,580/- as advance required to meet up the Court expenditure for filing/drafting/Court fees etd in all those 68 Nos. cases on the ~~an~~ basis of prescribed rate stipulated by the Ministry of law and Justice. The said letter dated 19.10.95 together with pre-receipt bill in duplicate were forwarded to the D, (L) through Speed post service vide this office letter No. Tr/234/REF/FEES/ADVOCATE dated 20.10.95 .

Thereafter, as per instruction of the Director (Lands) DE,EC, the DEO Gauhati came to Agartala and had a discussion with Dr. Bhattacharjee, Advocate, in details on various points raised by the Director (Lands). DEO, Gauhati letter No. TR/234/AGG/2 dated 24.11.95 enclosed

Contd...5

- 5 -

as Appendix-B . The DEO Gauhati also conveyed the decision of Director (Lands) that it would be utmost necessary to implede our department itself as an interested party first and directed to move petitions to the respective courts . Such irrelevant suggestions for implement as an interested party was rejected by the defending Counsel on the ground that the deptt. was already a party being the appellant in those SLPs. In fact, the suggestion for filing petitions to implede Union of India as an interested party is nothing but a laughing Stoke at this vital steps. The letter dated 29.11.95 of Dr. H.K. Bhattacharjee, Advocate, is enclosed as Appendix-'E' Advocate in his letter Dated 29.11.95 (Apendix-E) also requested DEO, Gauhati to intimate Departmental decision and accordingly early placement of fund to enable him to take further necessary steps in this regard .

The DEO, Gauhati vide his telegram dated 01.12.95 and post copy No. TR/234/ACQ dated 1.12.95 (Apendix-F) Submitted his detailed report to the Director (Lands) and requested for immediate placement of fund .

Thereafter the director (Lands) DE, EC vide his letter No. TR/234/ACQ/LC-8/115 dated 07.12.95 (Apendix-G) forwarded the pre-receipt bill dated 19.10.95 as advance

Conted...6

required to meet up the court expenditure for filing/drafting/Court fees tax etc thus prepared by Dr. Bhattacharjee, Advocate on the basis of prescribed rate of Ministry of Law Justice, to the Legal Adviser, Min. of Law Calcutta stipulating certain conditions at his own endorsing copies to the DEO, Gauhati/ADEO, Agartala raising following irrelevant queries stating for their urgent checking :-

- a). if DEO/ADEO was formal party before Reference Court/High Court in these cases.
- b). If, LAO was party at Reference, High Court at Supreme Court stages .
- c). Any action taken so far by the LAO before the Reference Court on remanded cases .
- d). Which counsel represented the LAO ?
- e). If, at any stage of litigation up to supreme Court, the LAO/his counsel formally represented Union of India .
- f). If, Dr. Bhattacharjee still on the State Govt. panel.

The replies of these observations was sent to the DEO/JD, Shillong/Director (Lands) through Speed post Service vide this office letter No. TR/234/REF/FEES/41 dated 1.1.96 (Appendix-H) as called for by the D(L) for his urgent checking .

Contd-....7

As per instruction of the Director (Lands) now again the JD, DE Shillong vide ~~in~~ his confidential letter No. TR/234/REF/FEES dated 22. 1. 96 (Appendix-I) further confirmed that "the LAG was to have appeared before reference Court" . interalia asking the Tripura Bar Councel at Agartala regarding the status of Dr. Bhattacharjee, Advocate at this crucial moment as if when patient is lying on the operation table, the appointment/status of attending surgeon is being enquired .

Now if the defending counsel Dr. Bhattacharjee takes it prestigious issue on the action taken so far on our part, may create another problem for us for defending those cases. It would not be out of place to mention here that Dr. Bhattacharjee was appointed by the Dte, General to Defend our cases as a special case particularly when there was none to defend defence cases due to a nexus between advocates and other authorities at Agartala. Considering the pecuniary situation prevailed at that time, the DEO Gauhati, JD, DE Shillong and Director (Lands) visited this station on several occasions and discussed at various levels and somehow, convinced Dr. Bhattacharjee advocate to defend our cases. Accordingly, on the basis of strong recommendations at command level vide D.DE.EC letter No. TR/234/ACQ/EC/DE/LC-8/40 dt. 13.12.90, Dr. Bhattacharjee advocate was appointed in term of legal fees and other

charges payable at the prescribed rates applicable to Central Govt. standing Counsel.

Hence, raising queries regarding status/applintment of Dr, Bhattacharjee time and again is meaningless and definitely jeopardize ~~Govt.~~ Govt. interest .

Besides restrictions has also ~~be~~ been imposed on this office on any official correspondence in litigation matters directly to higher authorities but to follow proper channel vide Director (Land) DE E.C. letter No. TR/234/ACQ/LC-8/147 dated 22. 1. 96 (Appx-J) This relates submission of certain documents/information pertains to SLP(C) No. 21284/93 U.O.I. - Vr- Sukhai Deb Barma and SLPs No. 21665/93 U.O.I. Vr. Brajendra Kumar Singh and Ots., directly to your Dte. Genl due to pausity of time vide this office speed post letter No. TR/234/REF/I/ACQ dated 03.1.96, required to be produced ~~now~~ before the Apex Court's hearing fixed on 15.1.96 m as per instruction of Dte. Genl telegram and discussion with the undersigned at ~~at~~ Delhi. Such type of restrictions for maintaining through proper channel from station like Agartala may hamper other SLPs pending in the Supreme Court for non-submission of documents/information in time as and ~~was~~ when required to be produced before the Apex Court .

Conte d...9

It is evident from the facts stated above that action taken so far within Command level may lead to ex-parte decision at any moment in favour of the claimants resulting payment of several crores of money from defence exchequer. Hence, your immediate kind intervention in this matter is earnestly requested to safeguard Govt. interest .

Yours

SHRI S. A. A. RAZVI ADDL DG-
DEFENCE ESTATES, NEW DELHI

Copy to :-

1. Shri S.K. Arora, DEG -- With reference to his letter
Dte Genl. DE No. 953/CONTEMPT/STATS/DE
New Delhi dtd 01.12.95 addressed to
this office regarding monitoring of contempt cases and
implementation of court
Judgment.

Considering inordinant delay in implementation of the Hon'ble Supreme Court orders dated 25.7.95 and 26.7.95 (Appendix-A and B) passed in 68 Nos of SIPs filed by the ADEO, Agartala, an immediate necessary action is solicited to avoid any ex-parte decision in favour of the claimants involving payment of several orders of Govt.

Contd...10

money . All appendices cited above are enclosed herewith for favour of your ready reference please .

2. The Director, DE ... With ~~for~~ reference to above
Min. of Defence and considering the facts
Eastern Command narrated, above an immediate
Calcutta-17 . necessary action is solicited
to avoid any ex parte decision
in favour of the claimants
resulting drainage of several
crores of Govt. money .

3. The Director, (Bands) .. With reference to above and
Min. of Defence the following requests/remi-
Eastern Command nders made vide this office
Calcutta.17 letters/telegrams on the
above issue.

- 1). Speed post letter No. TR/234/REF/FEES/ADVOCATE
Dtd. 20.10.95 .

- ii)- Telegram and post copy of No. TR/234/REF/ACQ/
GENERAL/4 dated 30.10.95 .

- iii)- Telegram and post copy No. TR/224/REF/FEES/30
dated 10.11.95

- iv). Speed post letter No. Tr/234/Ref/FEES/32 dated
dtd. 20.11.95 .

- (v) Telegram and post copy No. TR/234/REF/FEES/VOR-III
Contd....11
33 dtd. 30.11.95.

requesting immediate placement of the fund w

Considering the urgency of these cases he is requested to kindly contact D(L) immediately once again to avoid any lapse on our part and to safeguard Govt. interest please .

Sd/- illegible

Asstt. Defence Estates Officer

AGARTALA

N.K. RAY

INTERNAL

TR/234/REF/GEN

FLOTT COPY

ANNEXURE - G.

~~20~~ - 40 -

SPEED POST

No. 134/1/ADM/DE

Government of India
Ministry of Defence
Dte Gen Defence Estates
West Block iv. RK.Puram
New Delhi - 110066

Dated :- 21st May.1996

The Director. Defence Estates
Ministry of Defence
Eastern/Southern Command
Calcutta/ Pune.

SUB: POSTING/ TRANSFER: A.D.E.O.S

The following posting/ Transfer of Asstt. Defence Estates Officers are made:-

1. Shri P.K.Das. ADEO. Guwahati is transferred and posted as ADEO Agartala vice Shri N.K.Ray posted out. Shri Das will hand over his charge to DEO Guwahati and proceed to Agartala immediately to relieve Shri N.K.Ray.
2. On relief by Shri P.K.Das , Shri N.K.Ray ADEO Agartala is transferred and posted as ADEO Thiruananthapuram against an existing vacancy.He will relieve Shri G.Venkateswanlu ADEO.Secunderabad of his additional charge of ADEO Thiruananthapuram .
3. Shri N.V.Nair, ADEO in DEO Delhi Circle is posted as ADEO IN DEO Guwahati against the vacancy caused by transfer of Shri P.K.Das.

A Desd
Agartala
8-8-76

CONTD.....2

4. The date (FN/ AN) of ~~relinquishment~~/assumption of charge will be intimated to this Dte General immediately after the event.

Sd/- Illegible

(Director General Defence Estates)

Copy to:-

Director , Defence Estates

Central/Nothorn/Western Command/NIMA

~~X~~
Lucknow / Jammu Cannt/Manimajra/Delhi Cannt

Speed Post

Shri N.K.Ray

Assistant Defence Estates Officer

P.O.Adhynagar,Western Tripura

Agartala - 799005

Annexure H

-42-

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To

The Director General,
Defence Estates (Adm. Sec)
Ministry of Defence
West Block No.4 Wing Nos .202 3& 7
Sector -1, R.K.Puram
New Delhi -110066.

By Speed Post Service

NO.ADM/AGAR/179/IV

Dt. 31st May 1996

Subject:

Sir,

Reference your speed post letter No.134/1/ADM/DE dated 21-5-96 addressed to the Director DE EC/SC/ endorsing copy to me amongst others regarding posting transfer of ADEO's.

That Sir, I am compelled appeal before your kind honour and submit the following few lines for your reconsideration of my posting from Agartala (Tripura state) to Thiruananthapuram (Kerala).

That Sir, My son will appear the Final Board examination of class -X after 8 months. So it is not proper to shift my family at this crucial stage which will surely hamper my son's education. Moreover, it is also not possible to keep away my family in such a far station at thiruananthapuram (KERALA).

In view of the position narrated above, I would earnestly request you to kindly reconsider my posting from Agartala (Tripura) to Thiruananthapuram (Kerala) so that my son can appear the Final Board Examination without any hinderance.

Hope, this prayer of mine will surely get your sympathetic consideration and natural Justice.

Yours faithfully

Date: May 1996.

(M.K.Ray)
Assistant Defence Estates
Officer.

AGARTALA

con. 2

A. Deshpande
Agartala
Belgaon

-2-

Copy to :-

The Director
Defence Estates
EASTERN COM MAND
CALCUTTA- 17.

- With reference to above ,Considering my position stated above it is earnestly requested to kindly apprise the DG DE to reconsider my posting from Agartala (Tripura) to Thiruananthapuram (Kerala) so that my Son's education carrer is not disturbedat this crucial stage.

The Joint Director }
Defence Estates }
Shillong -1 }

The D.E.O. Gauhati }
Gauhati-3 }

- With reference to above, In view of my position narrated above,they are also requested to kindly apprise the DG DE & Shri P.K.Das ADEO , may kindly not be relieved untill my prayer is reconsidered.

Sd/- N.K.RAY

A.D.E.O. AGARTALA

-44-

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ANNEXURE- I

PRIORITY MSG

DATE : 31.7.96

ZCZC EATAT0001 XXX EATATA EZ

TELEGRAM

X 1910 CA 11 NEW DELHI Q 30 STMPLY 70/75

N K RAY ASSISTANT DEFENCE
ESTATES OFFICER PO ADHYNAGAR
AGARTALA 05

REFOLET ON POSTING/TRANSFER OFFICERS AAA A NUMBER OF OFFICERS
STILL HOLDING ON TO THEIR PRESENT STATIONS ON ONE OTHER
PRETEXT AAA NO FURTHER CHANGE IN THE ORDERS ISSUED ARE
POSSIBLE AAA ALL CONCERNED TO COMPLY WITH THE ORDERS
FORTHWITH AND INTIME DATES OF ASSUMPTION AND RELIN-
QUISHMENT OF CHARGE AAA DELAY WILL ENTAIL RAKSHA

SAMPADA

COL

=====

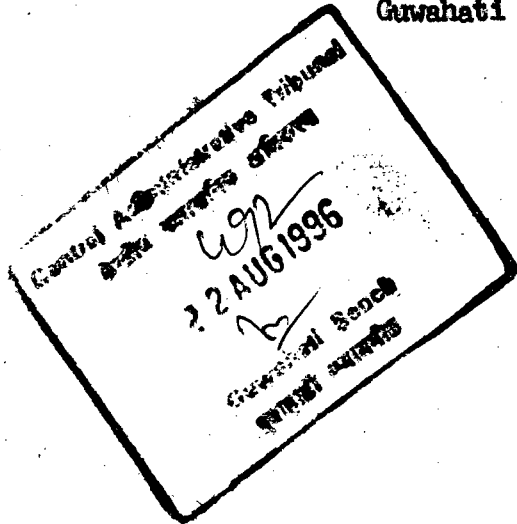
DNDCPBo117

DNDMSS1301

NNNN

M. K. Ray
Agartala

In the Central Administrative Tribunal
Guwahati Bench



In the matter of :-

OA No.160/96

Shri Nirmal Kr. Ray

- Vs -

Union of India & Ors

- And -

In the matter of :-

Show cause reply filed by the Respondents
No. 1,2, 3 and 5 as per order dated
9.8.96 passed by the Hon'ble Tribunal
regarding interim relief.

Show cause reply

The humble Respondents No. 1,2,3 and 5
submit their show cause reply as follows :-

1. That the transfer order in question relates to three officers including the applicant and the same has been made for administrative reasons and for public interest vide Annexure - 'G' annexed to the O.A. By that order the applicant has been transferred to Thiruvananthapuram. As per transfer order Sri P.K. Das is to move from Guwahati to Agartala who would relieve the applicant. One Mr. Nair has to come from Delhi to Guwahati to take over the post at Guwahati against the vacant post of Mr. P.K. Das. Mr. Nair have been relieved on 8.8.96 and joined his duty on 19.8.96 fore-noon. He has been taken on the strength at Guwahati with effect from 9.8.96. Mr. P.K. Das has been relieved on 19.8.96 on joining of Mr. Nair.

Filed by:

Chauhan

(MD. SHAUKAT ALI) 22/8/96
Jr. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench, Guwahati

*Received
22-8-96*

2. That now by virtue of interim order dated 9.8.96, the applicant is continuing at Agartala although Mr. P.K. Das has been relieved from Guwahati, but now he shall not be able to join there at Agartala as there is only one post of Asstt. Defence Estates Officer at Agartala and as such the interim order is liable to be vacated to enable to Mr. P.K. Das to join at Agartala.
3. That from the prayer of the applicant it transpires that the applicant is interested to stay at Agartala only though he has completed more than 2½ years at Agartala and his normal tenure at Agartala is only 2 years. Just to achieve his goal and to mislead the Tribunal the applicant has alleged malafide against the Respondent No.2, who is not the administrative authority. Respondent No.1 is the authority who has transferred him.
4. That the respondents beg to state the allegation of malafide and illegality are baseless and unwarranted, and as such, it is a fit case for vacating the interim stay order.
5. That your Respondents beg to state that transfer is normal and routine one and made for public interest and for administrative reasons and as such, the applicant is not entitled to interim relief and as such the ~~applicant's~~ application is liable to be dismissed.

It is, therefore, respectfully prayed
that the interim order dated 9.8.96 may
not be continued/granted else there will
be irreparable administrative difficulties.

VERIFICATION

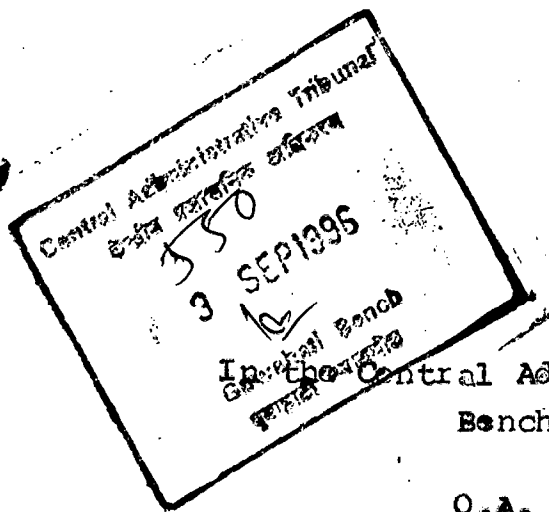
I, Sri L.K.Pegu, Defence Estates Officer, Guwahati Circle, Guwahati do here by solemnly declare that the statements made above are true to my knowledge, belief and information and I sign the verification on this 21st day of August, 1996 at Guwahati.

Declarant.



Filed through : S. Ali

Sr. C. G. S. C.
CAT, Guwahati.



Central Administrative Tribunal
Bench : Guwahati

O.A. 160/96

Nirmal Kumar Ray

-vs-

Director General Defence Estates & Others.

Synopsis of Submission

The applicant respectfully submits the following for consideration of this Hon'ble Tribunal to decide the application on merits :-

1. By a consented order dated 26th August 1996 passed by this Hon'ble Tribunal, the Respondants were directed to submit the written statement and thereafter to fix the matter for final disposal on 5th September, 1996. However, the written statement has not been submitted till date on which this written submissions are prepared, i.e. upto 2nd September 1996. As a result, the applicant cannot anticipate the stand that the respondents may take as against the categorical assertion of the applicant with regard to factual matrix.
2. However, as it is apparrant from the order dated 26th August 1996 passed by this Hon'ble Tribunal, the respondents pleaded three specific grounds against the order of stay passed by this Hon'ble Tribunal on 9th August 1996. The three grounds, in brief, are :-

Contd....Page/2

Ray

Filed by Nirmal Kumar
03/9/96
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(i) Interim order of stay has caused administrative inconvenience as Shri P.K.Das, the reliever of the applicant has since been relieved of his duties.

(ii) The allegation of malice/malafide is unfounded and

(iii) The transfer was made in the normal course of administratively and for public interest after the applicant completed his two years tenure.

3. With regard to the first ground that administrative inconvenience has been caused and Shri P.K.Das has already been released. It is worthwhile to bring on record that Shri Das was relieved on 19th August 1996 in spite of and in violation the order of stay passed on 9th August 1996 by this Hon'ble Tribunal. The order not only violates the judicial order but has palpably flouted the administrative order passed by the respondent No.1. The respondent No.1 by his order dated 21st May 1996 directed that Shri P.K.Das here would be relieved first in the sequence of transfer of three officers under the order. But from the submission of the Ld.Sr.C.G.S.C. it appears that Mr N.V.Nair, has already relieved Shri P.K.Das as a result of which the administrative inconvenience, as pointed out, has arisen.

It is evident that if any administrative inconvenience has at all been caused, it is the creation of the respondent No.3 defied the sequence of transfer contemplated in the transfer order dated 21st May 1996. Had the respondent obeyed the order of this Hon'ble Tribunal passed on 9th August 1996, no inconvenience would have arisen.

No urgency has been pleaded by the Respondant to fill up the vacancy at Thiruananthapuram which is long under the additional charge of ADEO Secunderabad. In view of the above submission, the first ground of the respondent merits no consideration by this Hon'ble Tribunal.

4. As regards the second ground that the plea of malafide is unfounded, it may be submitted that the Hon'ble Supreme Court in N. Shankar Narayanan -Vs- State of Karnataka (AIR 1993 S.C. 763) has observed - "It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture". In the present case the plea of malafide is well founded on factual matrix. The specific and categorical statement by the applicant in the O.A. in para V, VI and VII detailing the facts constituting the malice in fact cannot be brushed aside by the respondents.

From the matrix given in the said three paragraphs of the O.A. no other reasonable conclusion can be deduced except malafide.

5. It is now a settled law that transfer being a condition of service cannot be interfered with unless it is found to be inviolation of any rule or prompted by elements of malice. Order of transfer prompted by malafide or for a collateral purposes cannot be termed as transfer in public interest.



The Hon^{ble} Supreme Court in E.P.Royappa case : AIR 1974 SC.555, held "However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in Public interest. If the exercise of power is based on extraneous consideration or for achieving alien purpose or oblique motive it would amount to malafide and colourable exercise of power".

Similar decision was pronounced by the Hon^{ble} Supreme Court in Shri Rajendra Roy -vs- Union of India : AIR 1993 SC 1236, Malice viciate everything. If malafide can be presumed reasonably order of transfer would be struck down by judicial interference.

6. Moreover, this Hon^{ble} Tribunal has entertained this O.A. and on the prima facie was satisfied that the order of transfer is prompted by malafide and as a result, an order of stay was passed on 9th August 1996 by this Hon^{ble} Tribunal. In that situation this Hon^{ble} Tribunal would examine the grounds taken by the applicant and to decide whether from the factual matrix or malice in fact can be reasonably concluded.

The Hon^{ble} Supreme Court in St. Anthony's College, Shillong case : AIR 1988 SC.2005, while dealing with the question of validity of transfer order held "The respondent so long as submits to the order of transfer and complies with it the court has nothing to do. But if he does not comply with it and questioned it before the court, the court will have to consider his grievances and to decide if the impugned order of transfer is legal and valid" (Paragraph 11, last lines).



7. The third ground taken by the respondent that the impugned transfer is a routine transfer has to be rejected on the face of it. The applicant is entitled to a choice of posting on completion of tenure in the North East Region. But before obtaining his choice the applicant has been transferred by the respondent without assigning any reason or not having obtained the option of choice of the applicant.

8. To summarise the points malice in fact or malafide is on the surface of the facts stated in the application. The respondent No.1 infected by the vindictiveness of respondent No.2 which has caused the transfer of the applicant and such a transfer order tinted with malafide would not be sustained by this Hon'ble Tribunal.

9. The applicant could supplement his pleading by additional facts as follows :-

(a) By issuance of transfer order dated 14th May 1992, respondent No.1 here posted out Shri R.L.Sangal, ADEO from DEO LUCKNOW Office to take over charge at Agartala. In pursuance of the said transfer order dated 14th May 1992, Shri Sangal, ADEO, was relieved from the Office of the DEO Lucknow Circle vide their Office Order No.36 dated 25th May 1992. Shri Sangal approached the Hon'ble Administrative Tribunal, Lucknow Bench, challenging the order of transfer.

The Hon'ble Tribunal, Lucknow Bench, interfered with the order of transfer. Consequent on which the Respondent No.1 cancelled the order of transfer and Shri Sangal was allowed to resume his duties at Lucknow. The Respondent No.1

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The Respondant No.1 issued the order of modification/cancellation by letter No.134/1/ADM/DE/92 dated 25th June 1992 in persuasion of the Hon^{ble} Tribunal, Lucknow Bench.

(b) One Shri N.N. Talukdar, SDO-III posted in the Office of the Respondant No.3 challenged his order of transfer dated 6th April 1993 issued by the Respondant No.1 before this Hon^{ble} Tribunal. The Case was registered as O.A. 52/94 and is yet to be admitted. In spite of the absence of any stay order the said applicant Shri N.N. Talukdar is allowed to work in the Office of Respondant No.3 till date. Administrative exigency or inconvenience has not been pleaded by the respondents in the case of Shri Talukdar.

10. In case, the case is not finally decided on 5th September 1996, the applicant would submit application amending the original application to incorporate the above stated facts.

11. The synopsis of submissions is in addition to the oral submission before this Hon^{ble} Tribunal by the Council which may kindly be considered.

Dated, _____
The 2nd September, 1996

SIGNATURE

Nirmal Kumar Roy
(Applicant)

In the Central Administrative Tribunal,
Gauhati Branch.

O.A.No. 160/96

Shri N.k. Ray

Vs

Union of India & Ors

- And -

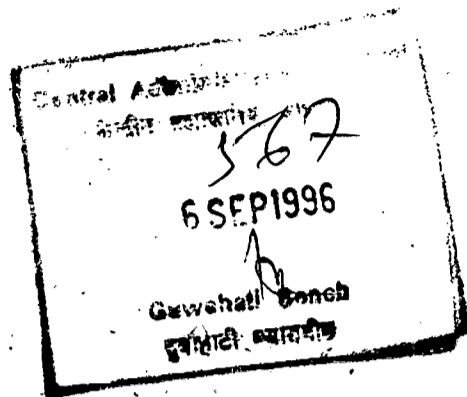
In the matter of :-

Written statements submitted by the represents
No.1, 2, 3 and 5.

Written statements :-

The ~~humble~~ humble Respondents submit their
written statements as follows :-

1. That with regards to statements made in paras 1 to 5 of the application the Respondents have no comments.
2. That with regard to statements made in paras 6.1 and 6.2 of the application the Respondents have no comments.
3. That with regard to statements made in para 6.III of the application, the Respondents beg to state that his transfer made earlier was as per transfer policy . The present transfer of the applicant is a normal transfer made for purely on administrative reasons and for public interest without any malafide intention.
4. That with regard to statements made in para 6.IV of the ~~application~~ application the Respondents beg to state that the same are not correct and hence denied the applicant's contention that his transfer is malafide is not correct and without any basis. He is put strict proof of it.
5. That with regard to statements made in paras 6.V, VI, VII and VIII of the application the respondents have no comments, the same being matter of ~~the~~ records.
6. That with regard to statements made in paras 6.IX, and X of the application, the respondents beg to state that it is not correct that the applicant has been transferred during his tenure, nor on the



Filed by.

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1/1/1996
(M.D. SINGH, AIT) 6/9/96
Gt. Central Office, High Court
Central Administrative Tribunal
Gauhati Branch

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Received
6/9/96

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basis of the various letters issued by Respondent No. 2. Respondent No. 2 is a senior officer controlling the work of the applicant. The senior officer can always send his recommendations but the decision in this regard are taken by the Respondent No.1 . In fact he has been transferred after completion of ~~the~~ his tenure at Agartala . He joined at Agartala on 11.1.94 and he completed his two years of tenure on 10.1.96. It is not correct that he has been transferred in the midst of academic session, but the transferred was made after the completion of academic session in April,1996 . The applicant was transferred in May, 1996, that is after completion of academic session of his sen. He could have been relieved in May,1996, itself but the applicant deliberately delayed in getting his relieve order. That apart the transferred of any employee is an incident of service and children academic difficulties and domestic difficulties are in-herent. These things happens and will happen some times to an employee. These does not mean that the applicant should not be transferred from his present place to Thiruvananthapuram where his services are required for public interest.

7. That with regard to statements made in Para XI of the application, the Respondents beg to state that the applicant made a representation to the Respondent No.I directly with a copy to the Director, Defence Estates, Eastern Command, Calcutta, Joint Director, Defence Estates, Shillong and the Respondent No.3, for information and necessary action. The applicant also personally went to Delhi after filing his representation to exercise pressure on the authority to cancel the transfer order but could not succeed . The letter dated 31.7.96 is a general letter issued to all the transferees not along to the applicant.

8. That with regard to statements made in Para 6 .XII of the application, the Respondents have no comments, the same being matters of records. However the applicant could have sought for relieve earlier, if desired.

Contd 3/-

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9. That with regard to Para 7 of the application regarding reliefs sought for, the Respondent beg to state that he is not entitled to any one of the reliefs sought for and ~~such~~ as such the application is liable to be dismissed.

10. That with regard to grounds of relief sought for, the Respondents beg to state that none of the grounds is maintainable in law as well as in facts and as such the application is liable to be dismissed.

11. That in view of ~~the~~ the facts and circumstances, mentioned above, the interim order is liable to be vacated forthwith.

12. That with regard to statements made in Paras 9 and 10, ~~of this~~ the Respondents have no comments.

13. That the Respondents submit that the transfer order of the applicant is a routine transfer without any illegality or malafide, ~~therefore~~ there is nothing to be interfered with the Hon'ble Tribunal and as such the application is liable to be dismissed.

14. That the Respondents submit that if the transfer order of the applicant is interfered with by the Hon'ble Tribunal there will be administrative inconvenience and as such the application is liable to be dismissed.

That at any rate the application is devoid of merit and hence liable to be dismissed.

VERIFICATION

I, Sri L.K.Pegu, Defence Estates Officer, Gauhati Circle, Gauhati do here by solemnly declare that the statements made above are true to my knowledge, belief and information and I sign the verification on this 6th September, 1996 at Gauhati.

Declarant. 

Filed through : S. Ali
Sr. C.G.S.C.
Cat, Gauhati.