

50/600

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

6

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

No. O.A. / 162/96

Mr. A. Deb Nath Applicant(s)  
VS-

NOT Respondent(s)

Mr. M. Chanda Advocates for the applicant(s)  
B. Baruah

Mr. S. Ali & Co Advocates for the Respondent(s)

Office Notes

Date

Courts' Orders

This application is in  
form and within time  
C. F. of Rs. 50/-  
deposited vide  
IPO No 3466/96  
Dated 8.8.96

Dy. Registrar

10/8/96

9-8-96

Learned counsel Mr.M.Chanda  
for the applicant. Mr.S.Ali learned  
Sr.C.G.S.C. for the respondents.

Mr.Chanda requests to take up  
this O.A. for Admission to-day  
unlisted on the ground of urgency.  
prayer is allowed.

Mr.Chanda submits that the  
applicant was transferred from  
Sonari to Shillong vide Establish-  
ment No.144/96 dated 19-7-96. He  
submitted representation dated  
26-7-96 to the Commissioner of  
Central Excise, Northeastern  
Region, Shillong praying for reten-  
tion at Sonari for further six  
months. In the meantime he had  
filed the O.A. No.134 of 96 on  
30-7-96. That O.A. was disposed  
of by this Tribunal vide order  
dated 30-7-96 with a direction to  
the Commissioner to dispose of  
that representation of the appli-  
cant keeping in view the situatic  
obtaining in his case and the  
transfer guidelines. The respon-  
dents were also directed not to  
implement the impugned transfer  
order till disposal of the repre-  
sentation. Thereafter a telegram  
was received by the applicant can-  
celling the released order. Howe-  
ver another telegram was received  
by him on 8-8-96(Annexure 7) rele-  
sing him from duty on the after-

14-8-96

Notice issued to the  
Concerned parties  
on 12.8.96.

*[Handwritten signature]*

2  
O.A. 162/96

9-8-96 noon of 9-8-96 and directing him to report to new place of posting at Headquarters, Shillong. Therefore, the applicant has submitted this present O.A. He submits that the main contention of the applicant is based on the transfer guidelines which lay down that general transfers should be affected at the end of the academic year and orders therefore should be issued sufficiently in advance and orders issued otherwise should contain reasons on the record.

Issue notice on the respondents to show cause why this application should not be admitted and the reliefs sought allowed.

Returnable on 23-8-96. List for show cause and consideration of Admission on 23-8-96.

Heard Mr. Chanda on interim relief prayer. Mr. S. Ali, Sr. C.G.S.C., opposes granting of interim relief. Pending disposal of show cause and consideration of Admission on 23-8-96, the respondents are directed to keep in abeyance the release order contained in the telegram as per Annexure 7 till 23-8-96.

Steps within to-day. As requested by Mr. M. Chanda, the notice to respondent No. 2 may be sent by speed post at the cost of the applicant.

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

lm

  
Member

3

G.A. 162/96

23.8.96

Mr M.Chanda for the applicant. Mr S.Ali, Sr.C.G.S.C for the respondents.

Show cause has not been submitted. Mr Ali seeks 3 weeks time for filing show cause. Allowed.

List for show cause and consideration of admission on 13.9.96.

The respondents are directed to keep in abeyance the release order contained in Telegram, Annexure-7 of the O.A. till disposal of the show cause.

*ba*  
Member

28-8-96

Copy of order dtd. 23.8.96 issued to the concerned parties.

pg

*Mr*  
23/8

*Ba*

Show Cause has not been filed

18.9.96

Learned counsel Mr M. Chanda for the applicant. Mr S. Ali, learned Sr. C.G.S.C. for the respondents. At the request of Mr Ali list for show cause and consideration of admission on 8.10.96.

*ba*  
Member

*BA*  
17/9

Show cause has not been filed

nkm

Service Reports are still awaited

8.10-96

Learned counsel Mr.M.Chanda for the applicant. Learned Sr.C.G.S.C. Mr.S.Ali for the respondents. Show cause has not been submitted. Mr.S. Ali seeks time for submission of the same.

List for show cause and consideration of Admission on 13-11-96.

*ba*  
Member

Service Reports are still awaited  
Show Cause has not been submitted

lm

*lm*  
9/10

*BA*  
12/11

13.11.96

None present for the applicant.

Leave note of Mr. S.Ali, Sr. C.G.S.C.

List for consideration of admission on 19.11.1996.

*[Signature]*  
Member

trd  
M/  
13/11

19-11-96

Learned counsel Mr.M.Chanda for the applicant. Mr.S.Ali, Sr.C.G.S.C. for the respondents. Written statement has been submitted by the respondents, copy of which has been served on Mr.M.Chanda. Mr.M.Chanda seeks time to consider the written statement.

List for consideration of Admission on 27-11-96.

*[Signature]*  
Member

lm  
M/  
19/11

27.11.96

Learned counsel Mr. M.Chanda for the applicant.

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

Show cause has been submitted on 20.11.96 and the rejoinder to the show cause has been submitted by the applicant on 26.11.1996. Perused the application, show cause and the rejoinder and heard counsel of both sides for admission. The case of the applicant in the application is in effect that he has no objection to carry out the transfer order but prays to allow him to stay in the present place of posting at Sonari till December, 15,1996. After due consideration of the matter I am of the view that there is no ground for scrutiny and decision of the application in so far as the transfer order is concerned. The

20.11.96

W/S filed by the  
Resps.

Service reports are still  
awaited.

26.11-96

Rejoinder of the W/S  
filed by the applicant.

1) Service reports are  
still awaited.  
2) Show cause has not  
been filed.

SP  
18/11

SP  
26/11

27.11.96 application is only a sort of stay order prayed against the release order vide Telegram at Annexure-7 of this application. In the facts and circumstances the application is not admitted and it is disposed of with the direction to the respondents to allow the applicant to remain in his present place of posting at Sonari till 15.12.1996.

The application is disposed of. No order as to costs.

Copy of the order be supplied to the counsel of both sides.

*[Signature]*  
Member 27/11/96

trd.

*Pl. comply order dated 27-11-96 as urgent. M 28/11/96.*

5.12.96

*Copy of order issued to the parties alongwith parties advocacy vide D.Nu 74 to 3979 D. 12.96.*

*[Small handwritten marks]*

9 AUG 1996  
 Central Bench  
 GUWAHATI

7

Filed by the appli.  
 through M. Chandra  
 9-8-96. Adv.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

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

O.A. No. 162 /96  
 Sri Ajit Debnath  
 - Versus -  
 Union of India & Ors.

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Received copy.  
 Sae. Sr. C.S.C.  
 9/8/96.

Date : 9-8-96.

Filed By :  
 (M) M. Chandra  
 Advocate

Ajit Debnath

2. Particulars of the Applicant

Shri Ajit Debnath,  
Inspector  
Office of the Superintendent  
Central Excise,  
Sonari,  
District, Sibsagar, Assam  
P.I.N. 785690

..... Applicant.

3. Particulars of the Respondents

1. The Union of India

through the Secretary to the Govt. of India  
Department of Revenue,  
Government of India  
Ministry of Finance,  
New Delhi.

2. The Commissioner,

Central Excise, Headquarter,  
Govt. of India, Ministry of Finance  
Department of Revenue,  
~~Laitumkhrah,~~  
Shillong.

3. The Assistant Commissioner,

Central Excise,  
Jorhat

..... Respondents

3. Particulars for which this application is made.

This application is made against the transfer order and posting order issued under East. Order No.144/96 dated 19.7.1996 whereby the applicant is transferred from Sonari Range under Jorhat Division to the office of the Commissionerate, Central Excise & Customs,

Ajit Debnath

Shillong. The prayer of the applicant for retention in the present place of posting till December 15th, 1996 i.e. for a period of 4 and half months as the transfer is made in the middle of the academic session of the daughters of the applicant who are studying in - St. Joseph School, Sonari under the Board of Assam. Non compliance of the Hon'ble Tribunal order dated 30.7.96 and against impugned telegram order dated 6.8.96. Whereby, applicant now sought to be relieved w.e.f. 9.8.96, Afternoon.

4. Jurisdiction of the Tribunal.

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

5. Limitation

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

6. Facts of the case.

6.1. That the applicant is a citizen of India and as such he is entitled to the rights and privileges and protection as guaranteed under the Constitution of India.

The applicant initially appointed under the Collectorate of Central Excise and Customs, Shillong as Inspector in the year 1984 and posted ~~and posted~~ at Sabrum Land Custom Station in South Tripura under

*Agartala*  
Tripura Division in the year 1984. Thereafter the applicant was transferred to Mono Bazar, Customs Preventive Post, South Tripura under <sup>*Agartala*</sup> Tripura Division in the year 1989. In the year 1989 the applicant was again transferred and posted to Sonari Range under Jorhat Central Excise Division. Thereafter the applicant is continued to serve there as Inspector under the Assistant Commissioner, Central Excise, Jorhat Division.

6.2. That your applicant all of a sudden received a transfer and posting order issued under Estt. Order No. 144/96 dated 19.7.96 issued by the ~~Assistant~~ Commissioner, ~~Customs and~~ Central Excise Shillong whereby the applicant is transferred and posted from Jorhat Central Excise Division to Headquarter Office Customs and Central Excise Shillong. In the said letter it is specifically stated that the applicant to be relieved on 31.7.96 (A.N) positively. The applicant is aggrieved only due to sudden transfer and posting in the middle of the academic session. As a result of his transfer in the middle of the academic session the applicant's daughter who are studying in St. Joseph's School at Sonari will cause an irreparable loss towards the academic career. ~~The~~ St. Joseph School at Sonari used to follow the syllabus of Assam Board. Thereafter it will cause irreparable loss towards the academic career of the applicant. As the final examination is going to be commenced in the month of first week of December, 1996 and the same likely to be completed by 15th December, 1996.

*By Mr. Debnath*

Therefore in the middle of the academic year this transfer of the applicant is likely going to affect adversely the academic career of the 2 daughters of the applicant namely Miss Shankari Debnath & Miss Maitreye Debnath who are studying in class five and one respectively in the St. Joseph's School. The applicant is very much willing to carry out the transfer order but only due to the educational difficulties of his children like to continue to stay in the present place of posting till the final examination of his daughters are over. In all past occasions the applicant have carried out all the transfer and posting orders without any protest as a sincere and obedient Government servant. In the instant case also the applicant has no grievance regarding the transfer and posting order although he had opted for his posting in Deomali in Arunachal Pradesh only on the ground that there is one Ram Krishna Mission School at Deomali at Arunachal Pradesh. However since the authorities have decided to transfer and post the applicant at Headquarter, Shillong the applicant is duty bound to carry out the transfer and posting order but since the transfer and posting order is issued in the middle of the academic session of his daughters therefore finding no other alternative the applicant has approached this Hon'ble Tribunal with the prayer to allow him to stay in the present place of posting ~~at~~ upto December 15th 1996 so that the daughters of the applicant may appear in the final examination smoothly in the present educational Institue under St. Joseph's School. *Sona*

A copy of the transfer Order dated 19.7.96 is annexed herewith and the same is marked as Annexure-I.

*Apil Debnath*

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6.3. That your applicant begs to state that he is hailed from Tripura and at Sonari no one is there in his family to look after them if the applicant is to carry out his transfer and posting order with immediate effect and in that event risk of security also involved as regard safety of the family members therefore considering the circumstances the Hon'ble Court be pleased to direct the respondents to allow the applicant to stay in the present place of posting at Sonari till December 15th, 1996. In this connection it may also be stated that no substitute is posted in the place of the present applicant therefore there will be no difficulty on the part of the administration to retain the applicant in the present place of posting for a period of 4 and half months considering the academic interest of the daughters of the present applicant.

6.4. That the applicant begs to state that he has only received the order of transfer and posting issued under Estt. Order No. 144/96 dated 19.7.96 on 25.7.96 and immediately thereafter the applicant submitted a representation before the Commissioner, Central Excise, Shillong through Assistant Commissioner, Central Excise, Jorhat Division on 26.7.96 where the applicant interalia prayed for allow him to stay in the present place of posting for a period of 6 months for smooth running of education of his daughters as they are going to appear in their final examination which is scheduled to be held in the last week of November or in the 1st week of December, 1996. However the representation is forwarded to the

*By M. Debnath*

Commissioner, Central Excise, Shillong, whereas it is already directed in the transfer and posting order dated 19.7.96 that the applicant to be relieved on 31.7.96 positively . Therefore finding no other alternative in the compelling circumstances the applicant has approached this Hon'ble Court for protection and his rights and interests by allowing him to stay till December 15th, 1996 in the present place of posting only on the ground that the daughters of the applicant is going to appear their final examination in the first part of December, 1996. In this connection it may further be stated that the Assistant Commissioner, Central Excise, Jorhat also in the meantime has issued the order of release vide letter under memo no. G.No. II/3/I/ET/95/2946-53 dated 25.7.96 whereby the applicant is relieved from his duty in the afternoon of 31.7.96 with a direction to report for his duty to the Headquarter i.e. new place of posting at Shillong with immediate effect until further orders.

A copy of the representation dated 26.7.96 and release order under memo dated 25.7.96 are annexed herewith and the same are marked as Annexure 2 and 3 respectively.

6.5. That the applicant begs to state that the Central Board of Excise & Customs, New Delhi<sup>vide</sup> their letter No. P. No.A-35017/28/92-AD-III-B dated 30th June, 1994 issued a transfer guidelines regarding

*Apk delbroad,*

posting and transfer regarding Group B, C and D Officers in the attached and subordinate offices under Central Board of Excise and Customs wherein in Clause of the said transfer and posting guidelines issued by the Board it is specifically stated that the general transfers should be effected at the end of the academic year and orders therefor should be issued sufficiently in advance. Orders issued otherwise should contain reasons on record. But in the instant case there is no mention in the transfer and posting order dated 19.7.96 that the present transfer of the applicant is in exigencies of service or for public interest or for any administrative reason. Therefore in the normal course when there is no exigencies the applicant ought to have given sufficient time for his transfer and posting in the Headquarter office at Shillong. The relevant portion of the order of the Central Board of Excise & Customs is quoted below :

\*VIII. General

- (i) General transfers should be effected at the end of the academic year and orders therefore should be issued sufficiently in advance. Orders issued otherwise should contain reasons on record\*.

Therefore the transfer of the present applicant made by the respondents in the middle of the academic session of his daughters is in total violation of the transfer

Ajit Debna

and posting guidelines of the Central Board of Customs and Central Excise. Therefore the transfer of the applicant is liable to be set aside and quashed and the same has been issued whimsically, arbitrarily and malafide by the respondents.

6.6. That your applicant approached this Honourable Tribunal on 30.7.96 against the impugned transfer order issued under Estt. Order dated 19.7.96 and also against the release order issued vide memo dated 25.7.96 issued by the Asst. Commissioner Central Excise Jorhat, the Honourable Tribunal after perusal of the records was pleased to direct the respondent No.2 Commissioner Central Excise to dispose of the representation of the applicant dated 26.7.96 keeping in view the situation obtaining in the case of the applicant and the transfer guideline as embodied in the circular dated 30.6.94. It is also stated that the representation should be disposed of as expeditiously as possible. It is further directed by the Honourable Tribunal not to implement the release order dated 23.7.96.

Copy of the Honourable Tribunal order dated 30.7.96 is enclosed as Annexure-5

6.7. That after receipt of the order dated 30.7.96 which was fixed by the applicant to the office of the Commissioner, Central Excise, Shillong, immediately thereafter the applicant received a telegram on 7.8.96

*Apil Albarrat*

whereby the release order of the applicant is cancelled untill further order. But most surprisingly on 8.8.96, the applicant received another telegram from the office of the Asstt. Commissioner, Central Excise, Jorhat whereby the applicant is directed to be relieved of duty on the afternoon of 9.8.96 and directed to report to his new place of posting of Headquarter. There is no indication in the telegramme whether the representation of the applicant is disposed of or not in pursuance to the order of the Honourable Tribunal dated 30.7.96. But it appeared that in a most arbitrary manner the release order is issued without complying the Hon'ble Tribunal order dated 30.7.96. Therefore, the release order by Telegram received by applicant in the afternoon of 8.8.96 from Asstt. Commissioner, Jorhat (Annexure - 7 ) be set aside and quashed.

6.8. That your applicant beg to state that this release order is being issued at the instigation of the Superintendent Sri A.R. Das, Sonai Range Central Excise, be it stated that Sri A.R. Das, Supdt. Sonai Range, on different occasion in course of official duty misbehaved with the applicant and tried to persuaded the applicant for commission of some irregularities but Sri Das ultimately failed in his efforts and than stated misbehaving with the applicant and also reported baseless allegation to the higher authorities. Even Sri A.R. Das, Supdt. Lodged a false F.I.R. in Sonai Police station and the impugned transfer order dated 19.7.96 and the release order issued through telegram

Ajit Kolbrou

is a result of the false allegations levelled against the applicant and the release order is issued at the instigation of Sri A.R. Das, Supdt. Sonai Range. Therefore ~~from~~ the transfer order is malafide and the same is liable to be set aside and quashed.

copies of the telegram all enclosed as Annexure-  
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6.9. That your applicant beg to state that the entire action of the respondent as regards transfer order dated 19.7.96 and release order issued ~~over~~ telegram without disposing the representation is highly arbitrary and illegal. If the applicant is guilty of any offence the same is liable to be enquired and necessary action in accordance with existing rules providing a adequate opportunity to the applicant is required to be done by the authorities without resorting to illegal transfer order in the middle of the academic session of the applicant's Children. Therefore transfer order dated 19.7.96 and release order by telegram dated 6.8.96 be set aside and quashed.

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

7. Reliefs sought for

Under the facts and circumstances the applicant prays for the following reliefs :-

1. That the respondents be directed to cancel/modify or to set aside the transfer and posting order issued under Estt. Order

Amr Kulkarni

No. 144/96 ( Annexure-I) dated 19.7.96

to allow the applicant to stay in the present place of posting i.e. at sonari Range, till December 15, 1996.

① by  
paw

*Hon'ble tribunal - pleased.*  
2. That the respondents be directed to set aside the release order under telegram dated 6.8.96 issued by the Assistant Commissioner, Central Excise, Jorhat, relieving the applicant w.e.f. 9.8.96 afternoon.

3. That the respondents be directed to allow the applicant to continue to stay the applicant in the present place of posting at Sonari till December 15th, 1996 or the final examination of his daughters are over.

4. To pass any other order or orders as deem fit and proper.

The above reliefs are praying on the following amongst other-

- G R O U N D S -

1. For that the transfer and posting order issued under Estt. Order No.144/96 dated 19.7.97 in the middle of the academic session of the daughters of the applicant.

2. For that the final examination of the daughters of the applicant is going to be commenced in the first part of December, 1996

Ap'l Albrest

3. For that the syllabus/course of the St. Joseph school is altogether different than that of the schools under Meghalaya Board.
4. For that the applicant received the transfer and posting order on 25.7.96 and submitted representation on 26.7.96 before the Commissioner which is now forwarded by the Asst. Commissioner, Borhat and the same is likely to take sometime for decision.
5. For that the release order has already issued by the respondents and the same has been received by the applicant on 25.7.96 and as per the release order the applicant is to be relieved on 31.7.96.
6. For that the transfer order is issued in total violation of the transfer guidelines issued by the Central Board of Excise and Customs, New Delhi on 30th June, 1994.
7. For that the transfer order is arbitrary, whimsical, malafide and the same is issued without considering the transfer guidelines of the Central Board of Excise and Customs New Delhi, dt. 30.6.94.
8. For that the representation dt. 26.7.96 not disposed of in terms of Hon'ble Tribunal's Order dt. 30.7.96.
9. For that Hon'ble Tribunal order dt. 30.7.96 is not complied with.

Apil Subra

10. For that telegram is issued in violation of departmental rule and Hon'ble tribunal orders.

8. Interim Reliefs sought for :

Under the facts and circumstances the applicant prays for the following interim relief:

1. That the transfer and posting order issued under Estt. Order No.144/96 dated 29.7.96 and release order under telegram dated 6.8.96 whereby, applicant is sought relieved on 9.8.96 afternoon be stayed till final disposal of the original application.

(M/L  
R/W)

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

9. Details of remedy exhausted :-

There is no other scope or any other remedy under any rule. There is no service rule in this respect and the Hon'ble Tribunal is the only remedy for the present applicant.

10. Matter not pending in any other Court/Tribunal

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

Appl Dec not.

11. Particulars of Postal Orders.

Postal Order No. : 3466 70  
Date of Issue : 8.8.96  
Issued from : G. P.O. Guwahati.  
payable at : G.P.O., Guwahati.

12. Details of Index

An Index showing the particulars of documents is enclosed.

13. List of enclosures

As per Index.

Appl. Selbst,

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

I, Shri Ajit Debnath, son of Shri Rajgobinda Debnath, resident of at present Sonari, aged about 38 years, working as Inspectors in the Central Excise Department, posted at § Jorhat Division, Sonari do hereby declare that I have gone through this application and to hereby declare that the statement made in this application are true to my knowledge and belief and I have not suppressed any material facts in this application.

I sign this verification on this day i.e. 9<sup>th</sup> ~~10<sup>th</sup>~~ August 1996 at Guwahati.

*Ajit Debnath,*

Signature .

-17-

Annexure - I

CUSTOMS AND CENTRAL EXCISE : SHILLONG

ESTABLISHMENT ORDER NO. 144/1996  
DATED SHILLONG THE 19TH JULY '96

Subject : Estt. Transfer and posting in the grade of Inspector - O/R.

The following transfer and posting in the grade of Inspector of Customs and Central Excise are hereby ordered with immediate effect and until further orders.

Sl. No.	Name	From	To
1.	Shri Rex Hungyo	Imphal Cus(Prev.) Division	Inspector(Sts. Br.) Jorhat C. Ex. Divn.
2.	Shri Ajit Debnath	Sonari Range Jorhat C. Ex. Divn.	Hqrs. Office, Shillong

Shri Rex Hungyo, Inspector and Shri Ajit Debnath, Inspector should be relieved on 31.7.96 (A.N.) positively.

Sd/-

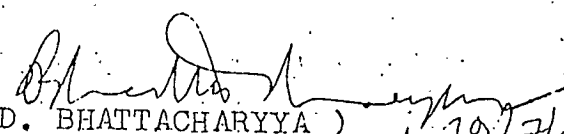
( D. BHATTACHARYYA )  
ASSISTANT COMMISSIONER (HQRS.)  
CUSTOMS AND CENTRAL EXCISE : SHILLONG.

C.NO.II(3)6/ET.III/95/

Dated : 19/7/96

Copy forwarded for information and necessary action to :-

1. The Additional Commissioner(Tech), Hqrs. Office, Shillong.
2. The Deputy Commissioner(Cus.Prev.), Hqrs. Office, Shillong.
3. The Sr. P.A. to Commissioner(Cus.Prev.), N.E.R., Imphal.
4. The Assistant Commissioner of Cus.(P), Imphal Cus.(Prev.) Division. The copy meant for the concerned officer is enclosed.
5. The Assistant Commissioner of C.Ex., Jorhat C.Ex. Division. The copy meant for the concerned officer is enclosed.
6. The Superintendent(Hqrs.), Hqrs. Office, Shillong.
7. ~~Shri Rex Hungyo, Inspector~~ / Shri Ajit Deb Nath, Inspector for compliance.
8. The P.A.O./C.A.O. of Customs and Central Excise, Shillong.  
Accounts I & II/ET.I & II/Confdl. Br./CIU-cum-VIG. Br.
10. The General Secretary, Group 'C' Executive Officers' Asson., Customs and Central Excise, Shillong.
11. Guard file.

  
( D. BHATTACHARYYA )  
ASSISTANT COMMISSIONER (HQRS.)  
CUSTOMS AND CENTRAL EXCISE : SHILLONG.

30/7/96

\*\* \* \* \* \*

AA as Fed  
Whole  
ADJ

The Hon'ble Commissioner of Central Excise,  
Central Excise Commissionerate,  
North Eastern Region, Shillong, Meghalaya.

74

Through  
The Assistant Commissioner,  
Central Excise, Jorhat Division.

Subject : Representation (of Sri Ajit Debbarth, Inspector  
Senari Range) for further stay at Senari under  
compassionate ground - Reg

Nadim/Sir,

With profound respect, the petitioner begs to refer Establishment Order No.144/1996 dated Shillong, the 19th July, 1996 communicated under CMO.II(3)6/ET.III/95/14412-16(A) dated 19.7.96 and subsequent relieve order dated 23.7.96 of the Assistant Commissioner of Central Excise, Jorhat communicated vide his letter CMO.II/3/1/ET/95/2946-83 dated 25.7.96 and to seek compassion to save <sup>me</sup> his from the scourge of humiliation and insultation that meted out for a non-committed offence and stigma thereto was further propelled by the Assistant Commissioner's (HQRs) Customs and Central Excise, Shillong's order to transfer <sup>me</sup> him to Shillong Hqrs. office from Senari Range under Jorhat Division and to lay down the following grim facts for favour of your kind consideration.

- (1) That Nadim, the petitioner was transferred from Agartala Division to Senari Range under Jorhat Division in the month of April, 1989.
- (2) That Nadim, petitioner have been residing at Senari since 1989 consisting of two children (Daughter) and wife. Petitioner's <sup>my</sup> children are <sup>studying</sup> read in Class V and Class I respectively under Assam Board.
- (3) That Nadim, it is pertinent to mention here that, on 9.7.96 Superintendent (Technical), Superintendent (Anti-Evasion) Jorhat comprising of several Inspectors of Jorhat Division visited Senari Range Office arising out from a seizure effected at Sibsegar by them when no officers were available in Senari Range Office except one sepoy namely Sri Ghana Mech. The petitioner was asked to attend Range Office through the said sepoy Sri G. Mech who was sent by the Superintendent (Technical) and Superintendent (Anti-Evasion) Jorhat to <sup>my</sup> the petitioner's rented house. Accordingly, the petitioner complied with their

Contd.....Page/2

Attested  
[Signature]  
Adv.

instruction and attended Sonari Range Office and produced some invoices of M/S Khasi Forest Product (Pvt.) Limited Kambari, Arinchoh Pradhan alongwith one declaration in connection with Transit Codem in spite of Superintendent's query which were taken by them with due receipt.

(4) That Madam, on 11.7.96 knowing the facts Superintendent Sonari Range namely Sri Agni Ram has threatened the petitioner <sup>me</sup> by saying that "you bloody, why you were attended office on 9.7.96 as per direction of Superintendents of Jorhat while you are working under my control and why you have given the Invoices to them?" Superintendent, Sonari Range further threatened <sup>me</sup> with dire consequences that he will see <sup>me</sup> the petitioner and he will make arrangements for <sup>my</sup> petitioner's transfer from Sonari and he will implicate the petitioner in <sup>me</sup> otherwise.

(5) That Madam, being an Inspector of this Department as well as sub-ordinate to the Superintendent, <sup>I have</sup> the petitioner <sup>see</sup> done nothing but felt serious insultation due to the injudicious remarks passed by the Superintendent, Sonari Range in presence of another officer namely Sri James Quite, Inspector of Sonari Range. If enquired, could easily <sup>be</sup> ascertain the facts.

(6) That Madam, on 12.7.96, the petitioner <sup>I</sup> came to know from the O/C, Sonari P.S. who visited Range Office, Sonari that a complaint was lodged by the Superintendent, Sonari Range against the petitioner <sup>me</sup> by giving entry in the P.I.R of P.S. Sonari, the reasons best known to the Supt. Sonari

(7) That Madam, the petitioner <sup>I</sup> procures that fabricated and concocted report is given by his <sup>my</sup> superior authorities to harass <sup>me</sup> the poor petitioner with vindictive attitude and thus resulted <sup>in my</sup> his premature transfer in the middle of a year which would cause tremendous troubles in maintaining education with regard to his <sup>my</sup> daughters, as academic course of Meghalaya differs from the course of Assam Board.

In the circumstances, <sup>I</sup> the petitioner fervently prays before your Judicious-self kindly to allow the petitioner <sup>me</sup> to stay further for six months at Sonari Range so that the petitioner <sup>I</sup> may not encounter with any troubles associated with <sup>my</sup> petitioner's children's education and <sup>my</sup> petitioner's children may appear in their forth coming final examination

Contd.....Page/2

Attested  
D. J. J.



OFFICE OF THE ASSISTANT COMMISSIONER  
CENTRAL EXCISE :: JORHAT.

O R D E R

Dated Jorhat the 23rd July '96.

In pursuance of the Assistant Commissioner (Hqrs), Customs & Central Excise, Shillong's Lett. Order No. 144/1996 dated Shillong the 19th of July '96 communicated under endorsement C.No. II(3)6/ET-II/95/14412-(A) dated 19.07.96. Sri Ajit Deb Nath, Inspector, Central Excise, Sonari Range is hereby relieved of his duty on the afternoon of 31.07.96 with a direction to report to his new place of posting at Hqrs. Office Shillong <sup>with</sup> immediate effect <sup>and</sup> until further orders.

( J. N. BAITHORY ),  
ASSISTANT COMMISSIONER,  
CENTRAL EXCISE :: JORHAT.

C.No. II/3/1/ET/95/ 2946 - 53

Dated :- 25.7.96

Copy forwarded for information and necessary action :-

- 1. Sri Ajit Deb Nath, Inspector Central Excise, Sonari Range for compliance.
- 2. The Superintendent, Central Excise, Sonari Range. The copy of the order ~~xxx~~ meant for Shri A. Deb Nath, Insp. is enclosed for delivery to him.
- 3. Asstt. Commissioner, (Hqrs), Customs & Central Excise, Shillong with reference to above.
- 4. To the Cash/Bill/Store/ET-II/Conf. Central Excise, Divisional Office, Jorhat.

Enclo:- One.

( J. N. BAITHORY ).  
ASSISTANT COMMISSIONER,  
CENTRAL EXCISE :: JORHAT.

*Affected  
Chhale  
D.V.*

*Order by  
25/7/96*

F. No. A-35017/22/92-AD-III-B  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, the 30th June, 1994

To

All Principal Collectors of  
Central Excise and Customs.

All Director Generals/Narcotics Commissioner

All the Heads of Departments under  
Central Board of Excise & Customs.

Subject : Transfer-Guidelines regarding posting and  
transfers of Group 'B' 'C' and 'D' officers  
in the attached & subordinate offices under  
Central Board of Excise and Customs.

Sir,

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. F. No. A 22015/20578-<br/>Ad-III-B dt. 1.11.78.</li> <li>2. E.No. A-22015/21/89-<br/>Ad-III-B dt. 13.7.89.</li> <li>3. F. No. A-35017/17/91-<br/>Ad-III-B dt. 24.1.92</li> <li>4. F. No. B-12014/4/92<br/>Ad-III-B dt. 2.9.92.</li> </ol> | <p>In supersession of all previous instructions, as indicated in the margin, the following instructions/guidelines are issued in consolidated form for regulating the transfers and deputation of Group B C and D officers in the various attached and subordinate offices under the Central Board of Excise &amp; Customs :-</p> |
|---|---|

I. Group 'B' and Group 'C' Officers :

(1) Period of stay at one station :

- (a) Executive Officers : The period of stay of an Officer at one station should normally be 4 years. Transfers may be made earlier if administrative requirements or compassionate grounds, so necessitate.
- (b) Ministerial Officers : While Ministerial officers are also liable to transfer, like Executive Officers, routine transfer of Ministerial Officers from one station to another should be avoided. However, Ministerial officers are liable to be transferred from one charge to another at periodic intervals.

Contd..P/2

*Handwritten signature and initials:*  
A. H. S. S. S.  
Chuli  
Ad. W.

II. Group 'D' staff :- Group 'DI' staff are also liable to be transferred any where within the Collectorate even though its jurisdiction extends to more than one State. However, frequent transfers of Group D staff should be avoided.

III. Postings of husband -wife teams at the same STATION :-

Guidelines contained in Department of Personnel & Training's Office Memorandum No. 28034/7/86-Estt (A) dated 03.4.86 may be followed subject to administrative requirements/exigencies.

IV. The tenure at sensitive charges and requirements of 'Cooling Off' period :-

(1) Officers posted in any of the following charges as mentioned below, on completion of his/her normal tenure, be posted to a formation/organisation/assignment other than those mentioned here below :-

- (a) Airports.
- (b) D.G.R.I.
- (c) D.S.A.E.
- (d) NCB/ED (FERA/EIB ETC.

The officers so posted in any of the aforesaid charges/organisation assignments will be required to complete the "Cooling Off" period of not less than two years before being considered for re-posting to any of the aforesaid charges.

V. (A) The power to relax the cooling off period etc.

The power to relax the "cooling off" period for an officer with reference to the charges mentioned in para IV shall be exercised by the P.R. Collr./ Director General Concerned, in consultation with the Head of the Department of the Officer in question.

*Handwritten signature and initials:*  
A. H. [unclear]  
[unclear]  
A. H.

(b) The decision to extend the normal tenure :

The decision to extend the normal tenure etc. will be governed by the provisions of recruitment rules and the DPO&T's guidelines on the tenure/depuration/executive instructions of the Board as the case may be.

VI. Transfers of Office bearers of the recognised Associations of Central Government Employees.

In regard to the transfers of Office bearers of the recognised Unions/Associations the instructions contained in the Department of Personnel & Training's O.M. No. 27/3/69-Estt. (B) dated 8.4. 1969 should be observed strictly read with future amendments, if any.

VII. Notwithstanding the instructions contained in paragraphs (I), (II), (III), the Heads of the Department will have full authority/power to transfer an officer on administrative/compassionate grounds.

The Heads of the Department will also be the deciding authority as to what would constitute difficult posting depending on the local conditions and will be fully authorised to fix - tenure of posting of officers at those places, as deemed necessary for administrative requirements and exigencies of service.

VIII. General :

- (i) General transfers should be effected at the end of the academic year and orders therefor should be issued sufficiently in advance. Orders issued otherwise should contain reasons on record.
- (ii) Officers who are due to retire within two years or so, may not be transferred from their state/district or from the proximity of the station where they propose to settle down after retirement. Those who are posted away from such a station may, if they so request be brought to the proximity of that

*Handwritten signature/initials*

station within last one year or so of their service. All this will, however, be subject to administrative requirements.

(iii) For the purpose of transfer, the stay of an officer at a particular station should be computed with reference to the total period of his continuous stay at that station regard less of the different posts held by him there.

2. above instructions may please be followed scrupulously.

Please acknowledge the receipt of this letter.

Yours faithfully,

Sd/- R.K. MITRA)  
UNDER SECRETARY

Central Board of Excise & Customs

Copy to recognised Association/Unions of Group 'B', 'C' and 'D' staff.

Sd/- Illegible

Attested  
Chhinder  
Adv

Ajit Debnath ... Applicant.  
Union of India & Ors. ... Respondents.

**- PRESENT -**

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER(A)

For the Applicant : Mr. R. Chanda, Advocate.

For the Respondents: Mr. S. Ali, Sr. C.G.S.C.

30.7.96 : Learned counsel Mr. M. Chanda for the applicant. Mr. S. Ali, learned Sr. C.G.S.C., for the respondents.

Mr Chanda prays for taking up this O.A. unlisted on the ground of urgency. Heard counsel for the parties. Prayer allowed. The application is taken up today for admission.

The applicant, an Inspector of Customs and Central Excise was transferred from Sonari Range, Jorhat Central Excise Division to Headquarters Office, Shillong vide Establishment Order No.144/96 dated 19.7.1996. He has been ordered to be relieved of his duty in the afternoon of 31.7.1996 with a direction to report in his place of posting with immediate effect by order dated 23.7.1996 as conveyed by memo No.C.No.II/3/1/ET/95/2946-53 dated 25.7.1996 of Assistant Commissioner, Central Excise, Jorhat. Thereafter the applicant has submitted a representation dated 26.7.1996 to the Commissioner of Central Excise, Central Excise Commissionerate, North Eastern Region, Shillong, praying for retention at Sonari Range for another six months on ground of his children's education. This representation has not been disposed of by the Commissioner. Under the circumstances,



*Attested  
@ Chanda  
Adv*

*contd -*

30.7.96

the respondent No.2, Commissioner, Central Excise, Shillong, is directed to dispose of this representation of the applicant keeping in view the situation obtaining in his case and the transfer guidelines as embodied in the Circular No.F.No.A-35017/28/92-AD-III-B dated 30.6.1994. The representation should be disposed of as expeditiously as possible. Till disposal of the representation the respondents shall not implement the above mentioned release order dated 23.7.1996.

The application is disposed of as above. No order as to costs.

Copy of the order may be furnished to the counsel for the parties. As requested by the counsel for the applicant copy of the order with copy of the application may be sent to the respondent No.2 by Speed Post at the cost of the applicant.



Sd/-

MEMBER(A)

Mem.No. 2316

Dated 30/7/96

Copy for information and necessary action to :

1. Shri Ajit Basmath, Inspector, S/o the Superintendent Central Excise, Senari, District Sibsagar, Assam, Pin - 785690.
2. The Secretary to the Govt. of India, Department of Revenue, Govt. of India, Ministry of Finance, New Delhi.
3. The Commissioner, Central Excise, Headquarter, Govt. of India, Ministry of Finance, Department of Revenue, Laitumkhrah, Shillong.

( A copy of the application in O.A.134/96 is also enclosed herewith as directed by the Hon'ble Court)

4. The Assistant Commissioner, Central Excise, Jorhat.
5. Mr. R. Chanda, Advocate, Gauhati High Court, Guwahati.
6. Mr. S. Ali, Sr.C.G.S.C., CAT, Guwahati Bench.

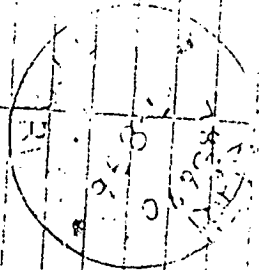
SECTION OFFICER(JUDL).

Att-eeed  
[Handwritten signatures]

[Handwritten signature]  
30/7/96

Received  
S. P. D. V.  
A. P. O. Enrol  
31/10/20

1435 CA 2 Jorhat 6 28



Ajit Debnath  
Inspector Central  
Exercise  
Sonari

The release order of S. Ajit  
Debnath Inspector Central Exercise  
Sonari Range hereby cancelled  
Further order (C)

Sx Central

1048  
S. P. D. V.

Attested  
Only  
adv

MOF (P) No. 1000/2019-2020 (P)

X-1430 CA 6 Tohat 29 7 Ste 47 51

(H)

958  
15-12

Agit Debrah  
Inspector Central Excise  
Sonari

Agit Debrah Central Excise Sonari

Range is hereby release of his duty  
on the afternoon on 9th of August 1996  
and directed to report at his  
new place of posting at Head quarter

Shilpa (C)

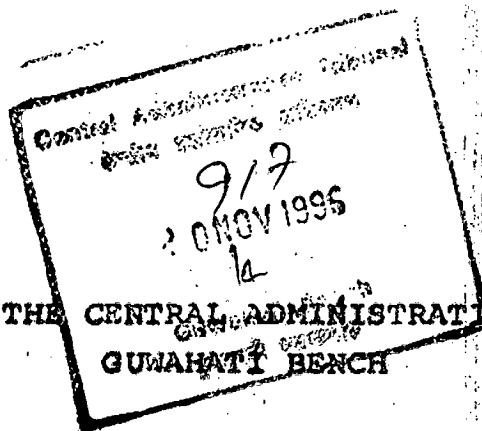
Sd/- Central

MOF (U) ...

23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50

Filed in Court  
on 19-11-96  
H. S. S. S.  
Court Master  
(19/11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH



Filed by  
Shankarale  
Sr. CSSC  
27/11/96

O.A. No. 162 of 1996

Shri Anit Debnath

-versus-

Union of India & Ors.

-And-

In the matter of :

Written statement submitted by the  
respondents.

WRITTEN STATEMENT

1. I, Sri R.K. Sarkar, Superintendent (Law), Central Excise, Guwahati Division do hereby solemnly affirm and state as follows :

1. That I am the Superintendent (Law), Central Excise, Guwahati Division and have been authorised to submit the written statement on behalf of the other respondents. I am acquainted with the facts and circumstances of the case. I have gone through a copy of the application served upon the respondents and have understood the contents thereof, save and except whatever is specifically admitted in this written statement, the other contentions and statements made in the application may be deemed to have been denied. Before giving the parawise comments I feel that it is necessary to give a brief history of the case :

Contd..P/2

BRIEF HISTORY OF THE CASE

Shri Ajit Debnath, Inspector, Sonari Range under Jorhat Central Excise Division was found to be frequently absenting himself from duty. He has also been found to be reluctant in discharging his designated duties over the last few months resulting in huge pendency of work. In general he was found to be indifferent towards his work. He was verbally advised and warned on several occasions by his Controlling Officer. Over and above these, there has also been allegation against Shri Debnath, Inspector of assaulting his Controlling Officer, i.e. his Range Superintendent.

With a view to ensure smooth functioning of the Range and also to ensure maintenance of discipline and command, so necessary in a uniformed service, the Department/respondents had no alternate way but to transfer the applicant, Inspector on administrative grounds.

Against the transfer order the applicant filed a Case vide O.A. No. 134/96 before the Hon'ble Central Administrative Tribunal, Guwahati with the contention that he be allowed to continue at Sonari Range till the end of the current Academic Session. In this connection, he had also submitted a representation to the Department/respondents with a request to allow him to stay at Sonari till the end of December, 1996. The said O.A. was disposed of by the Hon'ble Central Administrative Tribunal with a direction to consider his representation in the light of Board's Circular P.No. A-35017/28/92-AD.III-8 dated 30.08-94.

Accordingly the representation submitted by the applicant was disposed of vide this Office letter dated 05.08.96, stating that as the transfer was on administrative ground, his request could not be acceded to and he was ordered to be relieved accordingly by his Assistant Commissioner. Needless to mention here that the provision for transferring an Officer on administrative ground in the middle of an academic session has been provided in Board's circular dated 30.06.94 mentioned above.

However, against this too Shri Debnath filed the instant case pleading innocence, without mentioning about the misdeeds he has committed or other papers. Detailed clarification against his contention has been given in Para-wise comments.

PARAWISE COMMENTS

2. That with regard to the statements made in paragraphs 1,2,3,4,5 and 6 of the application the respondents beg to state that they have no comments on them.
3. That with regard to the statements made in paragraph 6.1 of the application the respondents beg to state that as per instructions issued by the Central Board of Excise and Customs and also Principles agree upon in consultations with the Service Association, this has been a regular practice in the Commissionerate not to transfer any Officer in the middle of an Academic Session. However, transfers on administrative grounds have always been kept outside the purview of this normal practice and there has been no

instance when an executive Officer has been transferred in the middle of an Academic Session, except on Compassionate or Administrative Grounds.

As per accepted norms and guidelines, Inspectors are to be in one Range for not more than 4 years and not less than 2 years. The Officer/applicant has been in Sonari Range since 1989 i.e. over 7 years.

The instant transfer was not a regular transfer but on administrative grounds and, hence, the administration in issuing the same did not contravene the instructions/general principles of transfer in force. The applicant, as reported by his Controlling Officer, viz., the Range Superintendent had in the last few months absented himself from duty unauthorisedly and was also found reluctant to attend to his designated official work resulting a huge amount of pending. In a department engaged in collection of duties which is also termed as 'Life Blood of the Nation', such activities ultimately mean that the Nation lose huge revenue as these work are barred by time.

Further, there has also been allegation against the applicant of resorting to physical assault and disorderly behaviour towards his Superintendent/superior. Thus, continuation of the applicant in Sonari Range would have led to break down of Chain of Command and discipline so necessary in a uniformed service. Hence, the Hon'ble Tribunal would appreciate the transfer was purely in the interest of the department as well as in the interest of the Nation.

4. That with regard to the statements made in paragraph 6.2 of the application the respondents beg to state that they have no comments.

5. That with regard to the statements made in paragraph 6.3 of the application the respondents beg to state that as already explained, the transfer was purely on administrative grounds keeping in view the interest of the Nation. As the fault was entirely of the applicant, it is his own responsibility now to face the consequences for his misdeeds and arrange for alternative arrangements for his family. Allowing him to continue at Sonari Range, it will set a procedure for other indisciplined Officers to derive undue advantage at the cost of the interest of the Nation.

6. That with regard to the statements made in paragraph 6.4 of the application, the respondents beg to state that the transfer was on administrative grounds, and by issuing the Transfer order, the administration has only safeguarded the interest of the Department as well as that of the Nation.

7. That with regard to the statements made in paragraph 6.5 of the application the respondents beg to state that all the transfer orders have to be circulated to several formations for information and observing official formalities viz. the formation the officer is transferred to Accounts Branch for updating the service book, for preparation of Last Pay Certificate for drawing Pay of the Transferred Office in his new office, the Service Association etc., besides to the transferred officer. If the reasons for transfer on Administrative Ground, as mentioned

by the applicant, obviously contended for deriving Hon'ble Tribunal's sympathy, are recorded in writing, it will not only affect the reputation of the concerned officer in the eyes of his colleagues, the same will also mean divulging of official secrets. This will also affect in conducting enquiries etc. related to such cases. However, the reasons for transfer on administrative grounds are always recorded in writing in official files. Above all, the Association have earlier requested to avoid mentioning of the reasons for the transfer.

7. That with regard to the statement made in paragraph 6.6 of the application, the respondents beg to state that immediately on receipt of the order dated 30.7.96 passed by the Hon'ble Central Administrative Tribunal, the respondents disposed of the representation submitted by ~~the~~ the applicant, Inspector and for reasons mentioned vide para 6.2 his request could not be considered and the same was communicated to the Assistant Commissioner of Division the applicant is working for informing the applicant.

8. That with regard to the statement made in paragraph 6.7 of the application, the respondents beg to state that the Telegram mentioned in this paragraph was issued in pursuance of this office letter mentioned in para 6.6. above which was issued in compliance with the direction vide Hon'ble Central Administrative Tribunal's Order dated 30.07.1996.

9. That with regard to the statement made in paragraph 6.8 of the application the respondents beg to state that it is on record that the applicant absented himself unauthorisedly and also did not perform his designated duties in the manner

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expected of him resulting in huge pendency of work putting at stake the Nation's interest which cannot be stated to be at the instigation of the Superintendent of the applicant as he has attempted to plead. This kind of prima-facie case should always be dealt with severely in order to maintain discipline and order in a Uniformed Service. As regards the allegation of his assaulting the Range Superintendent, enquiry is being ordered. At any rate, such serious allegations of assaulting put forward by a Senior Officer need not be given administrative support to ensure that the Chain of Command does not break down and the senior officers, while bringing such serious allegations to the notice of the administration, are only well aware that any false allegation levelled against their subordinates will jeopardise their own service and career.

10. That with regard to the statements made in paragraph 6.9 of the application the respondents beg to stated that as already been mentioned, there has been prima-facie case against the applicant for ignoring the Service rules, in subordination and also of not discharging his designated duties in a proper manner putting at stake the ~~intxxxxxx~~ Nation's Nation's revenue. Besides, there has also been serious allegation against the applicant of assaulting his Controlling Officer. Hence the transfer of the applicant was not illegal, details of which have already been stated in the fore-going paragraphs.

Contd...P/8

11. That with regard to the statement made in paragraph 7 of the application regarding relief sought for the respondents beg to state that the applicant is not entitled to any relief as such the application is liable to be dismissed.

12. That the respondents submit that the application has no merit and as such the same is liable to be dismissed.

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

I, Sri R.K.Sarkar, working as Superintendent (Law) in the office of the Central Excise, Guwahati Division do hereby declare that the statements made in the Written Statement are true to my knowledge derived from the records of the case.

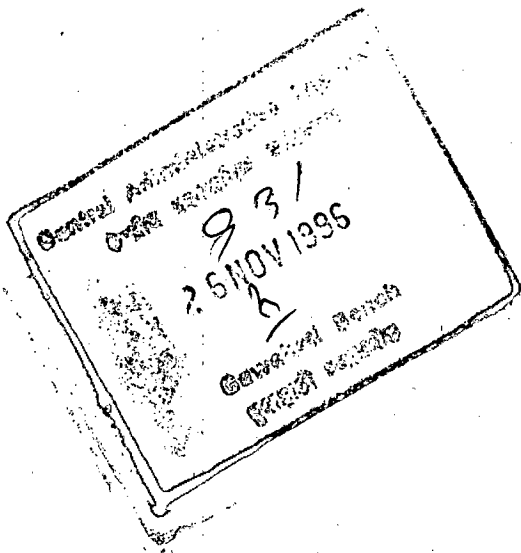
I, sign this verification on this the 18<sup>th</sup> day of ~~September~~<sup>November</sup>, 1996 at Guwahati.

*Rathindra Kumar Sen*

Superintendent (Law)  
Deponent  
Central Excise  
Guwahati Division

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH



O.A. No. 162 of 1996

Sri Ajit Debnath

-versus-

Union of India & Ors.

-AND-

In the matter of :

Rejoinder submitted by the  
applicant.

The applicant above named most humbly and  
respectfully begs to state as under :

SUBMITTED  
REPLY TO THE BRIEF HISTORY OF THE CASE/BY THE RESPONDENTS.

That your applicant categorically deny the contents  
stated in the form of Brief History of case. The allega-  
tion brought in the form of brief history of the case  
is false incorrect and misleading and the respondents  
are liable for strictest proof of the same. The respon-  
dents for the first time brought this sort of serious  
allegation against the applicant only in the written  
statement submitted before this Hon'ble Tribunal. Be it  
stated that the controlling Officer under whom the  
applicant presently serving at Sonali Range has never  
brought any kind of allegation of unauthorised absence  
from duties and the applicant categorically deny that

Contd...P/2

Received COPY  
File  
Sr. C.S.C.  
26/11/96

Filed by Mr. P. P. Choudhary  
Through M. M. Choudhary  
25.11.96  
Adv.

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45

the controlling officer in any point of time issued any verbal advise or instruction to the applicant. However, it is an admitted fact that the controlling officer i.e. the Superintendent of Sonari Range, Shri A.R. Das on number of occasions misbehaved with the present applicant in course of official work and also threatened the present applicant on number of occasions which is formally intimated <sup>to</sup> the Assistant Commissioner, Jorhat. From the contents of the written statement submitted by the respondents it is quite clear that the transfer order has been issued at the instance of controlling authority and the respondents have acted malafide by issuing the impugned transfer order in respect of the applicant. In this connection it may be stated that the controlling officer Shri A.R. Das has joined at Sonari Range on 21.3.96 and in the brief history of the case it is stated that the applicant is ~~in~~ reluctant in discharging his duties over the last few months resulting in huge pendency of work. The relevant portion of the written statement submitted by the respondents is quoted below :

"He has also been found to be reluctant in discharging his designated duties over the last few months resulting in huge pendency of work".

From above, it appears that the applicant was earlier sincere, disciplined and punctual only for the last few months the allegation of indiscipline~~d~~ is brought against him. The applicant therefore prays before the Hon'ble Tribunal to direct the respondents to produce the Annual Confidential Reports of the applicant for the last 3 (Three) years where the performance of the

applicant would be evident and thereby the Hon'ble Tribunal would be able to arrive at a fair decision regarding performance of the present applicant.

As regard the allegation of assault brought in the written statement against the applicant, the applicant categorically deny the same and further begs to state that the Controlling Officer Shri A.R. Das has falsely implicated the present applicant and also <sup>lodged</sup> alleged a FIR against the applicant with the Sonari Police Station on 11.7.96 which was registered as P.S. Case 120/96. The applicant beg to state in brief that the development took place on 11.7.96. The controlling officer Shri A.R. Das remained absent on 9.7.96 (AN) in the office when Superintendent Technical and Superintendent Anti evasion <sup>came</sup> in the office of the Superingendent with a good number of Inspectors of Central Excise of Jorhat Division and they asked the present applicant to handover some records regarding records of opening of a Transit Camp at Sibsagar by Hasai Forest Products Private Limited, Kanubari Tirap, Arunachal Pradesh and regarding copy of invoice of Hasai Forest Products Private Limited, and the present applicant accordingly handed over all those records to the Superintendent (Tech) as well as to the Superintendent Anti evasion after obtaining a formal receipt from them. Shri A.R. Das Superintendent came to learn about handing over the records by the present applicant on 11.7.96 and as soon as Shri Das came to know immediately started abusing the present applicant with unparliamentary words and also enquired the authority of the applicant for handing over all those records to the Jorhat Divisional

parties. The present applicant tried to satisfy the superintendent saying that he had no alternative in the compelling circumstances, <sup>but</sup> to hand over the records to the Jorhat Divisional parties. In the absence of the Superintendent he had to hand over the records to the Jorhat Divisional Party. When the present applicant requested him not to use these sorts of unparliamentary and filthy words Shri Das got very annoyed and rather posed to assault the present applicant in the presence of Games Guite Inspector, Sonari Range. But most surprisingly Shri Das, Superintendent reported this incidence <sup>with different colour,</sup> by lodging a FIR to the Sonari Police Station and got this FIR registered and thereafter Police also investigated the case on several occasions which was regularly reported to the Assistant Commissioner Jorhat Division by the applicant and necessary statements from the applicant was also recorded by the Sonari Police Station as well as by the Assistant Commissioner, Jorhat in a departmental enquiry. In this connection it may be stated that an anti-evasion ~~case~~ has already been registered by the office of the Assistant Commissioner, Central Excise, Jorhat against Hasai Forest Private Limited based on these records and therefore inference can be drawn <sup>that</sup> those records are the route cause which lead Shri A.R. Das for lodging FIR with the Sonari Police Station against the applicant.

Regarding allocation of work the applicant on a number of occasions requested the controlling officer Shri A.R. Das for allotting him his routine work which would be evident from letter dt. 3.7.96 and from the records of the daily diary maintained in the office of

Sonari Range where specific request was made to Sri Das, Superintendent for allotting of work, guidelines, instructions. This would be evident if the daily diary is produced before the Hon'ble Tribunal rather Sri A.R.Das Superintendent had taken away all the files relates to the surrounding Tea Estates which work was allotted to the applicant ~~for the present~~ for the reasons best known to Shri A.R.Das. ~~Therefore the~~ The applicant vide his letter dated 1.8.96 prayed before the Assistant Commissioner, Central Excise Jorhat for impartial evaluation of work done by him in Sonari Range with effect from 21.4.96 as the applicant is well aware that since an enmity ~~has~~ been developed with his controlling officer therefore fair and proper assessment of work may not be expected from his controlling Officer. Therefore the applicant had requested for impartial evaluation of work by the Assistant Commissioner, Central Excise, Jorhat Division.

From the above contents ~~made~~ it is quite clear that the action of the respondents transferring the present applicant from Sonari to Shillong vide impugned transfer and posting order is issued at the instance of the controlling officer of the applicant i.e. Shri A.R. Das and the same is malafide and issued with an ulterior motive. Therefore the allegations made in the brief history of the written statements are false, baseless and therefore the impugned transfer and posting order is liable to be set aside and quashed.

A copy of the ~~letter dated 22.2.96 and letter~~ the receipt dt. 9.7.96 and letters dated 1.8.96, 3.7.96 and ~~21.4.96~~ are annexed as Annexure 8, 9, 10, and ~~11~~ respectively.

REJOINDER

1. That the applicant categorically deny the statements made in paragraphs 3,5,6, and 7 of the written statement and further begs to state that the transfer and posting order has been issued on administrative grounds cannot be accepted as the written statement specifically admitted that the transfer and posting order of the applicant has been issued on the allegation of negligence of work and also on the allegation that the applicant has assaulted the Controlling Officer Shri A.R. Das, therefore the impugned transfer and posting order has been issued by the respondent with an ulterior motive and the same is malafide. Be it stated that there are ample scope and provisions in the CCS and CCA Rules for initiating necessary disciplinary proceedings in the event of any employee is found to be indisciplined, there is no single instance against the applicant where the controlling authority has brought the allegation of unauthorised absence, ~~is~~ indifferent towards allotted work to the applicant. The Hon'ble Tribunal be pleased to direct the respondents to produce necessary documentary evidence regarding the allegation of ~~un~~authorised absence as well as negligence of work as alleged in the written statement rather it may be stated that the performance of the applicant could be evident from the Annual Confidential Report of last 3 years regarding the contribution of the applicant towards the department. It would be evident from the office diary that on number of occasions the applicant prayed for allocation of work and the same is recorded in the office diary rather the

Contd....P/7

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controlling officer has taken away the file/records from the present applicant after the incidence of 11.7.96 when the applicant handed over ~~some~~ the same records on demand to the Jorhar Central Excise Party. The applicant is sincere, disciplined and loyal of the Central Excise and Custom Department and the applicant categorically deny that there is any act or omissions on the part of the applicant which may cause any loss to the department in any part of time. The applicant categorically state that upto June 1996 there was no pending assessment with the applicant particularly after the incidence of 11.7.96 Shri A.R. Das Controlling Officer did not allow the applicant to work and the same are very much in the office record. A few copies of <sup>diary of</sup> non-allotment of work which was duly reported to the controlling officer are enclosing for kind perusal of the Tribunal, therefore if <sup>there is</sup> any loss to the department, the controlling officer himself is responsible for the same. The applicant declare that he is quite aware regarding his duties. The applicant did not receive any reply of his representation till date as stated in the written statement in terms of the Hon'ble Tribunal's Order dated 30.7.96 passed in O.A. 134 of 1996 and the applicant being aggrieved by the impugned telegraphic order dated 6.8.96 whereby he was sought to be released with effect from 9.8.96 approached this Hon'ble Tribunal by filing a fresh O.A. which is registered as O.A. No. 162/1996. Finding no other alternative the applicant further begs to state that he is also willing to

Contd.....P/8

carry out the transfer order but he had to approach the Hon'ble Tribunal in a compelling circumstances on the ground of his children's examination and therefore ~~prayed~~ prayed for allowing him to retain in the present place of posting i.e. Sonari Range till 15.12. 96. The applicant ~~is~~ again declares that he is willing to carry out the transfer and posting order on completion of his children's examination.

2. That the applicant categorically deny the statement made in paragraph 8, 9, 10, 11 and 12 of the written statement and further begs to state that the allegation of unauthorised absence and negligence of work has already been dealt with above and necessary documents are also enclosed with this rejoinder for perusal of the Hon'ble Tribunal for arriving at a fair conclusion. In this connection it may be stated that the applicant is always sincere, punctual and loyal towards his superiors and there is no instance of disrespect on the part of the applicant through out his service career. The Hon'ble Tribunal be pleased to direct the respondents to produce ~~xxx~~ all the relevant records such as allocation of work, office diary and the record of the department proceeding for fair adjudication of the case. Therefore it is crystal clear from the written statement by the respondents that the transfer of the applicant has been made at the instance of the controlling officer Shri A.R.Das without verifying the records by the higher authorities and also without ascertaining the truth but on the basis of extraneous consideration. Therefore the impugned order of transfer and posting is malafide, illegal, arbitrary and unfair and the same is liable to be set aside and quashed and in the facts and circumstance stated above the application deserves to be allowed with costs.

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

I, Shri Ajit Debnath, son of Shri Rajgobinda Debnath, resident of at present Sonari, aged about 38 years, working as Inspector in the Central Excise Department, posted at Jorhat Division, Sonari do hereby declare that I have gone through this rejoinder to the written statement submitted by the respondents are true to my knowledge and belief and I have not suppressed any material facts in this rejoinder.

I sign this verification on this day i.e. on 26th November, 1996 at Guwahati.

*Ajit Debnath*

Signature

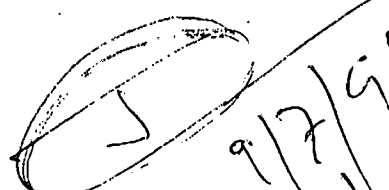
∴ American 8

Received one original application in connection with "Information Regarding opening of a Transit-Camp at Sibsoagar" containing two pages submitted by Hovai Forest products Pvt. Ltd. Kamabari, Tinap addressed to the Superintendent of Central Excise & Customs, Somari. dt-10.6.96 alongwith

the copy of invoices No. 65 dated 1.6.96 to 107 dated 30.6.96 (forty three numbers) AND one original letter of Supdt. Sibsoagar addressed to Supdt. Somari vide Lno. 433 dated 24.6.96. From Sni A. Debnath, Inspector, Somari Range.

The documents mentioned above will be returned to the Supdt. Somari Range after doing the needful.

AH stkd  
Adv  
Recd  
9.7.96  
A. E. B. ...

  
(J. Abedin)  
Superintendent-  
(Technical)  
Central Excise  
Jorhat.  
Central Excise.  
Jorhat.

CONFIDENTIAL

To The Asst. Commissioner,  
Central Jail,  
Gorakhpur.

Subj: Objective Impartial Evaluation of works  
done by me in Sonari Range, Co. S. of 21-1-96  
- prayer for.

Sir,

With reference to my visits to Civil office on  
10.7.96 and also my <sup>and meeting to you</sup> visit to Shillong Commissioner's  
and personal meeting with the Honorable  
Commissioner, I am led to believe that there  
is a doubt as to my <sup>on 30.7.96</sup> regularity and performance of my works in  
Sonari Range by my Range Superintendent, the  
deputation of an Inspector to Sonari Range and  
especially his relation to the Range after  
your letter to release him immediately which  
was received in Sonari Range on 10.7.96. (vide  
enward register) is also a proof that I am  
with all my <sup>3 (three)</sup> <sup>colleagues</sup> <sup>are</sup> <sup>able to</sup> <sup>work</sup> <sup>well</sup>  
sanctioned (strength) are not working to the  
satisfaction of my immediate supervisor officer.  
I feel ashamed, rather inferior to think that I am  
not competent enough to satisfy my superior.

I hope to excel in my performances  
and I am submitting my diaries (X-1) in the  
hope of betterment of my performance which  
are never coming back to me for making etc.

I also pray to be advised by you, kindly,  
advice, rules, guidelines etc. I have re-  
iterated my this prayer in my diary.

I also beged work distribution from you  
previously.

Under the above circumstances, I beg an  
assessment of my works done by me by you or any  
impartial officer and simultaneously I hope to  
have guidelines, instructing advice by my  
superior on other wise as I am getting controver-  
sial on heterogeneous verbal instructions from the  
to time whereas rules demands that every  
verbal order should be followed by a written  
order. Please see me from unseparable administration  
- tion to static norms.

Yours faithfully,  
A. DEONATH INSPE.

AH  
Mhr  
ATV  
11/11/96  
P.A.T

83/3896 To

The Asst. Commissioner,  
Central Excise,  
Gorakhpur.

19 Annexure-10

(Through proper Channel)  
in duplicate.

Subj: - Rotation or distribution of works -  
- proper for.

Sir,

I beg to state that I had been working basically on tea lines my joining in Sonbati on April/1989. Of course, I have undergone rotation on 1991 and on January 1999, my joining in present posting.

It is established rule of the Deptt. that there will be rotation every two years among Inspectors. If inter-office rotation is not possible due to existence of a single office <sup>only</sup> there will be an interchange of works for better work culture and development of manpower.

I have verbally requested my P.O. for rotation or distribution of duty since March 1996 again and again. Serving in the Deptt. as Inspector since 1989, I endeavour to excel in my duty and hence I pray to your honour to allocate me new commodities other than tea, my present one, to enable me to learn more so that my service to the Deptt. consummate into betterment than my present contribution.

Yours faithfully

AH est est  
Chh  
Pdv

3.7.06  
M. JERNATH  
INSPECTOR  
CENTRAL EXCISE  
SONBARI RANGE