

Annexure - A
CAT- 02
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD//
CIRCUIT BENCH, LUCKNOW

INDEX - SHEET

CAUSE TITLE 207/96 OF 198

Name of the Parties M.S. Ansari

Versus

203 (A.G.)

Part A, B and C

Sl.No.	DESCRIPTION OF DOCUMENTS	PAGE
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2	Order Sheet	2
3	Handing over List 20	9
4	Particulars Copy for witness	10
5	Counter	7
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7	Particulars Copy	9
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	<u>File B/C needed after list given at</u>	

10/10/2009
203 (A.G.)

to all Admissions from the Islands

of the Commonwealth of the United States.

207

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n

23/6/90

CIA.

SEARCHED INDEXED

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

27/6/96

Registration No. 207 of 1990 (C) ✓ 6

APPLICANT(S) M. S Ansari

REPRESENTATIVE(S) U.C.K.

<u>Particulars to be examined</u>	<u>Endorsement as to result of examination</u>
1. Is the applicant competent ?	Y
2. a) Is the application in the prescribed form ?	Y
b) Is the application in paper book form ?	Y
c) Have six complete sets of the application been fixed ?	Y
3. a) Is the application in time ?	Y
b) If not, by how many days it is beyond time ?	
c) Has sufficient cause for not making the application in time, been filed ?	
4. Has the document of authorisation/ Nakashnama been filed ?	Y
5. Is the application accompanied by S.D./Postal Order for Rs.50/-	Y
6. Has the certified copy/copies of the order() against which the application is made been filed ?	Y
7. a) Have the copies of the documents relied upon by the applicant and mentioned in the application, been filed ?	Y
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Y
c) Are the documents referred to in (a) above neatly typed in double space ?	Y
8. Has the index of documents been filed & pagging done properly ?	Y
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application ?	Y
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ?	N

Particulars to be examinedEndorsement as to result of examination

11. Are the application/ Duplicate copy/ copy of the application signed ? **Y**

12. Are extra copies of the application which are enclosed ?
 a) Identical with the Original ?
 b) Different ?
 c) Wanting in signatures
 Are the signatures _____ ?

13. Have the two size envelopes securing the copies of the application been filed ? **No**

14. Are the given names the registered names ? **Y**

15. Do the names of the parties stated in the copies tally with those mentioned in the application ? **Y**

16. Are the affidavits certified by a Notary Public or by an individual certifying that they are true ? **N/**

17. Are the affidavits in the case certified in Form No. 6 of the Rules of Court ?
 a) True ?
 b) In distinct heads ?
 c) Numbered consecutively **Y**.
 d) Printed in double space on one side of the paper ?
 e) Stamped with circular seal for interim relief or signed for Interim relief with date and place ? **Y**

18. Whether all the remedies have been exhausted. **Y**

Pallavi

28/9/90

Hon Mr. Justice R. Neth, re
Hon Mr. K. Ganguly, D.O.P.

A 2

The principal question is to whether the ~~for~~ a Senior Deputy Accountant General is competent to transfer the Divisional Account Officer. The learned counsel for the petitioner has referred to para ~~16~~ 333 of the Controller & Auditor General's general manual of standing orders to show that Divisional Accountants may be transferred by Accountant General. Inference might be drawn is that a Divisional Account Officer, who is superior to a Divisional Accountant, may therefore not be transferred by a by Accountant General. He also refers to para 163

Dr Dinesh Chandra accepts notice on behalf of respondents. The notice meant for respondent ~~can~~ be handed over by the Office to Dr Dinesh Chandra. He may obtain instructions and the case be listed for admission on 12-7-90. When the case may be disposed of finally. In particular, he will indicate whether my power of transfer ~~is~~

What for
12/7/90
I apply to the ^{deputy} Accountant General and if so
allowable he will also file a copy of
order transferring the applicant from Darjeeling
to Cuttack and its legal copy of the order be
given to petitioner.

Noted for 12/7/90

As appear air
A. T. Alielalal. After hearing reason and this is so filling after Trial. I am
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Hearbld Mr. P. Srinivasan A.M.
Hearbld Mr. J. P. Shrawan J.M.

When this application first came up for hearing ^{today} the application and Mr's counsel were absent. We therefore heard Counsel for respondent and ^{puruse of} ~~prosecute~~ the records of respondents and dictated an order dismissing the application.

After we ~~had~~ dictated the order Sri. Tilakn. Laxmi Counsel ^{in int} for the applicant appeared and submitted that the case ^{had} been listed at S. No. 28 but later been placed at S. No 4A of the admissions list. That is how he was not present. When it was called on, he ~~trou~~ ^{trou} that he be heard before passing final order. However by this time the departmental official who produced the records has left the court.

In the circumstances stated by Sri. Tilakn. we recall our ~~order~~ oral judgment dictated earlier today. The matter will be heard ~~ad hoc~~. Further the departmental records seen by us earlier are required. Dr. Dinesh Kumar Subramaniam that this case should be heard expeditiously because of the interim stay against his client.

The matter will be heard on 17.8.1990. If ^{Respondent will produce the records then} the interim order will continue.

John
J.M.

ff, 13/8
J.M.

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH, LUCKNOW.

Registration (C.A. No. 204/90 (L))

A-3

1

M.S. Taremi ... Applicant
 Vs.
 Union of India & others ... Opp. Parties

Rehabil Mr. P. Srinivasan, M.

Rehabil Mr. JP Sharma, M.

JUDGMENT

(Delivered by Rehabil JP Sharma, Judicial Member)

The applicant, a Divisional Accounts Officer, who earlier posted in Bhopalki Division of Sharda Canal under the Executive Engineer, moved this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of his transfer dated 27-5-1990, passed by the Senior Deputy Accountant General (Works) from the office of Executive Engineer, Sharda Canal Division, Bhopalki to Narmi 'B' Construction Division-2, Chinyali in Uttar Kashi.

2. The brief facts are that the applicant was promoted and appointed from selection grade of Divisional Accountant to the post of Divisional Accounts Officer (Group 'B' gazetted) by the Accountant General (A.G) vide his order dated 28-2-1990 and has been posted as Divisional Accounts Officer, Sharda Canal Division, Bhopalki (Appendix-I). Choice was also called from the applicant to indicate the station where he would like to be posted in case of his transfer during AGT 1990. The applicant gave his choice of stations at Lucknow, Unnao, Ras Barail and Kepur (Appendix-II). The appointing authority for Divisional Accountant before the Senior Deputy Accountant, i.e. Dy. Accountant General (Works) has been Searched. The application has been forwarded to the Dy. AGT and Searched by Senior Deputy Accountant.

General, who was not competent authority in violation of Fundamental Rule 15(a) and para 153 of Chapter IV of the Comptroller and Auditor General's Manual of Standing Orders (Administrative), Volume-I and para 333 of Chapter VII. Further para 37 of the aforesaid Manual provides that excepting cases of exigencies, all transfers should be made only during summer vacation and intimation of such transfer should be given in the month of March to officer concerned. The applicant prays that the transfer order be quashed.

3. The opposite parties 1 to 3 filed a reply contesting the application that it is not maintainable. The applicant belongs to the cadre of Divisional Accountant Officer, Grade-I which is a cadre of Divisional Accountants under the administrative control of the Accountant General (A&E)-II, U.P., Allahabad. The cadre of Divisional Accountants was re-constituted in various grades vide Comptroller and Auditor General Circular No. 1154-N2/140-88, dated 15-12-1988 (Annexure 7-i). The appointing authority of the Divisional Accountants, Group C (Grade-I) is the Accountant General (A&E)-II, U.P.. The Accountants shown in the above circular i.e. Divisional Accountant (Ordinary Grade 50% (1400-2600), Divisional Accountant Officer, Grade-II (N.G.) (1640-2900) and Divisional Accountant Officer, Grade-I, Group B Gazzeted 20, (2000-32000) find a pay range of 50%, 30% and 20% works in the public works officer/divisions of the U.P. State Government against post of a Divisional Accountant sanctioned by the State Government. The applicant was due for transfer from the office of Executive Engineer, Sharda Canal Division, Barabanki, on completion of three years period, out of Barabanki during annual general transfer 1990, which was duly done in May/June. This transfer was submitted to the Transfer Board and on the recommendation of the Transfer Board it was approved by the Accountant General (A&E) as the appointing authority of the concerned cadre (i.e. 1640-2900 (N.G.)), which is Grade-II.

Term of para 332 Comptroller and Auditor General's Manual of Standing Order (Admn), Volume-I which states as under;

"Posting of Divisional Accountants to divisions are ordered by the Senior Dy. Accountant/Deputy Accountant General acting under general control of the Accountant General. Posting should also be designed to provide a trained Accountant in each division office and an experienced Senior Accountant to new construction division or the divisions, the a account of which either heavy or of a peculiar nature, (Annexure P-2). The Senior/Accountant General ordered the transfer with due approval of Accountant General (A&E)-II, who is the appointing authority of the applicant. The power of transfer has been exercised with the approval of the competent authority. Service condition of the cadre of the Divisional Accountants to which cadre the petitioner belongs even after his promotion as Divisional Accounts Officer, Grade-I is governed under the relevant Central Government rules and administrative control of those officers is vested with Accountant General (A&E)-II, D.P. Allocated. The Fundamental Rule 15(e) does not apply to the petitioner as he has been transferred from one station to another without any change in the designation, post or status. The transfer order was made in the month of May, when there is general vacation. The transfer has been effected by the competent authority, keeping in view the public interest and administrative exigencies. Choices are invited from the employees, who are liable to transfer, but it does not vest any legal right in them to get their particular station of choice.

The respondent has further stated that promotion of the petitioner from the cadre of the cadre of Divisional Accountants to Deputy Accountant his function as Accountant. The petitioner is now engaged in same function as Divisional Accounts Officer, Central Accounts Office performing as Divisional Accountant. I would like to inform the respondents that in d...

Judgment of delivered by this Tribunal in OA No. 515 of 1990.

This application was filed almost on similar grounds and was dismissed on 5-7-1990.

5. We have heard the learned counsel for both the parties at length and have gone through records of the case. The first point urged by the learned counsel for the applicant is that the transfer has been made by an authority not competent to transfer. In this connection learned counsel for the applicant refers the authority of the Hon'ble Supreme Court, reported in AIR 1976 (SC), page 1899 'B. Kanta Mishra Vs. High Court of Orissa. Referring para 24 and 25 of this judgment the learned counsel pointed out that powers of Principal Accountant General (PAG) could not have been exercised by the Senior Deputy Accountant General (Dorke). But the aforesaid authority is not to applicable so far as the case of the applicant is concerned because firstly this case is regarding the punishment inflicted by an authority, who was not competent to do so and secondly subsequently the act was ratified by the Governor/ but it has been held that once there is a void order, it cannot be ratified subsequently. The present case is a simple case of transfer and it has to be seen whether the order has been passed by a competent authority or not. In this connection CAS Manual and Standing Orders Volume-II (Section-8) lays down the powers and Fundamental Rights and at serial no. 10 powers to transfer the government servant from one post to another and column 5 deals with the procedure in respect of Class-II officers and non-gazetted staff within the jurisdiction of their own offices. Section 8, para 10, of this Manual order at page-87 of the above book of 1978 does clearly goes to show that the Accountant General is a competent authority. The department has placed before us a copy of the 1990 file and it goes to show on 26-6-1990, the Accountant General has approved the transfer of the concerned officer to the concerned post after the due process of law.

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commendation for the good work done by the Annual General Transfer Board. A perusal of the file shows that the Board consisted of Shri S.K. Mishra, Senior Deputy Accountant General (U), Shri K.K. Srivastava, Dy. Accountant General (Pon) and Shri A. Srinivas Kumar, Dy. Accountant General (Funds). After the approval has been given by the Accountant General-II on 23-5-1990, the relevant transfer order was issued on 29-5-1990. Thus, in this case if the work had been entrusted by Accountant General-II to the Board for facilitating the grant of disposal of various annual transfers, then it cannot be said that the power has not been exercised by the competent authority. First order of course has been issued by the Senior Deputy Accountant General (Works), but actually this has been done with the prior approval of the Accountant General-II. In view of this fact, there is no illegality or unconstitutionality regarding competence of the authority passing the order of transfer of this applicant. This point was also raised in the case of Jagdish Prasad Vs. Union of India before the Allahabad Bench of the Tribunal in W.P. No. 312/90 and the similar order of transfer dated 29-5-90 was remanded. The Bench held that it creates no difficulty in the order as it is only an error of description. If the Accountant General was competent to order the transfer, his application for a special of transfer is only exception for the transfer. Thus, this point is covered by the judgment and we are fully in agreement with the view taken by the Hon'ble Mr. Justice K. Venkata and Hon'ble K.J. Ramai, AP.

6. The learned counsel for the applicant further refers to Fundamental Rule 16 and para 163 of the CMC Manual and Standing Orders, Volume-I. Para 163 deals with posting and transfers. It lays down that 'Military Judge Officer in his office and posts under his command, or in the Office of Judge, Defence Services, or Commandant, or Board of Enquiry, or other Deputy Comptroller of Accounts' (7) - C. 16, Schedule of Rules of Court of Appeal, 1950.

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powers of the Inspector General of Accounts, the liability like the other Central Government Services, to be transferred from one office to another subject to the provisions of P.R.L. The Comptroller and Auditor General may, before an office is to be part or office which has to be audit and should be responsible to the learned counsel for the applicant pointed out that if the power of CAG which is being exercised by the Accountant General and so it cannot be further delegated and in this connection no objection has been made by the learned counsel on State of J&K. Mr. Justice Suresh Singh, reported in AIR 1984 (SC), page 380. After giving a careful consideration to the authority (supra), we find that in the present case the power has been exercised by the Accountant General. There is no further delegation of power so the argument is to no force. The authority, therefore, is not relevant at all in the present case. Further this authority is confinement of judicial power and does not deal as such with the powers given to subordinates by the Head of the Office or Department. In any case the power of authority is not applicable to the facts of the present case.

7. The learned counsel for the applicant further pressed that the claim given by the applicant has not considered and no objection has been given. Obviously the claim is taken before hand to accommodate a particular person but in general transfer if the authority ^d does not look to the choice given by the participant according, there cannot be any challenge for non acceptance of the choice, a like principle is claimed. The matter comes before the Transfer Board constituted by Accountant General to facilitate the act of transfer involving about 370 officers and we find that the application has not been discontinued at all.

8. The learned counsel for the applicant further argued that the application has been filed in accordance with 28 L-1990 and has not asked for transfer, but for appointment. But there was no such application of the concerned officer to transfer and the power of

- 6 -

three years at a station is to be reckoned from the date an official remaining at that station in whatever capacity and his promotion in the next grade will not wipe out his earlier stay at the station.

9. The learned counsel for the petitioner has further referred to Para 36 of Chapter II of the Additional Accountant Establishment at page-10. This para lays down that an Accountant cannot be kept for a period longer than of three years in any particular division and if any special reason ~~is charged~~ cannot be made at the expiry of that period, ~~and~~ the matter should be brought to the notice of the Deputy Accountant General for orders. This point has already been discussed above. The stay of the applicant at his place of posting as Divisional Accountants Officer Sharda Canal has exceeded three years and he was well informed in time on 9-2-1990 by memo (Annexure R-5) to give the choice. If the applicant had any grievance, he could have come before the Tribunal prior to actual general transfer as considered in the May 1990.

10. It has been further argued by the learned counsel for the petitioner that notice of transfer was not given in the month of March which is required to do this, but that is not mandatory. Actual transfer order shows that it should be carried out between 16th June to 16th July and that is the period where necessary formalities of new commerce or starts commencing.

11. Learned counsel for the respondents has particularly referred to the judgment of English Pressed (Supra) and filed a copy of the said judgment. We are in full agreement with the judgment and the view taken therein. This case is almost covered by the judgment delivered by the Central Administrative Tribunal, New Delhi in a similar matter against a similar order.

Further, in D.K. Dua vs. State of Gujarat, reported in 1989 (3) SCR at page 390 SC has held;

"Therefore, even if there is some difficulty or irregularity in respect of passing and issue of transfer the same have got to be ignored. If the guidelines are to be applied by the court the confusion will be soon compounded. In the aforesaid circumstances unless it is clearly shown that the order of transfer is passed as a result of malice and it is by way of victimisation it would not be proper for those court to exercise its power under Article 226 of the Constitution of India and interfere in matter of transfer."

12. The Hon'ble Supreme Court in Gujarat Electricity Board vs. Atma Ram reported in 1989 (4) SCC, page 602 held that therefore in an incident of a transfer and the person, who has come to challenge it, should first go to the concerned difficulties before the administration which he is likely to suffer at the new place of posting. The guidelines or the administrative instructions are to be observed in the interest of the public and general administration. The appointing authority is the best judge to exercise the powers and prerogatives as to who is the person to be posted at which place. The administrative exigency requires posting of a particular person. In this part of case the order of transfer is neither malafide nor it is perverse order. The annual general transfer has been considered by senior-most officers of the office of the Accountant General and there is no allegation of arbitrariness or disciplinary action against him.

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In view of the above, we find that the applicant has no case, the application is devoid of merits and is dismissed leaving the parties to bear their own costs. The interim stay granted by the Tribunal on 23-6-1990 is vacated.

J. S. Manohar
MEMBER (J)

P. S. Iyer
MEMBER (A) 17/8/90

SS/

22/6/90
V
ANITA CENTRAL ADMINISTRATIVE TRIBUNAL, ALMORA (U.P.)

REGISTRATION

8-4
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Case No. 207 of 1990. (L)
(District-Barabanki)

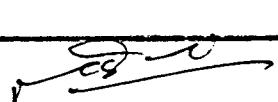
I.S. Ansari Applicant.

Versus.

Union of India and others. Respondents.

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4.	Annexure No. III in forma dated 5.5.1.90.	13. 14.


Signature of Applicant.

Date of Filing

Date of receipt by post

28.6.90 Registration No.

Almora
271650

Signature for Registrar.

W. T. Ansari
27/6/90

27/6/90
V A.M.
2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

CIRCUIT BENCH, LUCKNOW

Case No. 207 of 1990 (L)

APPLICATION J/S 19 OF ADMINISTRATIVE TRIBUNAL

ACT, 1985

M.S. Ansari Applicant

Versus

Union of India & Others Opposite Parties

1. PARTICULARS OF APPLICANT

Sri M.S. ANSARI, aged about 43 years,

S/O Shri Mohammad Yusuf,

Official address :

Divisional Accounts Officer Gr. I,

C/O Executive Engineer,

Barrabanki Division,

Sharda Canal Division, Barrabanki

Address of service of Notice:

69/20, Bheri Mandi, Lalkuan,

Lucknow. Applicant/
Petitioner.

Versus

2. PARTICULARS OF RESPONDENTS:

1. Union of India, through

Accountant General,

Uttar Pradesh, A.O. Office,

at Allahabad.

2. The Accountant General (A.G.) II

Dept., Allahabad.

ACLi
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3. Senior Deputy Accountant General,
(Works) through Office of
Accountant General (A.G.) II,
Uttar Pradesh, Allahabad.

4. Executive Engineer,
Sharda Canal Division,
Barabanki. Opposite Parties

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

That the present petition/application is directed
against the Order No. 32 T/T&P/AGT/90/DA/ dated
29.5.1990 passed by Senior Deputy Accountant General
(Works) transferring the petitioner from the Office
of Executive Engineer ~~Sharda Canal Division~~ Sharda
Canal Division, Barabanki to Maneri 'B' Construction
Divn. 2, Chinyali ⁴ ~~Sawans~~ Chiniali in Uttar Kashi.
The photostat copies of order of transfer dated
29.5.1990 as well as the original one is being placed
on record herewith as Annexure I to this petition.

4. JURISDICTION OF TRIBUNAL:

That the applicant declares that the subject matter
of order/s against which redressal is being sought
is within the jurisdiction of the Tribunal.

5. LIMITATION:

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

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-3-

6. FACTS OF THE CASE:

The facts of the case are as given below:

(a) That the applicant has been promoted and appointed from the Selection Grade of Divisional Accountant to the post of Divisional Accounts Officer (Group B Gazetted) in pay scale of Rs.2000-60-2300-2B-75-3200 by the Accountant General (A.G.) II vide order No. MM-1/DAO/Promotion/3325 dated 28.2.1990 from the Office of Accountant General (A.G.) U.P., Allahabad and has been posted as Divisional Accounts Officer, Sharda Canal Division, Barabanki. Copy of letter ~~and order~~ of promotion dated 28.2.90 is Annexure II.

(b) That prior to his promotion as Divisional Accounts Officer, ^{from AG} the opposite party No. 2 i.e. Accountant General's office, a communication was addressed to the applicant as Selection Grade Divisional Accountant to express and give his option for his further posting by transfer during AGT 1990.

(c) That on 5.3.1990 the applicant filled up the proforma and indicated his date of promotion as Divisional Accounts Officer as well indicated his option in order of preference as Lucknow, Jhansi, Raebareli and Kanpur and indicated his reason for preference or option. The true photostatic copy is annexed as Annexure III.

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20/5/80

(d) That the post of Divisional Accounts Officer in Group B post the appointing authority for this post is Principal Accountant General/Accountant General.

(e) That by order No. MI 1/T&P/AGT/90/DA/32 dated 29.5.1990 passed and issued by Senior Deputy Accountant General (Works), the petitioner has been transferred from Sharda Canal Division, Barabanki to the office of Executive Engineer/Supdt. of Works, Naneri B Construction Division Stage II Chiniyali Sauruk ~~Shambhaura~~, Uttar Kashi.

(f) That as per Central F.R. 15(a) the President may transfer a Government servant from one post to another.

(g) That para 333 - Chapter VII of Comptroller and Auditor General's Manual of Standing Orders Vol. I, provides "subject, as far as ^{is} practicable, to the expressed wishes of Superintending Engineer, transfers of Divisional Accountants from the Divisional Office to another are made by Accountant General ~~at his discretion~~"

(h) That para 162 of Chapter IV of aforesaid Manual further ~~forifies~~ that it is only the Accountant General who has been given power of control over Accounts & Audit Officer, Divisional Accountant and Divisional Accounts Officers has, next after President, ~~to~~ ~~to~~ ~~to~~

got the power or authority to transfer and to pass transfer orders of Divisional Accounts Officers and Divisional Accountants.

(i) That it is under the scheme of thing a proper working of department and officer that it is established that an Officer should be allowed reasonable time to work in his capacity as such officer but ordinarily not more than three years time to work on a post ~~in~~ same district or division and ~~thus~~ ^{is} the scheme under Rule 36 of Manual of the Works Audit Department 1957.

(j) That para 37 of the aforesaid Manual provides that excepting cases of exigencies, all transfers should be made only during summer vacation and the intimation of such transfer should be given in the month of March to Officer concerned.

(k) That the order impugned dated 29.5.1990 is illegal, null, void and without jurisdiction as having been passed by a person i.e. Senior Deputy Accountant General, who is not authorised to pass such transfer order, and person competent to pass transfer order is either President of India or Accountant General and none else as applicant has been advised to state.

(1) The order dated 29.5.90 is violative of paras 36 and 37 of Manual Works Audit Department issued and published by A.G. Office J.P. as:-

(a) the transfer order has been passed just after two months period of applicant's joining ~~of~~ new posting by promotion ~~of~~ new post of Divisional Accounts Officer at Sharda Canal Division, Barabanki ~~without~~ without giving the applicant sufficient time to work in Sharda Canal Division as Divisional Accountant Officer;

(b) as intimation of transfer was not given in March as required by Rule 37.

(m) That the opposite parties acted illegally by not giving due consideration and weightage to the indicated option sought from and ~~xxxrdxxed~~ by the applicant for Lucknow, Jhansi, Raebareli and Karpur alongwith reasons for the same.

7. DETAILS OF REMEDIES EXHAUSTED :

That there is no equally efficacious alternative remedy available to applicant against the order of transfer under Service Rules.

8. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

The applicant declares that he had not previously filed any application, writ petition, suit etc. regarding the subject matter in respect of which this application is being made, before any court

Tribunal etc. or is any such application, writ petition etc. pending before any of them.

9. RELIEFS SOUGHT:

That in view of the facts and circumstances narrated in para 6 above the applicant prays for the following reliefs:..

(A) That this Hon'ble Tribunal may kindly be pleased to declare order of transfer bearing No. MM/T&P/AGT/90/DA/32 dated 29.5.1990 passed by Senior Deputy Accountant General to be illegal, null, void and without jurisdiction and improper and to set aside the same as:

(a) the Senior Deputy Accountant General had no jurisdiction or authority to pass the order impugned as has been indicated in para 6(a)(d)(f)(g)(h)(k) of this petition,

(b) the order is violative of paras 36 and 37 of Manual of Audit department as has been passed without considering the option as well as without taking note of the fact that the applicant had joined the new post of Divisional Accounts Officer at Sharda Canal Division, Barabanki on 5th March 1990 and even two months had not elapsed.

contd...8

contd...9

(B) to issue the opposite parties not to implement, enforce the order of transfer dated 29.5.1990 against the applicant.

(C) allow the petition with cost.

10. INTERIM RELIEF PRAYED FOR :

That pending the final decision on this application the applicant seeks the interim relief and prays that this Hon'ble Tribunal may kindly be pleased to stay the operation and implementation of order of transfer bearing No. 111/T&P/AGT/90/DA/32 dated 29.5.1990 passed by Senior Deputy Accountant General (i.e. person unauthorised and breach of provisions referred to above) pending the final decision of the case and to direct that petitioner's transfer order will not be given effect during the pendency of the case.

11. The applicant will desire to have oral hearing at admission stage and final decision stage.

12. That the particulars of Bank Draft/Postal Order in respect of application fee are as under:-

- (a) Number of Indian Postal Order DD 819259
- (b) Name of Issuing P.C. - ~~Bank Draft~~, Lucknow
- (c) Date of Issue of Postal Order 29.6.1990
- (d) Name of Post office at which payable C.A.T, Allahabad.

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13. LIST OF DOCUMENTS ENCLOSED :

1. Order No. HII/T&P/AGT/90/DA/32 dated 29.5.1990.
2. Proforma of option given on 5.3.1990.
3. Postal order.
4. Order No. HII/T&P/AGT/90/DA/32 dated 29.5.1990.

VERIFICATION

I, H.S. Ansari, aged 43 years son of Abhd. Yusuf, Divisional Accounts Officer, Sharda Canal Division, Barabanki, resident of 69/20, Bheri Mandi, Lalkuan, Lucknow do hereby verify that the contents of paras 1 to 3, 6(a) to 6(e), 8, 10, 11, 12, 13 to be true to my knowledge and those of paras 4, 5, 6(f), 6(g), 6(h)(i)(j)(k)(m), 7, 9(a)(b) are believed by me to be true on legal advice and that I have not suppressed any material facts.

Dated : Lucknow
the 26 June 1990
27

SD-O
SIGNATURE OF APPLICANT.

Hari Dutt Motilal Lalhara
Advocate
Counsel for Applicant

A-5

IN THE HIGH COURT OF UTTAR PRADESH, ALLAHABAD
LAW AND BENCH.

CASE NO. 27 OF 1990.

I.S.Ansari

Applicant.

Versus.

Union of India and others. Respondent.

ANNEXURE NO. 1

OFFICE OF THE ACCOUNTANT GENERAL(A&E)II
UTTAR PRADESH ALLAHABAD

REGISTERED

No WMI/T&P/AGT/90/DA/ 32

Date 29.5.90

OFFICE ORDER

Senior Deputy Accountant General(Works) is pleased to order that

Shri M.S.Ansari,DAO I, is transferred from the Office of Executive Engineer/Superintendent of Works/Works Manager, Sarda Canal Divn, Barabanki to the office of Executive Engineer/Superintendent of Works/ Works Manager,

✓ Maneri B. Const Dn 2 Stage II, Chiniyalisaur UK lying vacant/~~in place of~~

Shri Vacant, who is transferred to the Office of the Executive Engineer/Superintendent of Works/Works Manager, -,-.

In this regard, following points may be noted :

1. Transfer should start from 15th June 1990 and should be completed by 16th July 1990.
2. Invariably, the variation statement should be submitted before proceeding on transfer.
3. The abovementioned DAO I will join the new Division only after being relieved from the present division.
4. He will be relieved by the relieving official/nearest DA. If there is any difficulty or delay in this regard he shall directly submit his charge handing over report to the Divisional officer. If he does not get himself relieved and take over charge at new place of posting within stipulated time, he will be treated as absent unauthorisedly and action will be taken against him as per rules.
5. The handing over and taking over charge should be done in accordance with para 334 of MSO(Admin) Vol I, reproduced below, and all relevant orders on the subject :

"When a DA is about to be relieved of his duties in a Divisional Office, either permanently or temporarily, he

TRUE COPY
(S. M. Ansari)
ATTESTED
CATH COMMISIONER
High Court, Allahabad
Law and Bench
20-6-1990
2pm 27.6.90

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should prepare a memorandum reviewing the accounts of the division. The relieving accountant should examine and forward it promptly with his remarks to the Divisional Officer who will record such observations as he may consider necessary."

6. DAs on being relieved after joining at their new place of posting must inform this office immediately, so as to reach this office latest by 10th August 1990.

7. The abovementioned transfer order will be in public interest/own interest and the affected official will be/will not be entitled for TA advance and transfer TA as well as joining time.

sd
(AK AICH)
Accounts Officer(WMI)

Registered

No WMI/T&P/AGT/90/DA/ 32 (1)

Date 29.5.90

Copy forwarded to the following for information and necessary action :

1. Shri M.S.AnSari,DAO I,Office of the Executive Engineer/Superintendent of Works/Works Manager,Sarda Canal Divn,Barabanki

2. Executive Engineer/Superintendent of Works/Works Manager,Sarda Canal Divn,Barabanki with the request that Shri M.S.AnSari may be relieved immediately under arrangements mentioned in the above office order. He is also requested to issue a certificate to the DAO I who is transferred from his division that handing over/taking over has been done in accordance with para 334 of MSO(Admin) Vol I and relevant orders on the subject. He is also requested to arrange relief of concerned DAO I by the stipulated date. After the receipt of transfer order, no leave of the transferee may be recommended and forwarded to this office and no representation against the transfer be entertained and forwarded to this office.

3. The Executive Engineer/Superintendent of Works/Works Manager ,ManeriB.ConstDn2 Stage II with the request that joining report of Shri M.S.AnSari may be sent immediately to the undersigned.

(R) Chinu Lal Singh

TRUE COPY

ATTESTED of 12

(AK AICH)
Accounts Officer(WMI)

Marikesh Sharma

OATH COMMISSIONER

Rishabh, 10/10/90

At Lal Bahadur Shastri

No. 52
Date 22.6.90

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3

OFFICE OF THE ACCOUNTANT GENERAL(A&E) II
UTTAR PRADESH ALLAHABAAD

REGISTERED

No WMI/TEP/AGC/90/DA/ 51

Date 29.5.90

OFFICE ORDER

Senior Deputy Accountant General(works) is pleased to order that

Shri M.S.Ansari, DAS I,
is transferred from the Office of Executive Engineer/Superintendent of Works/Works Manager,
Sarda Canal Divn, Banabasi
to the office of Executive Engineer/Superintendent of Works/
Works Manager,
✓ Maneri B.C. Const Dc Stage II, Chiniyalisaur UK
lying vacant/~~vacant~~ of
Shri Vasant, -
who is transferred to the Office of the Executive Engineer/
Superintendent of Works/Works Manager,

In this regard, following points may be noted :

1. Transfer should start from 15th June 1990 and should be completed by 16th July 1990.
2. Invariably, the variation statement should be submitted before proceeding on transfer.
3. The abovementioned DAS I will join the new Division only after being relieved from the present division.
4. He will be relieved by the relieving official/nearest DA. If there is any difficulty or delay in this regard he shall directly submit his charge handing over report to the Divisional Officer. If he does not get himself relieved and take over charge at new place of posting within stipulated time, he will be treated as absent unauthorisedly and action will be taken against him as per rules.
5. The handing over and taking over charge should be done in accordance with para 334 of MSO(Admin) Vol I, reproduced below, and all relevant orders on the subject :

"When a DA is about to be relieved of his duties in a Divisional Office, either permanently or temporarily, he

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should prepare a memorandum reviewing the accounts of the division. The relieving accountant should examine and forward it promptly with his remarks to the Divisional Officer who will record such observations as he may consider necessary."

6. DAs on being relieved after joining at their new place of posting must inform this office immediately, so as to reach this office latest by 10th August 1990.

7. The abovementioned transfer order will be in public interest/our interest and the affected official will be ~~not be~~ entitled for TA advance and transfer TA as well as joining time.

SA
(AK AICH)
Accounts Officer(WMI)

Registered

No WMI/TRP/AGT/90/DA/ 32(1)

Date 29.5.90

Copy forwarded to the following for information and necessary action:

1. Shri M.S.Ansari,DAO I,Office of the Executive Engineer/Superintendent of Works/Works Manager,Sarda Canal Divn,Bareilly

2. Executive Engineer/Superintendent of Works/Works Manager,Sarda Canal Divn,Bareilly with the request that Shri M.S.Ansari may be relieved immediately under arrangements mentioned in the above office order. He is also requested to issue a certificate to the DAO I who is transferred from his division that handing over/taking over has been done in accordance with para 334 of MSO(Admin) Vol I and relevant orders on the subject. He is also requested to arrange relief of concerned DAO I by the stipulated date. After the receipt of transfer order, no leave of the transferee may be recommended and forwarded to this office and no representation against the transfer be entertained and forwarded to this office.

3. The Executive Engineer/Superintendent of Works/Works Manager,Maneri B.Chhatra 2 Stage (if) with the request that joining report of Shri M.S.Ansari may be sent immediately to the undersigned.

(R) Chaudhary Umarali

Anil
(AK AICH)
Accounts Officer(WMI)

W.E.M. No. 17

A-5
15/87

OFFICE OF THE ACCOUNTANT GENERAL (A&E)II, U.P. ALLAHABAD
No. W.M.-I/DA.O./Promotion/3325

Date:- 23.02.90

OFFICE ORDER

The Accountant General (A&E)II is pleased to promote following Selection Grade Divisional Accountants to officiate as Divisional Accounts Officer (Group-B Gazetted) in the pay scale of ₹2000-50-2300-13-75-3200 w.e.f. the date they actually take over charge as Divisional Accounts Officer in their present assignments. They are promoted without prejudice to the rights of their seniors and will be on probation for a period of two years from the date of promotion as per instructions contained in Indian Audit & Accounts Deptt. (Divisional Accounts Officer) Recruitment Rules 1989.

They are required to submit their option to this office for fixation of pay under provisions of F.R. 22-C within one month from the date of promotion.

Option once exercised is final.

<u>Sl. No.</u>	<u>Name</u> S/Sri
1.	Meraj Ahamed
2.	Keshav Bhushan (S.C.)
3.	L. S. Trivedi
4.	Vishwa Nath Singh
5.	Har Deo Ram (S.C.)
6.	Sobha Ram Ashok (S.C.)
7.	Kedar Ram (S.C.)
8.	Paras Nath Mishra
9.	Surendra Kumar Dixit
10.	Abdul Rasheed II
11.	Mohd. Shamsher Ansari
12.	Ram Narain Mishra
13.	Raj Narain Singh

(S. K. Mishra)
Sri. Deputy Accountant General (Works)

Dy. A.G.

SG

Recd.

TRUE COPY

ATTESTED

21.2.1990

P.T.O

21.2.1990

PROCEDURE

To be filled by the E.D.A./D.A./S.G.D.A./D.A.O. and must reach the Accounts Officer, W.M.I Section, Office of the Accountant General (A&E) II, U.P., Allahabad latest by 15th March, 1990 through proper channel.

1- Name and designation MOHD SHAMSHER ANSARI S.D.A.O.

2- Present place of posting Barabanki Division
with postal address. Sharda Canal Barabanki

3- Date of birth 01.01.1947

4- Date of retirement 2005

5- Permanent Home Address AT 800 - Bithi Road Distt. Bulandshahr

6- Date of appointment as E.D.A./D.A. 9.2.73.

7- Month & year of passing D.A. December, 1972
Grade Exam.

8- Date of promotion as S.G.D.A. 19.6.86

9- Date of promotion as Divisional 5.3.80.
Accounts Officer

10- Details of postings of last 10 years.

Name of Division	Period of stay	Posting Order No. and date.
(a) PT. Regs Division Lko.	3.6.80 to 19.7.83	WM-1/MF/LXXI/1126 dt 17.5.80
(b) Research Institute (Phy.) Lko.	20.7.83 to 17.8.84	WM-1/MF/LXXI/324 dt 5.7.82
(c) Tukewise Dam Silapur	18.8.84 to 20.6.87	WM-1/MF/LXXXI/131 dt 10.7.83
(d) B.D. Shand, Canal Barabanki	1.7.87 to date	WM-1/AGT/54 DA/76 dt 26.5.87

TRUE COPY

ATTESTED

Marikesh Sharma
Marikesh Sharma

OATH COMMISSIONER
High Court, Allahabad
Execution Deed

(Contd---2/-)

27.6.88

11. Names of Four Stations (Specifying a division will result in disqualification) in order of preference where transfer is desired.

STATION

REASONS

1. Lucknow

If will be easier for me to look after children who are studying in PSC Part I & Intermediate at Lucknow.

2. Unnao

3. Raibareilly

4. Kannauj

12. Any other remarks.


Signature of D.A.O. / S.G.D.A. / D.A. / E.D.A.

13. Remarks of the Divisional Officer.....

(The Divisional Officer will despatch the application within 3 days of submission. Under no circumstances, the application will be withheld by the Divisional Officer)

Note : Portions not applicable may be scored out.

DIN
484

TRUE COPY

ATTESTED

By S. S. Singh
S. S. Singh
OATH COMMISSIONER
27-6-97

27-6-97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDL. BENCH
ALLAHABAD.

CIVIL MIS. APPLICATION NO. OF 1990
ON BEHALF OF
UNION OF INDIA & OTHERS. APPLICANTS/
RESPONDENTS

To,

The Hon'ble The Vice Chairman and His
companion Members of the aforesaid Tribunal.

The humble application of the above named
MOST RESPECTFULLY SHOWETH:

Analysis of facts and circumstances

stated in accompanying counter affidavit,
the interim relief prayed by the petitioner
is liable to be rejected and the petition is also liable
to be dismissed with costs.

A-6
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2.

P R A Y E R

WHEREFORE, this Hon'ble Tribunal
may be pleased to reject the interim relief
as prayed by the petitioner, ^{& the petition be dismissed} otherwise
respondents would suffer irreparable loss.

Dated :

), (d-2

(DR.DINESH CHANDRA)
ADDL-STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE
RESPONDENTS. No 1 to 3

76
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH: ALLAHABAD.

• • • • • • •

COUNTER REPLY

ON BEHALF OF RESPONDENTS No. 1, 2, 3

IN
O.A. No. 207 of 1990(L)

M.S. Ansari applicant

versus

Union of India and others. Respondents

I, S.K. Mishra, aged about 38 years s/o S.
S.S. Mishra, posted as Sr.Dy.Accountant
General(Works) Office of the Accountant
General(A&E)-II,U.P., Allahabad, do hereby solemnly
affirm and state as under

1- That I have read the application filed by Shri. M.S. Ansari and has understood the contents thereof.

2. That I am Sr.Dy.Accountant General(Works in the office of the Accountant General(A&E)II, U.P. Allahabad and I am competent to

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A-4
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to serve this ~~counter~~ affidavit on behalf of myself and on behalf of respondent No.I & II. That I am well conversent with the facts of the case deposed herein after.

Brief Facts of the case

3. That it is worthwhile to give a brief facts of the case as under.

4. Shri.M.S. Ansaria Divisional Accounts Officer Grade-I belongs to the cadre of divisional accountants under administrative control of Accountant general(A&E)-II,U.P.,Allahabad. The cadre of the divisional accountants was reconstituted in various grade vide Comptroller and Auditor General circular No.1154-N2/140-88 dated 15.12.88 and read with C.A.G. circular No.130-N4/35-90 dated 29.3.90 as under (Annesure R-1)

1. Divisional Accountant (Oridinary Grade 50% (1400-2600)

2. Divisional Accounts Officer Grade-II(N.G.) (1640-2900)

3. Divisional Accounts Officer Grade I
Group B Gazetted 20% (2000-3200)

The appointing authority of divisional accounts officer Gr.I group B (Gazetted) is the Accountant General(A&E)II,U.P.

All the three categories of the officials of different grades works in the public works offices/divisions of the U.P. State Governement against post of a Divisional Accountant sanctioned by the State Government. For the placement of divisional accounts officer grade-I, Divisional Accounts Officer Grade-II,

S. J.

A-6

and Divisional Accountant, the divisions are identified for administrative purposes on the basis of a volume of expenditure etc. by the Accountant general to accommodate them in a division of their status.

In the instant case Shri. M.S. Ansari Divisional Accounts Officer Grade-I was due for transfer from office of the Executive Engineer Sarda Canal Division, Barabanki on completion of three years term, out of Barabanki during annual general transfer 1990, which are generally done in May/June. He was promoted to D.A.O. Grade (now redesignated as D.A.O. Grade I) vide order dated 28.2.90. His case of transfer was considered by duly constituted Transfer Board and on the recommendation of Transfer Board and its approval by the Accountant General(A&E)-II, U.P., the appointing authority of the petitioner, the Sr.Dy.Accountant General(Works) ordered his transfer in terms of para 332 Comptroller and Auditor General' Manual of standing order (Admn.) Volume I which states as under:

" Posting of Divisional Accountants to divisions are ordered by the Sr.Dy.Accountant/Dy.Accountant General acting under general control of the Accountant General. Posting should also be designed to provide a trained

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A-6
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a trained Accountant in each division office and an experieced Sr.Accountant to new construction divison or the divisions, the account of which either heavy or of a peculiar nature." (Annexure R-2)

In view of the above para 332 Sr.Dy.Accoountant Genral(Works) ordered the transfer with due approval of Accountant General(A&E) II, who is the appointing authority of the petitioner.

4. Being agrived by the said order of the transfer the petitioner has approached the this Hon'ble Tribunal for quashing his order of transfer to Uttar Kashi.

In this connection, it will be pertinent to mention that in the present case, the power of transfer has been excercised by and with the approval of the Competent Authority without any extraneous consideration as the same was done on the recommendation of the Transfer Board, which was constituted for the purpose as many as 371 transfer orderes were done including that of the petitioner, which goes to show that there was no arbitrariness in making the annual transfers. The said transfer order is neither illmotivated nor malafied but has been undertaken in public interest. It has been established

A-6

has been established that transfer is an incident of service and can be effected on administrative exigencies. In the present case the petitioner had already completed his scheduled stay of three years when the transfers orders were to take effect. No legal provisions have been violated.

inconvenience and hardships.

6. That the contents of para 1 to 5 of the petition need no comments.

7. That ~~the~~ the contents of para 6(a) are admitted. It is however, clarified that after restructuring of the cadre of Divisional Accountants, the petitioner, who was working as Selection Grade Divisional Accountant was promoted as Divisional Accounts Officer (now designated as Divisional Accounts Officer Grade I) on 28.2.90. He was transferred from office of Executive Engineer, Sharda Canal Division, Barabanki vide order dated 29.5.90. As he had ~~also~~ almost completed his scheduled stay of three years at Barabanki in the same division. As such he was liable to be transferred even if he would ~~not have been promoted/~~ transferred.

8. That contents of para 6(b) & 6(c) are admitted.

9. That the averments made by the petitioner are misconceived. It is, however, submitted that divisional Accountants constitute a separate cadre and their posting is done in State* Public Works Offices/Divisions against post of Divisional Accountants sanctioned by the State Government, but the service condition of the cadre of the Divisional Accountants to which cadre the ~~petitioner~~ C

belongs even after his promotion as Divisional Accounts Officer Grade I is governed under the relevant Central Govt. rules and administrative control of these officers is vested with Accountant General (A&E) II, U.P., Allahabad. It is admitted that the Divisional Accounts Officer Grade I is group B post but the appointing authority is the Accountant General (A&E) II (annexure R 1) ~~though under the administrative and supervisory control of the Accountant General (A&E) II, and~~ and their postings are decided taking into consideration the importance of the Divisions with regard to volume of expenditure ~~vis-a-vis~~ the status of the Officer likely to be posted.

10 That the contents of para 6(c) are admitted.

11 That in reply ~~likewise~~ to para 6 (f) it is stated that provisions of Fundamental rules 15 (a) do not ~~apply~~ in the present case as the petitioner has merely been transferred from one station to another without any ~~change~~ ^{change} in his designation/post and status.

12 That with reference to para 6(g) it is submitted that all the transfers were issued during annual general transfer 1990 including that of the petitioner on the recommendation of the Transfer Board and approved by the ^{Govt} ~~Govt~~

On the recommendations of the transfer Board ~~transfers~~ were made ^{after} taking into consideration the various factors including the request for transfer to places of choice / request for, by the persons who were due for transfer, and ~~an~~ administrative exigencies.

That with reference to para 6(h) it is submitted that the provisions of para 163 of Comptroller and Auditor General of India's Manual of Standing Orders (Admn) volume I quoted in the petition are of a general nature, wherein it has been indicated that the comptroller and Auditor General of India is the administrative head of the Indian Audit and Accounts Department also. As a matter of fact, there is separate chapter viz. chapter VII in the same manual which is applicable for the cadre of divisional accounts. Provisions of paras 318 and 332 of the said manual are directly applicable to the present case. It is reiterated that the petitioner has been transferred from ~~the~~ Barabanki to Uttar Kashi. After completion of scheduled stay and without any change of designation, post or status on the recommendation of Transfer Board duly approved by the Accountant General (A&E) II and issued by the Sr. Dy. Accountant General (Works).

(Annexure P)

[Signature]

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14 That in reply to contents of para 6(i) it is submitted that in paragraph 36 of the Manual of Works Audit Deartment it is specifically stated that an Accountant should not be retained in a particular division ^{for more than three years.} Since the petitioner was going to complete three years in the Office of Sharda Canal Division, Barabanki, he was transferred on the recommendations of the Transfer Board and with the approval of Accountant General (A&E) II. A photo copy of the said para is being filed as annexure R-4

15 That in reply to para 6 (j) it is submitted that perusal of para 37 of the manual of works audit department, which show that except in cases of transfers found quite necessary due to exigencies of service all transfers should, as far as possible, be made only during summer vacation time. As per instructions sent by the answering respondent vide his letter No.W.M.I/T&P/A.G.T.-1990/38 dated 9.2.90 the petitioner was duly intimated that he was due for a shift from Barabanki. Thus the petitioner had the knowledge of an impending transfer as early as in the month of February 1990. The Transfer order was made in May, 1990, which was to take effect between 15th June & 16th July. The academic session was thus not disturbed.

Shanti

16. That in reply to para 6(k) it is stated that as per provisions of para 332 of C&A.G. Manual of Standing Order (Admn. Volume I) Sr.Dy.Accountant General (Woks) is the competent authority ~~to~~ to order the transfer of the petitioner. Moreover, the said order ~~has been~~ issued with the approval of Accountant General (A&E) II on the recommendation of the Transfer Board. The petitioner was due for transfer from Barabanki after having completing his stay of three years.

17. That in reply to para 6(l) it is stated that the contention of the petitioner is misconceived according to para 36 quoted by the petitioner an Accountant should not be retained in a Division for more than three years. The promotion of the petitioner after restructuring of the cadre of Divisional Accountant does in no way change his function as an Accountant. It is respectfully pointed out that the petitioner is required to perform the same function as a n Divisional Accounts Officer Grade I, which he was performing as a Divisional Accountant.

(b) Submissions made in para ~~15~~^{above} are reiterated. It is further submitted that in order that the said transfers becomes effective from commencement of the academic session, annual general transfers were made in May, 1990 to be effective ~~from~~ from 15th June to 16th July, 1990. *Answer*

~~A-6
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18. That in reply to para 6(m) it is stated that the petitioner was working in the Office of the Executive Engineer, Sharda Canal Division, Barabanki with effect from 1.7.87. His option for posting at Lucknow, Unnao, Raiberry & Kanpur was duly considered by the Transfer Board but he could not be accommodated at ~~any~~ ^{any} places of his choice.

The transfer being an administrative matter, the competent authority had to keep into consideration public interest and administrative exigencies. Places of choice ~~are~~ invited from the employees who ~~are~~ liable for transfer but it does not vest any legal claim in them. In view of para 318 of C&AG's Manual of Standing Order (Admn. Volume I) The Divisional Accountants are liable to serve anywhere within the jurisdiction of the Accountant General (A&E) II. Thus the respondent ^{was} within his right to post the petitioner in any suitable station in public interest.

19. That in view of the submission made in the foregoing paragraphs the relief ^{sought} short for in para 9 of the petition is not admissible as the transfer was made by the competent authority in public interest without any discrimination, arbitrariness, ill-motive, malice etc.

20. That in reply to para 10 it is stated that Shri. Ram Chandra Agarwal, Divisional Account Officer Grade I, who was posted in place of the

Shri

petitioner (Annexure R-6) had reported for duty on 10th July, (Annexure R-6) to the Executive Engineer, Sharda Canal Division, Barabanki in compliance of transfer order but he was not allowed to resume his duty on account of stay order granted by this Hon'ble Tribunal on 28th June 1990 in favour of the petitioner. Thus Shri. Ramchandra Agarwal is at Barabanki without any assignment allotted to him. Under these circumstances, the Hon'ble Tribunal is requested to vacate the stay order passed on 28th June, 1990 and petition may be finally dismissed with costs.

ADDITIONAL SUBMISSIONS FOR CONSIDERATION

1. The transfer being strictly administrative matter does not call for judicial intervention unless the said transfer order is actuated by the malafides and arbitrariness. There is neither any malafides nor arbitrariness in the petitioner's transfer to Chiniyalisaur, Uttarkashi district. "Transfer of an employee is a matter of adjustment and accommodation to be made by the administrative authority concerned.

The following extract from judgement of Gujarat High court in S.C.A. No. 3969 of 1988 decided on 14.10.88, J.K. Dave Vs. State of Gujarat and others.... ^{affas} is relevant.

[Signature]

A-6
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"Transfer" is solely within the power of the Executive and is not to be interfered with by Courts:.....If sufficient lee-way is not granted to the Executive authority in matter like transfer of employee, the administrative machinery may be collapsed or working of the same may come to a grinding halt.....Stay of transfer of an employee is likely to have a chain reaction".

(29) "Transfer of Govt. servant appointed to a particular cadre of transferable posts from one place to other is an incident and condition of service. It is necessary in public interest and efficiency in public administration. No Government servant or employee of public under taking has legal right for being posted at any particular place." as ~~extracted~~ held by ^{Hon'ble} Supreme Court judgement of Gujarat Electricity Board versus Atmaram Sungomal Poshani, Civil appeal No. 3561 of 1986.

(3) The transfer order has been issued by the competent authority considering full facts.

(4) In an identical case No.O.A. 515 of 1990 filed by Jagdih Prasad versus Union of India, this Hon'ble Tribunal has ~~disposed~~ ^{dismissed} the petition on 5.7.90, which was filed on similar grounds and against similar order.

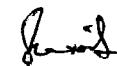
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VERIFICATION

I, S.K. Mishra, aged about 38 years, Sr.Dy.Accountant General(Works) do hereby verify that the contents of paras 1 &2 are true to my knowledge and paras 3 to 20 are based on records and legal advice. Nothing material has been suppressed.



RESPONDENT NO.3



THROUGH DR. DINESH CHANDRA
ADDITIONAL STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE RESPONDENTS.

15-12-88

CIRCULAR NO. NGE/108/1988

भारत पर सचिवालय के
विभिन्न विभागों को
विभिन्न फैसले।

All communications should be
addressed to the Comptroller
and Auditor General of India.

सचिवालय का पता : भारत

Telegraphic Address : ARGBL

पत्र नं. 1154-N.2/140-88

No. 1154-N.2/140-88

भारत के विभिन्न विभागों का फैसला

फैसला-110002

OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

(Champal Kc Niyantak-Nabak

Parikshak Ka Karyalaya),

NEW DELHI-110002

दिनांक

15-12-88

प्रेसक
FROM

15 DEC 1988

भारत के नियंत्रक-महानेतारीयक

नई दिल्ली-110002

THE COMPTROLLER AND AUDITOR GENERAL OF INDIA
NEW DELHI-110002

सभा सभा

The Accountants General (A.G.),
Controlling the cadre of Divisional Accountants
(as per standard list).

विषय :

Subject:

Introduction of a functional grade in Group B Gazzeted for
Divisional Accountants.

Sir,

In continuation of this office d.o. letter No.
1107-N.2/140-88 dated 1.12.1988 on the subject mentioned above
I am directed to convey the following instructions for filling
up the posts in the higher grades of Rs. 2000-3200.

(1) The cadre proposal from 1.7.1988 will be
as follows:-
Divisional Accountants - Rs. 1400-2600 50%

(Ordinary Grade)

Divisional Accountants - Rs. 1640-2430 30%

2000-3200 20%

for operate
staff.

on Group B
and the to

posts in existence on 1st July every year. Accordingly, for the current panel year 1988 (ending 31.12.1988) the percentage will be worked out on the basis of regular posts in existence on 1st July 1988. As the percentage of Selection Grade Divisional Accountants has been reduced by 20% with corresponding creation of a new grade in Group B, the posts of Selection Grade Divisional Accountant in existence on 1.7.1988 will be suitably upgraded.

(iv) The new higher functional grade viz Rs.2000-3200 (standard scale) will be Group B Gazetted and designated as "Divisional Accounts Officer".

(v) The post will be a non-selection post and Selection Grade Divisional Accountants with three years regular service will be eligible for promotion to the new higher grade. Promotion will be on seniority basis subject to rejection of unfit.

(vi) The eligibility criteria should be satisfied on 1st October of the preceding year for promotions in a year, as at present for all other similar promotions. Thus for promotions during the panel year 1988, the crucial date would be 1st October 1987.

(vii) For promotions made against vacancies upto end of 31.12.1988, benefit may be given from 1.7.1988 or date of occurrence of vacancies whichever is later. For instance, if 20 vacancies exist on 1.7.1988, promotions would be from 1.7.1988 for 20 persons. If on 1.10.1988, a vacancy had arisen in the higher grade of Rs. 2000-3200 due to retirement, an eligible Selection Grade Divisional Accountant satisfying the seniority criteria as on 1st October 1987 may be promoted to the new higher grade.

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(viii) Being a Group D post, the appointing authority will be the Principal Accountant General/ Accountant General and the DPC will be a group B DPC as for Assistant Accounts Officer in your office.

(ix) The procedure followed in your office for notification of appointments/retirement of DADS may be followed in the case of Divisional Accounts Officers.

(x) Reservation orders incorporated in the Brochure on Reservation for SC and ST in services as amended from time to time apply to the promotions to the new higher grade.

(xi) The posts in the new higher grade of Rs.2000-3200 should be identified by the A.G. within a period of two months without any reference to the State Government, keeping in view the well defined criteria such as volume of expenditure etc. No prior concurrence of the State Government to implement the scheme is necessary but the State Government may simply be informed that consequent on the recommendations of the Fourth Central Pay Commission and further follow up action in consultation with staff side, the cadre of Divisional Accountants has been restructured.

(xii) Promotions to the cadre of Divisional Accounts Officer may be made on 'as is where is basis till such time the Divisions are identified by the A.G. for posting of these persons.'

2. It is presumed that you have already taken advance action to keep ready the panel as requested in the D.O. dated 1.12.1988. Immediate action may please be taken to promote the eligible Selection Grade Divisional Accountants as Divisional Accounts Officers.

Contd..4/-

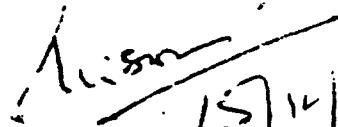
8/10/

3. While there is no objection for the Divisional Accounts Officers to continue as members of the Divisional Accountants association after proper amendment of the Constitution of the association, they cannot represent in JCM forums viz Office Council, Departmental Council and National Council.

4. A report on implementation of these orders may please be despatched to this office on 2nd Jan. 1989.

5. Hindi version will issue separately.

Yours faithfully,


(N. VISWANATHAN)

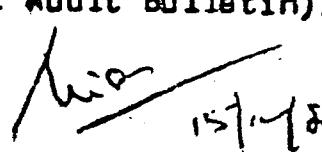
ADMINISTRATIVE OFFICER (N)

No. 1155-N.2/140-88 ;

Dated:- 15-12-88

Copy forwarded to

1. A.C.(N), J.D.(P), NGE-1, NGE-3, NGE-4 (8 copies),
BRS, GE-2 and Audit-2 (2 copies for Audit Bulletin).


ADMINISTRATIVE OFFICER (N)

2. D.O.T. Department of Posts & Telegraphs
3. D.O.T. Department of Posts & Telegraphs
4. D.O.T. Department of Posts & Telegraphs

Enc.

सभस्त अधिकार भारत के नियन्त्रक-महालेखापरीक्षक का सम्बोधन किया जाए।
All communications should be addressed to the Comptroller and Auditor General of India.
सार का पता : आर्जेल
Telegraphic Address: ARJEL



Date No. 130-H4/35-90

भारत के नियन्त्रक-महालेखापरीक्षक का कार्यालय,
नई दिल्ली-110002
OFFICE OF THE COMPTROLLER
AND AUDITOR GENERAL OF INDIA,
(Bharat Ke Nyantrak-Mahalekh
Parikshak Ka Karyalaya),
NEW DELHI-110002

दिनांक

Dated.....

29 MAR 1980

प्रेषण
FROM

भारत के नियन्त्रक-महालेखापरीक्षक
नई दिल्ली-110002

THE COMPTROLLER AND AUDITOR GENERAL OF INDIA,
NEW DELHI-110002

संवाद में

To

All Accountants General (A&E)
(Cadre controlling authority of Divisional Accountants Cadre)
(As per standard list)
Change in designation.

विषय:
Subject:

SIE,

I am directed to state that the question of revising the designation of posts of the Divisional Accountants cadre has been under consideration for some time past and it has now been decided to revise the designations as shown below with immediate effect:-

	<u>Pay Scale</u>	<u>Existing Designation</u>	<u>Revised Designation</u>
1.	Rs. 1400-2600	Divisional Accountant	No Change
2.	Rs. 1640-2900	Selection Grads Divisional Accountant	Divisional Accounts Officer Grads. II (Non-Gazetted)
3.	Rs. 2000-3200	Divisional Accounts Officer	Divisional Accounts Officer Grade I (Group 'B' Gazetted)

2. Amendment to the Recruitment Rules will be issued in due course.

3. The State Governments may be informed suitably.

4. Hindi version will issue separately.

CL A.C/3
W.M.T.

Yours faithfully,

R.N. BANDYOPADHYAY 29/3/80
(R.N. BANDYOPADHYAY)
ADMINISTRATIVE OFFICER (N)

The Senior Deputy Accountant General/Deputy Accountant General (Works) will bring to the notice of the Accountant General periodically good and bad reports of the Divisional Accountants.

NOTE—Instructions contained in paragraph 140 apply also to Divisional Accountants.

330. The Audit Officer inspecting the accounts of the Division should also submit to the Accountant General a confidential report, written in his own handwriting on the work and conduct of the Divisional Accountant as judged mainly by the quality of the work inspected by him. This report should mention *inter-alia* how far the Divisional Accountant keeps himself posted with the relevant rules and procedure relating to audit and accounts and has his personal copies of the codes and other books of reference corrected up-to-date.

331. A confidential report on any clerks of the Division who have applied for appointments under the Accountant General may also be prepared by the Inspecting Officer, if so desired by the Accountant General.

Postings

332. Postings of Divisional Accountants to Divisions are ordered by the Senior Deputy Accountant General/Deputy Accountant General (Works) acting under the general control of the Accountant General. Except in individual cases where a qualified Divisional Accountant is not available and where a purely temporary arrangement is permissible, no person who is not eligible to be appointed to the cadre of Divisional Accountants may be posted to a Division. Postings should also be designed to provide for a trained Accountant for each Division office and, in particular, for an experienced Senior Accountant to new construction division or the divisions, the accounts of which are either heavy or of a peculiar nature.

333. Subject, as far as is practicable, to the expressed wishes of the Superintending Engineer, transfers of Divisional Accountants from the Divisional office to another are made by the Accountant General at his discretion.

334. When a Divisional Accountant is about to be relieved of his duties in a Divisional office, either permanently or temporarily, he should prepare a memorandum reviewing the accounts of the Division. The relieving Accountant should examine it and forward it promptly with his remarks to the Accountant General through the Divisional Officer who will record such observations as he may consider necessary.

Shanti

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316-319]

DIVISIONAL ACCOUNTANTS

[CHAP. VII]

Conditions of Recruitment and Confirmation

316. All departmental candidates who have officiated as Emergency Divisional Accountants for a period of not less than 2 years (including spells totalling 2 years) may be absorbed in the cadre on their passing the Divisional Test alone. The age limit for such Emergency Divisional Accountants for appearing in the examination will be 48.

Those who have reverted at their own request or as a disciplinary measure cannot, however, be considered.

NOTE—Such Emergency Divisional Accountants may not ordinarily be allowed more than 3 chances to sit for the Divisional Test but the Accountants General may allow, in special cases upto two additional chances in deserving cases.

317. Appointment to the cadre of Divisional Accountants, from whatever source, is treated as direct recruitment for the purposes of orders issued from time to time, regarding the reservation of vacancies in favour of the Scheduled Castes and the Scheduled Tribes, and the Accountant General is personally responsible for seeing that these appointments conform to the relative orders.

318. It is a specific condition of the appointment that Divisional Accountants are liable for service anywhere within the audit jurisdiction of the Accountant General concerned including his own office.

319. Every person appointed to the cadre of Divisional Accountants will be on probation, his confirmation being governed by the provisions in paragraph 326. The period of probation will be for a maximum period of three years (six to twenty four months for training and one year for a trial as Divisional Accountant). Recruits from sources (1) and (2) will be reverted in case they are found unsuitable during the period of their training. If a direct recruit fails to pass the Divisional Test Examination within the period of probation he will be removed from service or if fully deserving of retention, offered an Upper Division vacancy in the Audit Office.

Explanation—The periods of probation may be automatically extended in the case of recruits from sources (1) and (2), if an Accountant General holds for them under paragraph 322, the Divisional Test Examination only once in a year instead of twice, to give candidates three normal chances. The Accountants General may also, for special reasons, curtail the period of probation to the extent necessary.

NOTE—When a person after passing the Divisional Test Examination is placed in independent charge of the accounts of a Division or in charge of a Divisional Accountant's work in the Audit Office, he should draw pay in the regular scale of pay of Divisional Accountants, that is, his pay as a probationer should be limited to so much of the probationary period during which the person is not placed in full charge of a Divisional Accountant's work.

Signature

A/C
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33-39] DIVISIONAL ACCOUNTANTS ESTABLISHMENT [CHAP. II

on any other duties except his own.

[Circular letter No. W.M. 2/1599, dated 25-8-50, published in Part V of the Gazette, page 23 'c' File No. W.M./778.]

34. The Divisional Accountant should not be entrusted with the audit and accounts works relating to the Irrigation Branch Benevolent Fund or with any work in connection with the realization of the dues of the U. P. Irrigation Branch Co-operative Society or its accounts.

[Letter No. W.M. II/652, dated the 23-5-52, addressed to Chief Engineer, Irrigation Branch, page 73, 'c' File W.M./778.]

35. *Transfers and Postings.*—Postings of Divisional Accountants to Divisions are ordered by the Deputy Accountant General (Works) acting under the general control of the Accountant General. Postings should be designed to provide for trained accountant for each Divisional Office and in particular for an experienced Senior Accountant to new construction divisions or to divisions the accounts of which are either heavy or of a peculiar nature.

36. Ordinarily an accountant should not be kept for a period longer than three years in any particular division, and if for any special reason a change cannot be made at the expiry of that period the Superintendent, Works Miscellaneous Section, should bring the matter to the notice of the Deputy Accountant General for orders so that he may be transferred as soon as possible.

Note.—The local Government have, as a measure of economy, issued general orders to the effect that transfers should be limited as far as possible.

[Finance Department G. O. No. F.N.-102/X-130, dated 19th April, 1932.]

Note.—Once a year on 10th March the Superintendent, W.M., should submit a note to the Deputy Accountant General (W) detailing all cases in which Divisional Accountants would complete more than 3 years in a particular division ending with the financial year just closed.

37. Except in cases of transfers found quite necessary due to exigencies of service all transfers should, as far as possible, be made only during summer vacation time and intimation of such transfers should be given in the month of March to the Officers concerned. Transfers in the middle of the year need not be made simply because Accountants may have finished their prescribed term of office within 3 years at a particular place.

[C. A. G. Circular letter No. 2630-GBE/326-48, dated 8-6-1948.]

38. *Transfer Report.*—When a Divisional Accountant is about to be relieved of his duties in a Divisional Office, either permanently or temporarily, he should prepare a memorandum reviewing the account of the division. The relieving Accountant should examine it and forward it promptly with his remarks to the Accountant General through the Divisional Officer who will record such observations as he may consider necessary. For detailed instructions para. 700 of F.H. Volume VI, may also be seen.

39. The transfer memos received in this office should first be sent to W. M. Section which section will note the date of relief taking over by the respective Divisional Accountants in the Employment Register. W. M. Section will also see that there has been no delay in handing over and taking over charge and also that the relief

S. M.

(Annexure- R-5)

REGISTERED

OFFICE OF THE ACCOUNTANT GENERAL (A&E) II, U.P., ALLAHABAD.

No. W.M.I/T&P/A.G.T.-1990/38

Dated : 9-2-1990.

To,

Shri...M.S...Ansari...S.G.DA
...Rajendra Canal Division
.....Banka.....

He is hereby directed to furnish the option through proper channel in the attached proforma for his further posting during A.G.T.-1990, so as to reach Shri. A.K. Aich, Accounts Officer/W.M.I Section, O/o the Accountant General (A&E) II, U.P. Allahabad, latest by March 15, 1990.

In this regard, following points may be noted.

- 1- Option received late is liable to be rejected.
- 2- Option once exercised will be final.
- 3- He may send by name and Registered post, an advance copy of the option so as to reach Shri. A.K. Aich, Accounts Officer/W.M.I within stipulated time.
- 4- He must indicate only four choice stations (only station) in order of preference with reasons.
- 5- Reasons for posting at a desired place may be quoted precisely and only at appropriate columns provided in the proforma.
- 6- Proforma prescribed for the purpose, duly filled by Divisional Accounts Officer/Selection Grade Divisional Accountants/ Divisional Accountants/Emergency Divisional Accountants alone shall be taken into consideration for the purpose of postings. All necessary information may be presented on the proforma itself.
- 7- Preference will be given to officials who opt to serve at hills (Chamoli, Pithoragarh, Pauri Garhwal, Tehri Garhwal, Uttarkashi) for a minimum period of two years, while deciding their next transfers, subject to other administrative exigencies at the time.
- 8- Persons completing a tenure of two years at the hills (Chamoli, Pithoragarh, Pauri Garhwal, Tehri Garhwal, Uttarkashi) are given the choice of electing one more year stay at the place of

(Contd....2/-)

Ansari

PROFORMA

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To be filled by the E.D.A./D.A./S.G.D.A./D.A.O. and must reach the Accounts Officer, W.F.I Section, Office of the Accountant General (A&E) II, U.P., Allahabad latest by 15th March, 1960 through proper channel.

1- Name and designation
2- Present place of posting with postal address.
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3- Date of birth
4- Date of retirement
5- Permanent Home Address
6- Date of appointment as E.D.A./D.A.
7- Month & year of passing D.A.
8- Date of promotion as S.G.D.A.
9- Date of promotion as Divisional Accounts Officer
10-Details of postings of last 10 years.

Name of Division	Period of stay	Posting Order No. and date.
(a)		
(b)		
(c)		
(d)		

(Contd---2/-)

Subj

(Annexure - A-6)

From : Ramesh Chandra Agarwal
Divisional Accounts Officer I

A-6
27

To

The Senior Deputy Accountant General
Office of A.G.U.P II (A&E)
Allahabad

Sir,

In reference to your order No. W.M.I/MP/
A.G.T/90 DA/31 dt 28/5/90 I have to inform you that
I have handed over charge to Sir K.R. Tripathi D.A.O.
on 10th July 1990 Afternoon and submitted joining
report to the Executive Engineer, Sardar Patel
Division, Barabanki immediately i.e. 10th July 1990
A.N. but he refused to accept the same in his
letter No. 2645 dt 10/7/90 (Photocopy enc) under
intimation to you.

Encd. as above.

11-7-90.

Yours faithfully
Ramswami
D.A.O.G.T

Swami

कायांलय अधिशासा अभियन्ता
बाराबंकी प्रखंड, शारदा नहर,

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पत्रांक 2645

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वादी (अपीलान्ट)

M. S. Andam v/s बनास हाई कोर्ट प्रतिवादी (रेस्पाडेन्ट)

न० मुकद्दमा २०७ सन् १९९० पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से थी M. Andam (लेस्टर
Alb. Gen. Smt. Sunita Singh (माला) वकील महोदय
Lodew एडवोकेट

अदालत
मुकद्दमा नं० २०७
नाम फरीदकन्त

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरदी व जबाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौठावें या हमारी ओर से डिगरी जारी करावे और रूपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपवे हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रूपया जमा करे या हारी विपक्षी (फरीदकन्ती) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्ताखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा को गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकर को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसको जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

मनत कुमार सिंह
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Chart 6

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